



## **LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA**

Business Committee Conference Room - 2<sup>nd</sup> Floor Norbert Hill Center

July 20, 2022

9:00 a.m.

- I. Call to Order and Approval of the Agenda**
- II. Minutes to be Approved**
  - 1. July 6, 2022 LOC Meeting Minutes (pg. 2)
- III. Current Business**
  - 1. Children's Code Amendments (pg. 4)
  - 2. Oneida Nation Assistance Fund Law (pg. 169)
- IV. New Submissions**
  - 1. Probate Law (pg. 179)
- V. Additions**
- VI. Administrative Updates**
  - 1. E-Poll Results: Adoption of an Emergency Amendment to the Election Law (pg. 202)
- VII. Executive Session**
- VIII. Recess/Adjourn**



**LEGISLATIVE OPERATING COMMITTEE MEETING MINUTES**  
Oneida Business Committee Conference Room-2<sup>nd</sup> Floor Norbert Hill Center  
July 6, 2022  
9:00 a.m.

**Present:** Kirby Metoxen, Marie Summers, Daniel Guzman King

**Excused:** David P. Jordan, Jennifer Webster

**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), Kristal Hill (Microsoft Teams), Rhiannon Metoxen (Microsoft Teams), Rae Skenandore (Microsoft Teams), Kaylynn Gresham (Microsoft Teams), Eric Boulanger (Microsoft Teams), Carrie Lindsey (Microsoft Teams), Hon. Robert Collins II (Microsoft Teams), Matthew Denny (Microsoft Teams), Michelle Myers (Microsoft Teams),

**I. Call to Order and Approval of the Agenda**

Kirby Metoxen called the July 6, 2022, Legislative Operating Committee meeting to order at 9:00 a.m.

Motion by Marie Summers to adopt the agenda with three additions: Section V.1. Elder Assistance Program law; Section V.2. Oneida Nation Assistance Fund Application Submission Period and Disbursement Timeframe for 2022 Resolution; and Section V.3 Election Law Emergency Amendments; seconded by Daniel Guzman King. Motion carried unanimously.

**II. Minutes to be Approved**

**1. June 15, 2022 LOC Meeting Minutes**

Motion by Marie Summers to approve the June 15, 2022, LOC meeting minutes and forward to the Oneida Business Committee; seconded by Daniel Guzman King. Motion carried unanimously.

**III. Current Business**

**1. Healing to Wellness Court Law**

Motion by Daniel Guzman King to approve the adoption packet for the Healing to Wellness Court law and forward to the Oneida Business Committee for consideration; seconded by Marie Summers. Motion carried unanimously.

**2. Children's Code Amendments**

Motion by Marie Summers to accept the public comments and the public comment review



memorandum and defer to a work meeting for further consideration; seconded by Daniel Guzman King. Motion carried unanimously.

#### **IV. New Submissions**

##### **1. Eviction and Termination Law Amendments**

Motion by Marie Summers to add the Eviction and Termination law amendments to the Active Files List with David P. Jordan – or Marie Summers if David P. Jordan declines - as the sponsor; seconded by Daniel Guzman King. Motion carried unanimously.

##### **2. Emergency Management Law Amendments**

Motion by Daniel Guzman King to add the Emergency Management law emergency amendments to the Active Files List with Marie Summers as the sponsor; seconded by Marie Summers. Motion carried unanimously.

#### **V. Additions**

##### **1. Elder Assistance Program Law**

Motion by Marie Summers to approve the adoption packet for the Elder Assistance Program law and forward to the Oneida Business Committee for consideration; seconded by Daniel Guzman King. Motion carried unanimously.

Motion by Daniel Guzman King to 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; seconded by Marie Summers. Motion carried unanimously.

##### **2. Oneida Nation Assistance Fund Application Submission Period Timeframe for 2022 Resolution**

Motion by Marie Summers to approve the resolution, *Oneida Nation Assistance Fund Application Submission Period and Disbursement Timeframe for 2022*, with noted change and corresponding statement of effect and forward to the Oneida Business Committee for consideration; seconded by Daniel Guzman King. Motion carried unanimously.

##### **3. Election Law Emergency Amendments**

Motion by Marie Summers to add the Election law emergency amendments to the Active Files List with Kirby Metoxen as the sponsor; seconded by Daniel Guzman King. Motion carried unanimously.

#### **VI. Administrative Items**

#### **VII. Executive Session**

#### **VIII. Adjourn**

Motion by Marie Summers to adjourn at 9:40 a.m.; seconded by Daniel Guzman King. Motion carried unanimously.



Legislative Operating Committee  
July 20, 2022

## Children's Code Amendments

|                                     |                                |
|-------------------------------------|--------------------------------|
| <b>Submission Date:</b> 10/7/20     | <b>Public Meeting:</b> 6/15/22 |
| <b>LOC Sponsor:</b> David P. Jordan | <b>Emergency Enacted:</b> 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.

**7/6/22 LOC:** Motion by Marie Summers to accept the public comments and the public comment review memorandum and defer to a work meeting for further consideration; seconded by Daniel Guzman King. Motion carried unanimously.

**7/14/22:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Daniel Guzman King, Clorissa N. Santiago, Kristal Hill, Grace Elliot, Carolyn Salutz. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to review and consider the public comments received during the public comment period.

#### **Next Steps:**

- Approve the updated public comment review memorandum, draft, and legislative analysis.
- 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 August 17, 2022.



TO: Legislative Operating Committee (LOC)  
FROM: Clorissa N. Santiago, Legislative Reference Office, Senior Staff Attorney *CNS*  
DATE: July 20, 2022  
RE: Children's Code Amendments: Public Comment Review with LOC Consideration

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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. The Legislative Operating Committee reviewed and considered the public comments received on July 14, 2022.

#### 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**

The Legislative Operating Committee determined that the Children's Code should be amended to clarify the issue regarding the guardian ad litem's efficient access to information when there is an order of the Court addressing such matter to avoid unnecessary delay in the future. The Legislative Operating Committee directed 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.

**Title 7. Children, Elders and Family - Chapter 708**  
**Latiksa'shúha Laotilihwa'ke**  
*the children – their issues*  
**CHILDREN'S CODE**

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

1

2 **708.1. Purpose and Policy**

3 708.1-1. *Purpose.* The purpose of this law is to provide for the welfare, care, and protection of  
4 Oneida children through the preservation of the family unit, while recognizing that in some  
5 circumstances it may be in the child's best interest to not be reunited with his or her family.  
6 Furthermore, this law strengthens family life by assisting parents in fulfilling their responsibilities  
7 as well as facilitating the return of Oneida children to the jurisdiction of the Nation and  
8 acknowledging the customs and traditions of the Nation when raising an Oneida child.

9 708.1-2. *Policy.* It is the policy of the Nation to ensure there is a standard process for conducting  
10 judicial proceedings and other procedures in which children and all other interested parties are  
11 provided fair hearings in addition to ensuring their legal rights are recognized and enforced, while  
12 protecting the public safety.

13

14 **708.2. Adoption, Amendment, Repeal**

15 708.2-1. This law was adopted by the Oneida Business Committee by resolution BC-07-26-17-J,  
16 and amended by resolution BC-\_\_-\_\_-\_\_-\_\_.

17 708.2-2. This law may be amended or repealed by the Oneida Business Committee and/or Oneida  
18 General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

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

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

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

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

### **708.3. Definitions**

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

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

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

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

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

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

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

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

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

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

- (1) To have physical custody of the child as determined by the Court, if physical custody is not with the person having legal custody;
- (2) To protect, educate and discipline the child so long as it is in the child’s best interest; and
- (3) To provide the child with adequate food, shelter, education, ordinary medical care and other basic needs, according to court order. In an emergency situation, a custodian shall have the authority to consent to surgery as well as any other emergency medical care needs.

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

(ee) “Nation” means the Oneida Nation.

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

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

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

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

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

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

(1) lacerations;

(2) fractured bones;

(3) burns;

(4) internal injuries;

(5) severe or frequent bruising;

(6) bodily injury which creates a substantial risk of death;

(7) bodily injury which causes serious permanent disfigurement;

(8) bodily injury which causes a permanent or protracted loss or impairment of the function of any bodily member or organ; or

(9) any other serious bodily injury.

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

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

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

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

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

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

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

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

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

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

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

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

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



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

#### **708.4. Scope**

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

#### **708.5. Jurisdiction**

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

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

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

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

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

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

(a) is without a parent or guardian;

(b) has been abandoned;

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

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

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

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

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

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

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

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

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

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

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

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

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

## **708.6. Nation's Child Welfare Attorney**

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

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

(c) An attorney contracted by the Department.

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

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

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

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

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

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

#### **708.8. Guardian ad litem**

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

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

708.8-2. *Qualifications.*

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

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

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

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

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

#### **708.9. Advocate**

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

#### **708.9-2. *Qualifications.***

(a) An advocate shall be an adult who:

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

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

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

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

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

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

**708.11. Order of Placement Preferences**

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

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

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

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

- (a) Good cause to go outside the placement preferences shall be determined based on any of the following:
  - (1) When appropriate, the request from the child's parent or the child, when the child is age twelve (12) or older;
  - (2) Any extraordinary physical, mental or emotional health needs of the child requiring highly specialized treatment services as established by an expert;
  - (3) The unavailability of a suitable placement after diligent efforts have been made to place the child in the placement preference listed in section 708.11-1; or
  - (4) Any other reason deemed by the Court to be in the best interest of the child.
- (b) The party requesting to deviate from the placement preferences listed in 708.11-1 has the burden of establishing good cause.

**708.12. Notice; General Terms**

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

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

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

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

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

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

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

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

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

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

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

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

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

708.14-3. If a request for discovery is refused, the person may submit an application to the Court requesting an order granting discovery. Motions for discovery shall certify that a request for discovery has been made and refused.



~~708.14-4.~~~~708.14-3.~~ If the discovery violates a privileged communication or a work product rule, the Court may deny, in whole or part, otherwise limit or set conditions on the discovery authorized.

708.14-~~4~~5. The identity of the individual that initiated the investigation by contacting the Department, shall be redacted in all documents that are made available to the parties.

708.14-~~5~~6. In addition to the discovery procedures permitted under this law, the discovery procedures permitted under the Oneida Judiciary Rules of Civil Procedure shall apply in all proceedings under this law.

708.14-~~6~~7. The Department may make an ex parte request to the Court to conduct an in camera review to determine what information should and should not be released to the parties and their counsel. In making that determination, the Court shall balance what is necessary to a fair determination of the child welfare legal matter, including access to records, against the interest in protecting the child from the risk of harm. After the Court conducts the in camera review, the decision regarding the release of records shall be provided to the parties in writing.

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

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

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

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

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

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

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

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

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

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

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

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

that services to ensure the child's safety and well-being are not available or would be inadequate;

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

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

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

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

(b) A licensed foster home;

(c) A licensed group home;

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

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

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

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

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

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

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

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

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

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

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

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

**708.16. Emergency Custody Hearing**

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

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

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

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

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

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

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

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

- (a) All orders to hold a child in custody shall include all of the following:
  - (1) A finding that continued placement of the child in his or her home would be contrary to the best interests of the child;
  - (2) A finding that the Department and/or anyone else providing services to the child had reasonable grounds to remove the child from the home based on the child's best interest;
  - (3) A finding that the Department has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's best interests are the paramount concerns;
  - (4) The Department made reasonable efforts to make it possible for the child to return safely home; and

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

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

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

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

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

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

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

708.17-2. The petition shall include the following:

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

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

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

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

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

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

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

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

**708.18. Consent Decree**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (b) A strategic plan for the care of and assistance to the child and family calculated to resolve the concerns presented in the petition;
- (c) A detailed explanation showing the necessity for the proposed plan of disposition and the benefits to the child and family under the proposed plan; and
- (d) If an out-of-home placement is being recommended, specific reasons for recommending that placement.

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

- (a) The location of the placement and where it fits within the placement preferences.
- (b) A recommendation as to whether the Court should establish a child support obligation for the parents;
- (c) Specific information showing that continued placement of the child in his or her home would be contrary to the best interests of the child and specific information showing that the Department has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's best interests are the paramount concerns;
- (d) If the child has one (1) or more siblings who have been removed from the home or for whom an out-of-home placement is recommended, specific information showing that Department has made reasonable efforts to place the child in a placement that enables the sibling group to remain together, unless the Department recommends that the child and his or her siblings not be placed together, in which case the report shall include specific information showing that placement of the children together would be contrary to the best interests of the child or any of those siblings; and
- (e) If a recommendation is made that the child and his or her siblings not be placed together specific information showing that the Department has made reasonable efforts to provide for frequent visitation or other ongoing interaction between the child and the siblings, unless the Department recommends that such visitation or interaction not be provided, in which case the report shall include specific information showing that such visitation or interaction would be contrary to best interests of the child or any of those siblings;

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

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

708.22-2. During a dispositional hearing, if the Department is recommending placement of the child outside of the child's home in accordance with the placement preferences in section 708.11-

1, the Department shall present as evidence specific information showing all of the following:

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



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

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

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

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

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

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

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

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

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

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

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

(d) If the child is placed outside the home, a finding that continued placement of the child in his or her home would be contrary to the welfare of the child and a finding as to whether the Department has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's best interests are the paramount concerns. The Court

shall make the findings specified in this subsection on a case-by-case basis based on circumstances specific to the child;

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

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

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

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

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

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

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

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

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

(3) The specific treatment objectives that clearly identify the separate roles and responsibilities of all parties addressed in the service plan, including the Department's specific responsibilities to make reasonable efforts to assist the parent, guardian or legal custodian in their efforts toward reunification with the child; and

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

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

(1) Outpatient mental health treatment;

(2) Substance abuse treatment;

(3) Anger management;

(4) Individual or family counseling;

- (5) Parent training and education;
- (6) Cultural wellness treatment and training; and/or
- (7) Any other treatment as deemed appropriate by the Court.

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

708.22-7. The Court shall provide a copy of the dispositional order to the child's parent, guardian, and legal custodian, and other parties to the action.

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

### **708.23. Permanency Plans**

708.23-1. The Department shall prepare a written permanency plan anytime a child is placed outside the home pursuant to dispositional order that finds the child is in need of protection or services.

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

- (1) The name, birth date, address, and tribal affiliation of the child;
- (2) The names, birth dates, addresses, and tribal affiliation of the child's parent(s), guardian(s), and legal custodian(s);
- (3) The date on which the child was removed from the home;
- (4) A statement as to the availability of a safe and appropriate placement with an extended family member;
- (5) The goal(s) of the permanency plan which may include one or more of the following: reunification, adoption, guardianship, placement with a fit and willing relative, or long-term foster care;
- (6) Date by which it is likely the goal(s) of the permanency plan will likely be achieved;
- (7) A description of the services offered and any services provided in an effort to prevent removal of the child from the home or to return the child to the home, while assuring that the best interests of the child are the paramount concerns;
- (8) If the child has one (1) or more siblings who have been removed from the home, a description of the efforts made to place the child in a placement that enables the sibling group to remain together. If a decision is made to not place the siblings together, a description of the efforts made to provide for frequent and ongoing visitation or other ongoing interaction between the child and siblings;
- (9) Information about the child's education; and
- (10) Any other appropriate information as deemed necessary by the Court or the Department.

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

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

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

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

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

(a) The continuing necessity for and the safety and appropriateness of the placement;

(b) The compliance with the permanency plan by the Department and any other service providers, the child's parent(s), and the child;

(c) Efforts taken to involve appropriate service providers and Department staff in meeting the special needs of the child and the child's parent(s);

(d) The progress toward eliminating the causes for the child's placement outside the home and returning the child safely to the home or obtaining a permanent placement for the child;

(e) The date by which it is likely that the child will be returned to the home or placed for adoption, with a guardian, with a fit and willing relative, or in some other permanent living arrangement;

(f) Whether reasonable efforts were made by the Department to achieve the permanency plan goal(s);

(g) Whether reasonable efforts were made by the Department to place the child in a placement that enables the sibling group to remain together or have frequent visitation or other ongoing interaction; and

(h) The date of the next review hearing, if appropriate.

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

708.24-1. The Department, the Nation's Child Welfare attorney, or a party to the dispositional order may request a change in the placement of the child who is the subject of the dispositional order by filing a motion with the Court. The Court may also propose a change in placement on its own motion.

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

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

708.24-4. Upon filing with the Court, the Department shall provide a copy of the request for a change in placement to the parties by first-class mail.

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

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

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

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

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

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

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

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

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

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

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

## **708.25. Trial Reunification**

708.25-1. The Department or the Nation's Child Welfare attorney may request the Court to order a trial reunification. A trial reunification occurs when a child placed in an out-of-home placement resides in the home of a parent, guardian, or legal custodian from which the child was removed for

a period of seven (7) consecutive days or longer, but not exceeding one hundred fifty (150) days, for the purpose of determining the appropriateness of changing the placement of the child to that home. A trial reunification is not a change in placement under section 708.24.

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

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

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

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

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

- (a) If no objection against the trial reunification is filed, the Court may issue an order for the trial reunification.
- (b) If an objection is filed, a hearing shall be held within forty five (45) days after the request was filed with the Court. A trial reunification shall not occur until after the hearing. Not less than three (3) business days before the hearing the Court shall provide notice of the hearing to all parties.

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

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

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

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

- (a) *Extension Request.* The request shall contain a statement describing how the trial reunification continues to be in the best interests of the child. No later than seven (7) days

prior to the expiration of the trial reunification, the Department shall submit the request to the Court and shall cause notice of the request to be provided to all parties by first-class mail.

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

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

(2) If an objection is filed, the Court shall schedule a hearing on the matter. If the Court is unable to conduct a hearing on the matter before the trial reunification expires, the trial reunification shall remain in effect until the Court is able hold the hearing. Not less than three (3) business days before the hearing the Court shall provide notice of the hearing to all parties.

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

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

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

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

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

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

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

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

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

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

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

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



(C) the reasons for the proposed revocation.

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

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

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

(2) If an objection is filed, the Court shall schedule a hearing on the matter. Not less than three (3) business days before the hearing the Court shall provide notice of the hearing to all parties.

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

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

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

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

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

708.26-2. The request or Court proposal shall set forth in detail the nature of the proposed revision and what new information is available that affects the advisability of the Court's disposition. The request for revision shall be filed with the Court with notice provided to the parties by first-class mail.

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

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

**708.27. Extension of Dispositional Orders**

708.27-1. A party, or the Court on its own motion, may request an extension of a dispositional order. The request shall be filed with the Court with notice to the parties by first-class mail.

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

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

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

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

**708.28. Continuation of Dispositional Orders**

708.28-1. If a petition for suspension or termination of parental rights or guardianship is filed or an appeal from a suspension or termination of parental rights or guardianship judgment is filed during the year in which a child in need of protection or services dispositional order is in effect, the dispositional order shall remain in effect until all proceedings related to the petition or appeal are concluded.

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

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

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

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

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

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

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

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

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

- (a) The child;
- (b) The child's guardian ad litem;
- (c) The child's parent;
- (d) The person with whom the child is placed or in whose home placement of the child is recommended by the Department;
- (e) The Department; or
- (f) The Nation's Child Welfare attorney.

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

- (a) The name, birth date, address, and tribal affiliation of the child;
- (b) The names, birth dates, addresses, and tribal affiliation of the child's parents;
- (c) A copy of the order adjudicating the child to be in need of protection or services and the order placing the child outside of the parental home; and
- (d) A statement of the facts and circumstances which the petitioner alleges establish that the conditions for guardianship specified in section 708.29-1(a)-(f) are met.

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

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

708.29-6. *Plea Hearing for Guardianship.* A plea hearing to determine whether any party wishes to contest a petition for guardianship shall take place no sooner than ten (10) days after the filing of the petition. At the hearing, the non-petitioning parties shall state whether they wish to contest the petition. Before accepting an admission or a plea of no contest to the allegations in the petition, the Court shall do all of the following:

- (a) Address the parties present and determine that the admission or plea of no contest is made voluntarily and with understanding of the nature of the facts alleged in the petition, the nature of the potential outcomes and possible dispositions by the Court and the nature of the legal consequences of that disposition;
- (b) Establish whether any promises or threats were made to elicit the admission or plea of no contest; and
- (c) Make inquiries to establish to the satisfaction of the Court that there is a factual basis for the admission or plea of no contest.

1289 708.29-7. If the petition is not contested and if the Court accepts the admission or plea of no  
1290 contest, the Court may immediately proceed to a dispositional hearing unless an adjournment is  
1291 requested.

1292 708.29-8. If the petition is contested or if the Court does not accept the admission or plea of no  
1293 contest, the Court shall set a date for a fact-finding hearing which allows reasonable time for the  
1294 parties to prepare but is not more than sixty (60) days after the plea hearing, unless the Court enters  
1295 an order finding good cause to go outside the time limits.

1296 (a) If the petition is contested, the Court shall order the Department to file with the Court  
1297 a report containing as much information relating to the appointment of a guardian as is  
1298 reasonably ascertainable, including an assessment of the conditions for guardianship  
1299 specified in section 708.29-1(a)-(f). Upon filing with the Court and at least seven (7) days  
1300 prior to the hearing, the Department shall provide the parent, guardian, legal custodian,  
1301 proposed guardian, and any other parties a written copy of the report by first-class mail.

1302 708.29-9. *Fact Finding Hearing for Guardianship.* The Court shall hold a fact-finding hearing  
1303 on the petition at which any party may present evidence relevant to the issue of whether the  
1304 conditions for guardianship have been met. If the Court, at the conclusion of the fact-finding  
1305 hearing, finds by clear and convincing evidence that the conditions for guardianship specified in  
1306 section 708.29-1(a)-(f) have been met, the Court shall immediately proceed to a dispositional  
1307 hearing unless an adjournment is requested.

1308 708.29-10. *Dispositional Hearing for Guardianship.* The Court shall hold a dispositional hearing  
1309 at which any party may present evidence, including expert testimony, relevant to the disposition.  
1310 In determining the appropriate disposition for guardianship, the Court shall use the best interests  
1311 of the child as the prevailing factor to be considered by the Court. In making a decision about the  
1312 appropriate disposition, the Court shall consider any report submitted by the Department and shall  
1313 consider, but not be limited to, all of the following:

- 1314 (a) Whether the person would be a suitable guardian of the child;  
1315 (b) The willingness and ability of the person to serve as the child's guardian for an extended  
1316 period of time or until the child reaches the age of eighteen (18) years; and  
1317 (c) The wishes of the child, if the child has the capacity to express their wishes.

1318 708.29-11. *Dispositional Order for Guardianship.* After receiving any evidence relating to the  
1319 disposition, the Court shall enter one of the following dispositions and issue a written decision  
1320 consistent with the Oneida Judiciary Rules of Civil Procedure:

- 1321 (a) A disposition dismissing the petition if the Court determines that appointment of the  
1322 person as the child's guardian is not in the best interests of the child; or  
1323 (b) A disposition ordering that the proposed guardian be appointed as the child's guardian  
1324 if the Court determines that such an appointment is in the best interests of the child.

1325 708.29-12. If the Court appoints a guardian for the child, the Court may dismiss the dispositional  
1326 order finding that the child is in need of protection or services.

1327  
1328 **708.30. Revisions of Guardianship Order**

1329 708.30-1. Any person authorized to file a guardianship petition or the Court, on its own motion  
1330 may request a revision in a guardianship order.

1331 708.30-2. The motion or Court proposal shall set forth in detail the nature of the proposed revision,  
1332 shall allege facts sufficient to show that there has been a substantial change in circumstances since  
1333 the last order affecting the guardianship was entered and that the proposed revision would be in  
1334 the best interests of the child and shall allege any other information that affects the advisability of

the Court's disposition. The motion for the revision shall be filed with the Court and, upon filing, a written copy shall be provided to all parties by first-class mail.

- (a) The Court may order the Department to file with the Court a report containing as much information relating to the revision of the guardianship as is reasonably ascertainable. Upon filing with the Court and at least seven (7) days prior to the revision hearing, the Department shall provide the parties with a written copy of the report by first-class mail.

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

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

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

- (a) The date on which the child attains eighteen (18) years of age;
- (b) The date on which the child is granted a high school or high school equivalency diploma or the date on which the child reaches nineteen (19) years of age, whichever occurs first, if the child is a full-time student at a secondary school or its vocational or technical equivalent and is reasonably expected to complete the program before reaching nineteen (19) years of age; or
- (c) The date on which the Court terminates the guardianship order.

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

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

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

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

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

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

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

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

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

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

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

708.32-7. The suspension or termination of parental rights shall not adversely affect the child's rights and privileges as a member of the Nation, nor as a member of any tribe to which the child is entitled to membership, nor shall it affect the child's enrollment status with the Nation, nor shall it interfere with the child's cultural level and traditional and spiritual growth as a member of the Nation.

**708.33. Voluntary Suspension or Termination of Parental Rights**

708.33-1. The Court may suspend or terminate the parental rights of a parent after the parent has given his or her consent. When such voluntary consent is given and the Department has submitted a court report pursuant to section 708.38, the Court may proceed immediately to a dispositional hearing.

708.33-2. The Court may accept a voluntary consent to suspension or termination of parental rights only if the parent appears personally at the hearing and gives his or her consent to the suspension or termination of his or her parental rights. The Court may accept the consent only after the judge has explained the effect of suspension or termination of parental rights and has questioned the parent, and/or has permitted counsel who represents any of the parties to question the parent, and is satisfied that the consent is informed and voluntary. If the Court finds that it would be difficult or impossible for the parent to appear in person at the hearing, the Court may allow the parent to appear by telephone or live audiovisual means.

708.33-3. If in any proceeding to suspend or terminate parental rights voluntarily any party has reason to doubt the capacity of a parent to give informed and voluntary consent to the suspension or termination, he or she shall so inform the Court. The Court shall then inquire into the capacity of that parent in any appropriate way and shall make a finding as to whether or not the parent is capable of giving informed and voluntary consent to the suspension or termination. If in the Court's discretion a person is found incapable of knowingly and voluntarily consenting to the suspension or termination of their parental rights, the Court shall dismiss the voluntary proceedings

without prejudice. That dismissal shall not preclude an involuntary suspension or termination of the parent's rights.

708.33-4. A parent who has executed a consent under this section may withdraw the consent for any reason at any time prior to the entry of a final order suspending or terminating parental rights.

708.33-5. Any consent given under this section prior to or within ten (10) days after the birth of the child is not valid.

708.33-6. The parties, and the placement provider or adoptive resource, may agree to attend peacemaking to establish an agreement regarding post-voluntary suspension or termination of parental rights contact with a birth parent, birth sibling, or other birth relative of the child.

(a) Any party to a post-voluntary suspension or termination contact agreement or the child who is the subject of the proceedings may petition the Court that approved the agreement to compel any person who is bound by the agreement to comply with the agreement. The petition shall allege facts sufficient to show that a person who is bound by the agreement is not in compliance with the agreement and that the petitioner, before filing the petition, attempted in good faith to resolve the dispute giving rise to the filing of the petition. The petition may also allege facts showing that the noncompliance with the agreement is not in the best interests of the child.

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

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

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

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

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

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

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

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

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

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

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

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

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

(E) The child has been left by the parent with any person, the parent knows or could discover the whereabouts of the child and the parent has failed to visit or communicate with the child for a period of six (6) consecutive months or longer.

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

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

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

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

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

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

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



1513 (b) *Relinquishment*. Relinquishment occurs when a parent gives up or abandons their child  
1514 and all rights to their child. Relinquishment shall be established by proving that a court of  
1515 competent jurisdiction has found that the parent has relinquished custody of the child when  
1516 the child was seventy-two (72) hours old or younger.

1517 (c) *Continuing Need of Protection or Services*. Continuing need of protection or services  
1518 shall be established by proving any of the following:

1519 (1) That the child has been found to be in need of protection or services and placed,  
1520 or continued in a placement, outside his or her home pursuant to one (1) or more  
1521 dispositional orders containing the notice required by section 708.22-8;

1522 (2) That the Department has made a reasonable effort to provide the services  
1523 ordered by the Court;

1524 (3) That the child has been outside the home for a cumulative total period of six (6)  
1525 months or longer pursuant to such orders; and that the parent has failed to meet the  
1526 conditions established for the safe return of the child to the home and, if the child  
1527 has been placed outside the home for less than fifteen (15) of the most recent  
1528 twenty-two (22) months, that there is a substantial likelihood that the parent will  
1529 not meet these conditions as of the date on which the child will have been placed  
1530 outside the home for fifteen (15) of the most recent twenty-two (22) months, not  
1531 including any period during which the child was a runaway from the out-of-home  
1532 placement or was residing in a trial reunification home.

1533 (d) *Continuing Parental Disability*. Continuing parental disability shall be established by  
1534 proving that:

1535 (1) The parent is presently, and for a cumulative total period of at least two (2)  
1536 years within the five (5) years immediately prior to the filing of the petition has  
1537 been, an inpatient at one (1) or more hospitals as defined in either the Nation's laws  
1538 or state law;

1539 (2) The condition of the parent is likely to continue indefinitely; and

1540 (3) The child is not being provided with adequate care by a relative who has legal  
1541 custody of the child, or by a parent or a guardian.

1542 (e) *Continuing Denial of Periods of Physical Placement or Visitation*. Continuing denial  
1543 of periods of physical placement or visitation shall be established by proving all of the  
1544 following:

1545 (1) The parent has been denied periods of physical placement by Court order in an  
1546 action affecting the family or has been denied visitation under a dispositional order  
1547 containing the notice required by section 708.22-8, Wis. Stat. 48.356(2), or Wis.  
1548 Stat. 938.356 (2); and

1549 (2) A Court order has denied the parent periods of physical placement or visitation  
1550 for at least one (1) year.

1551 (f) *Child Abuse*. Child abuse shall be established by proving that the parent has committed  
1552 child abuse against the child who is the subject of the petition and proving either of the  
1553 following:

1554 (1) That the parent has caused death or injury to a child resulting in a felony  
1555 conviction; or

1556 (2) That a child has previously been removed from the parent's home pursuant to a  
1557 dispositional order after an adjudication that the child is in need of protection or  
1558 services.

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

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

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

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

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

(h) *Incestuous Parenthood.* Incestuous parenthood shall be established by proving that the person whose parental rights are sought to be terminated is also related, either by blood or adoption, to the child's other parent in a degree of kinship closer than 2nd cousin.

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

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

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

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

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

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

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

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

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

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

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

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

1605 (k) *Commission of a Felony Against a Child.*

1606 (1) Commission of a serious felony against the child, shall be established by  
1607 proving that the child was the victim of a serious felony and parent was convicted  
1608 of that serious felony.

1609 (2) In this subsection, “serious felony” means any of the following:

1610 (A) The commission of, the aiding or abetting of, or the solicitation,  
1611 conspiracy or attempt to commit, a violation of any of the following:

1612 (i) First degree intentional homicide [under Wis. Stat. 940.01];

1613 (ii) First degree reckless homicide [under Wis. Stat. 940.02];

1614 (iii) Felony murder [under Wis. Stat. 940.03];

1615 (iv) Second-degree intentional homicide [under Wis. Stat. 940.05]; or

1616 (v) A violation of the law of any other state or federal law, if that  
1617 violation would be a violation of the above-mentioned felonies if  
1618 committed in Wisconsin.

1619 (B) The commission of a violation of any of the following:

1620 (i) Battery, substantial battery, aggravated battery [under Wis. Stat.  
1621 940.19 (3), 1708 stats., or Wis. Stats. 940.19 (2), (4) or (5)];

1622 (ii) Sexual assault [under Wis. Stat. 940.225 (1) or (2)];

1623 (iii) Sexual assault of a child [under Wis. Stat. 948.02 (1) or (2)];

1624 (iv) Engaging in repeated acts of sexual assault of the same child [under  
1625 Wis. Stat. 948.025];

1626 (v) Physical abuse of a child [under Wis. Stats. 948.03 (2) (a), (3) (a),  
1627 or (5) (a) 1., 2., or 3.];

1628 (vi) Sexual exploitation of a child [under Wis. Stat. 948.05];

1629 (vii) Trafficking of a child [under Wis. Stat. 948.051];

1630 (viii) Incest with a child [under Wis. Stat. 948.06];

1631 (ix) Soliciting a child for prostitution [under Wis. Stat. 948.08];

1632 (x), Human trafficking [under Wis. Stat. 940.302 (2) if Wis. Stat.  
1633 940.302 (2) (a) 1. b. applies]; or

1634 (xi) A violation of the law of any other state or federal law, if that  
1635 violation would be a violation listed under the above listed felonies if  
1636 committed in Wisconsin.

1637 (C) The commission of a violation of neglecting a child under Wis. Stat.  
1638 948.21 or a violation of the law of any other state or federal law, if that  
1639 violation would be a violation of Wis. Stat. 948.21 if committed in this state,  
1640 that resulted in the death of the victim.

1641 (l) *Prior Involuntary Suspension or Termination of Parental Rights of Another Child.*  
1642 Prior involuntary suspension or termination of parental rights to another child shall be  
1643 established by proving all of the following:

1644 (1) That the child who is the subject of the petition is in need of protection or  
1645 services under section 708.5-2(b), (d), or (k); or that the child who is the subject of  
1646 the petition was born after the filing of a petition under this subsection whose  
1647 subject is a sibling of the child; and

1648 (2) That, within three (3) years prior to the date the Court determined the child to  
1649 be in need of protection or services as specified in section 708.34-1 (l) (1) or, in the  
1650 case of a child born after the filing of a petition as specified in section 708.34-1 (l)

(1), within three (3) years prior to the date of birth of the child, a Court has ordered the suspension or termination of parental rights with respect to another child of the person whose parental rights are sought to be suspended or terminated on one or more of the grounds specified in this section.

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

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

- (a) Nation's Child Welfare attorney;
- (b) Department; or
- (c) child's parent in the case of a step-parent adoption.

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

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

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

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

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

- (a) The Court may grant an injunction prohibiting the respondent from visiting or contacting the child if the Court determines that the prohibition would be in the best interests of the child. An injunction under this subsection is effective according to its terms but may not remain in effect beyond the date the Court dismisses the petition for suspension

or termination of parental rights or issues an order suspending or terminating parental rights.

708.35-5. Upon filing with the Court and at least seven (7) days prior to the initial hearing, the petitioner shall serve the summons and petition upon the following persons by personal service or, if personal service is not possible, by certified mail, return receipt requested:

(a) The parent(s) of the child, including an alleged father if paternity has not been established; and

(b) The child's foster parent, guardian or legal custodian, if applicable. If the address has been marked confidential by the Court, the Court shall send a copy of the summons and petition to the home in which the child is placed via first-class U.S. mail.

### **708.36. Initial Hearing on the Suspension or Termination of Parental Rights Petition**

708.36-1. The initial hearing on the petition to suspend or terminate parental rights shall be held within forty-five (45) days after the petition is filed. At the hearing the Court shall determine whether any party wishes to contest the petition and inform the parties of their rights.

708.36-2. If the petition is contested, the Court shall set a date for a fact-finding hearing to be held within sixty (60) days after the hearing on the petition, unless the Court enters an order finding good cause to go outside the time limits.

708.36-3. If the petition is not contested, the Court shall hear testimony in support of the allegations in the petition and may proceed immediately with a dispositional hearing if the parties agree. Before accepting an admission of the alleged facts in a petition, the Court shall:

(a) Address the parties present and determine that the admission is made voluntarily with understanding of the nature of the acts alleged in the petition and the potential outcomes and possible dispositions by the Court;

(b) Establish whether any promises or threats were made to elicit an admission; and

(c) Make such inquiries to establish a factual basis for the admission.

### **708.37. Fact Finding Hearing for a Suspension or Termination of Parental Rights**

708.37-1. The fact-finding hearing is a hearing conducted by the Court to determine whether there is clear and convincing evidence to establish that grounds exist for the suspension or termination of parental rights.

708.37-2. The fact-finding hearing shall be conducted according to the Oneida Judiciary Rules of Civil Procedure except that the Court may exclude the child from the hearing.

708.37-3. If grounds for the suspension or termination of parental rights are found by the Court, the Court shall find the parent(s) unfit. A finding of unfitness shall not prevent a dismissal of a suspension or termination of parental rights petition. Unless the parties agree to proceed immediately with the dispositional hearing and the Court accepts, the Court shall set a date for a dispositional hearing no later than forty-five (45) days after the fact-finding hearing, unless the Court enters an order finding good cause to go outside the time limits.

### **708.38. Department's Suspension or Termination of Parental Rights Report**

708.38-1. In any case that the Department is a party, the Department shall submit a written report to the Court prior to any dispositional hearing, with a copy to the parties by first-class mail no later than seven (7) days prior to the hearing, which shall contain all of the following:

(a) The social history of the child and family, including any relevant medical conditions;

(b) A statement of the facts supporting the need for suspension or termination of parental rights;

(c) If the child has been previously adjudicated to be in need of protection or services, a statement of the steps the Department has taken to remedy the conditions responsible for Court intervention and the parent's response to and cooperation with these services. If the child has been removed from the home, the report shall also include a statement of the reasons why the child cannot be returned safely to the family and the steps the Department has taken to effect this return;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) If the disposition is for the suspension or termination of parental rights, the order may contain all of the following:

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

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

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

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

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

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

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

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

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

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

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

#### **708.41. Adoption**

708.41-1. Adoptions under this law shall take the form of customary adoptions when the Court has granted a petition to suspend parental rights. When the Court grants a petition to terminate parental rights the adoption shall be closed.

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

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

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

(c) Adoption shall not prevent an adopted child from inheriting from a biological parent in the same manner as any other biological child. The biological parents shall not be entitled



to inherit from an adopted child in the same manner as parents would otherwise be entitled to inherit. An adopted child shall be entitled to inherit from adoptive parents, and vice versa, in the same manner as if biological parents and child;

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

(1) The right to communication;

(2) The right to visitation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) A married adult couple;

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

(c) An unmarried adult.

708.42-3. If the person proposing to adopt the child cannot successfully clear a background check, and any convictions the person may possess have not been pardoned, forgiven, reversed, set aside or vacated, the Court may still deem the person eligible to adopt if the Court determines by clear and convincing evidence that the adoption would be in the best interests of the child.

### **708.43. Adoption Procedure**

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

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

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

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

(d) The name by which the child shall be known if the petition is granted;

(e) The relationship of the petitioner to the child; and

(f) A copy of the order suspending or terminating parental rights of the child's biological parent(s).

708.43-2. Upon the filing of a petition for adoption, the Court shall schedule a hearing within sixty (60) days.

708.43-3. When a petition for adoption is filed, the Court shall order an investigation to determine whether the child is a proper subject for adoption and whether the petitioner's home is suitable for the child.

(a) The Court shall order one (1) of the following to conduct the investigation:

(1) If the Department, or another agency or department, has guardianship of the child, the agency or department that has guardianship; or

(2) If no agency or department has guardianship of the child and a relative, including a stepparent, has filed the petition for adoption, the Department.

(b) If the Court orders the Department to conduct the investigation, the Department may contract with a third-party agency to conduct the investigation.

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

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

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

1968 708.43-7. If after the hearing and a study of the report required by section 708.43-3 the Court is  
1969 satisfied that the adoption is in the best interests of the child, the Court shall make an order granting  
1970 the adoption. The order may change the name of the child to that requested by petitioners.

1971 708.43-8. After the order of adoption is entered the relation of parent and child and all the rights,  
1972 duties and other legal consequences of the natural relation of child and parent thereafter exists  
1973 between the adopted child and the adoptive parents. The relationship between the adopted child  
1974 and biological parents shall be completely altered and all the rights, duties, and other legal  
1975 consequences of those relationships shall cease to exist, excluding any residual rights granted to  
1976 the biological parents and extended family through customary adoption. If the biological parent  
1977 is the spouse of the adoptive parent, the relationship shall be completely altered and those rights,  
1978 duties, and other legal consequences shall cease to exist only with respect to the biological parent  
1979 who is not the spouse of the adoptive parent.

1980 708.43-9. Within five (5) days after entry of the order granting a closed adoption, the Department  
1981 shall mail a copy of the order to the State of Wisconsin Bureau of Vital Statistics and furnish any  
1982 additional data needed for the issuance of a new birth certificate.

#### 1984 **708.44. Non-Compliance with a Residual Rights Agreement**

1985 708.44-1. Any party to a residual rights agreement or the child who is the subject of the  
1986 proceedings may petition the Court that approved the agreement to compel any person who is  
1987 bound by the agreement to comply with the agreement. The petition shall allege facts sufficient to  
1988 show that a person who is bound by the agreement is not in compliance with the agreement and  
1989 that the petitioner, before filing the petition, attempted in good faith to resolve the dispute giving  
1990 rise to the filing of the petition. The petition may also allege facts showing that the noncompliance  
1991 with the agreement is not in the best interests of the child.

1992 708.44-2. After receiving a petition for action regarding a residual rights contact agreement the  
1993 Court shall set a date and time for a hearing on the petition and shall provide notice of the hearing  
1994 to all parties to the agreement and may reappoint a guardian ad litem for the child.

1995 708.44-3. If the Court finds, after hearing, that any person bound by the agreement is not in  
1996 compliance with the agreement and that the petitioner, before filing the petition, attempted in good  
1997 faith to resolve the dispute giving rise to the filing of the petition, the Court shall issue an order  
1998 requiring the person to comply with the agreement and may find a party in contempt.

1999 708.44-4. The Court may not revoke a suspension or termination of parental rights order or an  
2000 order of customary adoption because an adoptive parent or other custodian of the child or a birth  
2001 parent, birth sibling, or other birth relative of the child fails to comply with a residual rights  
2002 agreement; however, the parties may return to peacemaking to revise the agreement, or the Court  
2003 may amend an order if it finds an amendment to the order is in the best interests of the child.

#### 2005 **708.45. Peacemaking and Mediation**

2006 708.45-1. The Court may refer the parties to peacemaking or mediation if the parties agree to  
2007 attend peacemaking or mediation. The Court shall not refer the parties to peacemaking or  
2008 mediation if attending the session will cause undue hardship or would endanger the health or safety  
2009 of a party.

2010 708.45-2. When the parties attend peacemaking or mediation based on a referral from the Court,  
2011 the Court shall enter an order finding good cause to suspend the time limits established under this  
2012 law.

2014    **708.46. Appeals**

2015    708.46-1. Appeals of all orders issued under this law shall be heard by the Nation’s Court of  
2016    Appeals in accordance with the Rules of Appellate Procedure.

2017  
2018    **708.47. Liability**

2019    708.47-1. No liability shall attach to the Department, Indian Child Welfare Worker, the Nation’s  
2020    Child Welfare Attorney or any person acting under their authority for statements, acts or omissions  
2021    made in good faith while in the course of activities taken under this law.

2022  
2023    *End.*

2024    Adopted – BC-07-26-17-J

2025    Amended – BC-\_\_-\_\_-\_\_-\_\_

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

### ~~CHILDREN'S CODE~~

Latiksaʔshúha Laotilihwa'ke

*the children – their issues*

### CHILDREN'S CODE

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### **708.1. Purpose and Policy**

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

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

### **708.2. Adoption, Amendment, Repeal**

708.2-1. This law was adopted by the Oneida Business Committee by resolution BC-07-26-17-J<sub>2</sub> and amended by resolution BC- - - - .

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

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

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

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

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

### **708.3. Definitions**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **708.4. Scope**

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

#### **708.5. Jurisdiction**

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

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

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

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

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

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

(a) is without a parent or guardian;

(b) has been abandoned;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) hold adoption proceedings.

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

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

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

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

#### **708.6. Nation's Child Welfare Attorney**

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

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

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

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

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

(t) Maintain a knowledge and understanding of all relevant laws and regulations.

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

(a) Identify and refer parties to resources in the community calculated to resolve the problems presented in petitions filed in Court, such as the various psychiatric, psychological, therapeutic, counseling, and other social services available within and outside the Nation when necessary;

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

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

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

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

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

## 708.8. Guardian ad litem

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

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

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

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

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

708.8-2. *Qualifications.*

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

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

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

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

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

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

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

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

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

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



(1) has completed guardian ad litem training provided by the Court, another Indian tribe, or a state; or  
(2) is recognized as a certified guardian ad litem by another jurisdiction.

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

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

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

## **708.9. Advocate**

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

708.9-2. *Qualifications.*

(a) An advocate shall be an adult who:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



708.14-2. 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.

708.14-3. If a request for discovery is refused, the person may submit an application to the Court requesting an order granting discovery. Motions for discovery shall certify that a request for discovery has been made and refused.

708.14-34. If the discovery violates a privileged communication or a work product rule, the Court may deny, in whole or part, otherwise limit or set conditions on the discovery authorized.

708.14-45. The identity of the individual that initiated the investigation by contacting the Department, shall be redacted in all documents that are made available to the parties.

708.14-56. In addition to the discovery procedures permitted under this law, the discovery procedures permitted under the Oneida Judiciary Rules of Civil Procedure shall apply in all proceedings under this law.

708.14-7. The Department may make an ex parte request to the Court to conduct an in camera review to determine what information should and should not be released to the parties and their counsel. In making that determination, the Court shall balance what is necessary to a fair determination of the child welfare legal matter, including access to records, against the interest in protecting the child from the risk of harm. After the Court conducts the in camera review, the decision regarding the release of records shall be provided to the parties in writing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

708.17-2. The petition shall include the following:

- (a) The name, birth date, address, and tribal affiliation of the child;
- (b) The names, birth dates, addresses, and tribal affiliation of the child's parent, guardian, legal custodian or spouse, if any; or if no such person can be identified, the name and address of the nearest relative;
- (c) Whether the child is in custody, and, if so, the place where the child is being held and the date and time he or she was taken into custody unless there is reasonable cause to believe that such disclosure would result in imminent danger to the child or legal custodian;
- (d) A Uniform Child Custody Jurisdiction and Enforcement Act affidavit;
- (e) A plain and concise statement of facts upon which the allegations are based, including the dates, times, and location at which the alleged acts occurred. If the child is being held

in custody outside his or her home, the statement shall include information showing that continued placement of the child in the home would be contrary to the welfare of the child and the efforts that were made to prevent the removal of the child, while assuring that the child's health, welfare, and safety are the paramount concerns; and

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

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

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

### 708.18. Consent Decree

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

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

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

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

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

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

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

708.18-4. *Extension of a Consent Decree.* Upon the motion of the Court or the request of the child, parent, guardian, legal custodian, child's guardian ad litem, or the Department, the Court



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) The social history of the child and family;
- (b) A strategic plan for the care of and assistance to the child and family calculated to resolve the concerns presented in the petition;
- (c) A detailed explanation showing the necessity for the proposed plan of disposition and the benefits to the child and family under the proposed plan; and
- (d) If an out-of-home placement is being recommended, specific reasons for recommending that placement.

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

- (a) The location of the placement and where it fits within the placement preferences.
- (b) A recommendation as to whether the Court should establish a child support obligation for the parents;
- (c) Specific information showing that continued placement of the child in his or her home would be contrary to the best interests of the child and specific information showing that the Department has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's best interests are the paramount concerns;
- (d) If the child has one (1) or more siblings who have been removed from the home or for whom an out-of-home placement is recommended, specific information showing that Department has made reasonable efforts to place the child in a placement that enables the sibling group to remain together, unless the Department recommends that the child and his or her siblings not be placed together, in which case the report shall include specific information showing that placement of the children together would be contrary to the best interests of the child or any of those siblings; and
- (e) If a recommendation is made that the child and his or her siblings not be placed together specific information showing that the Department has made reasonable efforts to provide for frequent visitation or other ongoing interaction between the child and the siblings, unless the Department recommends that such visitation or interaction not be provided, in which case the report shall include specific information showing that such visitation or interaction would be contrary to best interests of the child or any of those siblings;

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

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

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

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

- (a) That continued placement of the child in his or her home would be contrary to the best interests of the child;
- (b) That the Department has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's best interests are the paramount concerns;
- (c) If the child has one (1) or more siblings who have been removed from the home or for whom an out-of-home placement is recommended, that the Department has made reasonable efforts to place the child in a placement that enables the sibling group to remain together, unless the Department recommends that the child and his or her siblings not be placed together, in which case the Department shall present as evidence specific information showing that placement of the children together would be contrary to the best interests of the child or any of those siblings; and
- (d) If a recommendation is made that the child and his or her siblings not be placed together, that the Department has made reasonable efforts to provide for frequent visitation or other ongoing interaction between the child and the siblings, unless the Department recommends that such visitation or interaction not be provided, in which case the Department shall present as evidence specific information showing that such visitation or interaction would be contrary to the best interests of the child or any of those siblings.

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

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

- (a) The ~~treatment~~service plan and specific services to be provided to the child and family, and if custody of the child is to be transferred to effect the ~~treatment~~service plan, the identity of the legal custodian;
- (b) If the child is placed outside the home, where the child will be placed. If the Court finds that disclosing identifying information related to placement of the child would result in imminent danger to the child or anyone else, the Court may order the name and address of whom the child is placed with withheld from the parent or guardian;
- (c) The date of the expiration of the court's order;
  - (1) A dispositional order made before the child reaches eighteen (18) years of age that places or continues the placement of the child in his or her home shall terminate one (1) year after the date on which the order is granted unless the Court specifies a shorter period of time or the Court terminates the order sooner.
  - (2) A dispositional order made before the child reaches eighteen (18) years of age that places or continues the placement of the child outside of the home shall



terminate on the latest of the following dates, unless the Court specifies a shorter period or the Court terminates the order sooner:

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

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

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

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

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

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

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

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

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

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

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

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

(2) The treatment goals and objectives for each condition or requirement established in the plan. If the child has been removed from the home, the

~~treatment~~service plan must include, but is not limited to, the conditions or requirements that must be established for the safe return of the child to the family;  
(3) The specific treatment objectives that clearly identify the separate roles and responsibilities of all parties addressed in the ~~treatment~~service plan, including the Department's specific responsibilities to make reasonable efforts to assist the parent, guardian or legal custodian in their efforts toward reunification with the child; and

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

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

- (1) Outpatient mental health treatment;
- (2) Substance abuse treatment;
- (3) Anger management;
- (4) Individual or family counseling;
- (5) Parent training and education;
- (6) Cultural wellness treatment and training; and/or
- (7) Any other treatment as deemed appropriate by the Court.

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

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

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

### **708.23. Permanency Plans**

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

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

- (1) The name, birth date, address, and tribal affiliation of the child;
- ~~(b2)~~ (2) The names, birth dates, addresses, and tribal affiliation of the child's parent(s), guardian(s), and legal custodian(s);
- ~~(e3)~~ (3) The date on which the child was removed from the home;
- ~~(d4)~~ (4) A statement as to the availability of a safe and appropriate placement with an extended family member;

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

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

(~~g~~7) A description of the services offered and any services provided in an effort to prevent removal of the child from the home or to return the child to the home, while assuring that the best interests of the child are the paramount concerns;

(~~h~~8) If the child has one (1) or more siblings who have been removed from the home, a description of the efforts made to place the child in a placement that enables the sibling group to remain together. If a decision is made to not place the siblings together, a description of the efforts made to provide for frequent and ongoing visitation or other ongoing interaction between the child and siblings;

(~~i~~9) Information about the child's education; and

(~~j~~10) Any other appropriate information as deemed necessary by the Court or the Department.

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

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

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

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

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

(a) The continuing necessity for and the safety and appropriateness of the placement;

(b) The compliance with the permanency plan by the Department and any other service providers, the child's parent(s), and the child;

(c) Efforts taken to involve appropriate service providers and Department staff in meeting the special needs of the child and the child's parent(s);

(d) The progress toward eliminating the causes for the child's placement outside the home and returning the child safely to the home or obtaining a permanent placement for the child;

(e) The date by which it is likely that the child will be returned to the home or placed for adoption, with a guardian, with a fit and willing relative, or in some other permanent living arrangement;

(f) Whether reasonable efforts were made by the Department to achieve the permanency plan goal(s);

(g) Whether reasonable efforts were made by the Department to place the child in a placement that enables the sibling group to remain together or have frequent visitation or other ongoing interaction; and

(h) The date of the next review hearing, if appropriate.

**708.24. Change in Placement**

708.24-1. The Department, the Nation's Child Welfare attorney, or a party to the dispositional order may request a change in the placement of the child who is the subject of the dispositional order by filing a motion with the Court. The Court may also propose a change in placement on its own motion.

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

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

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

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

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

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

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

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

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

708.24-8. No change in placement may extend the expiration date of the original dispositional order, except that if the change in placement is from a placement in the child's home to a placement

outside the home the Court may extend the expiration date of the original dispositional order to the latest of the following dates, unless the Court specifies a shorter period:

- (a) The date on which the child reaches eighteen (18) years of age;
- (b) The date that is one (1) year after the date on which the change-in-placement order is granted; or
- (c) The date on which the child is granted a high school or high school equivalency diploma or the date on which the child reaches nineteen (19) years of age, whichever occurs first, if the child is a full-time student at a secondary school or its vocational or technical equivalent and is reasonably expected to complete the program before reaching nineteen (19) years of age.

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

- (1) the date of the return of the child to the out-of-home placement; and  
(2) the address of that placement to all parties, unless providing the address would present imminent danger to the child;  
(b) Request a change in placement under section 708.24 to place the child in a new out-of-home placement; or  
(c) Request a change in placement under section 708.24 to place the child in the trial reunification home.

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

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

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

- (A) the date on which the child was removed from the trial reunification home;  
(B) the address of the child's current placement, unless providing the address would present imminent danger to the child; and  
(C) the reasons for the proposed revocation.

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

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

- (1) If no objection is filed, the Court may issue a revocation order.  
(2) If an objection is filed, the Court shall schedule a hearing on the matter. Not less than three (3) business days before the hearing the Court shall provide notice of the hearing ~~together with a copy of the request for the revocation~~, to all parties.

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

708.25-10. *Prohibited Trial Reunifications.* The Court may not order a trial reunification in the home of an adult who has been convicted of the first-degree intentional homicide or the second-degree intentional homicide of a parent of the child or any crime against a child, if the conviction has not been reversed, set aside, vacated or pardoned. If a parent in whose home a child is placed for a trial reunification is convicted of homicide or a crime against a child, and the conviction has

not been reversed, set aside, vacated or pardoned, the Court shall revoke the trial reunification and the child shall be returned to his or her previous out-of-home placement, or placed in a new out-of-home placement.

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

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

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

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

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

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

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

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

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

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

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

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



**708.28. Continuation of Dispositional Orders**

708.28-1. If a petition for suspension or termination of parental rights or guardianship is filed or an appeal from a suspension or termination of parental rights or guardianship judgment is filed during the year in which a child in need of protection or services dispositional order is in effect, the dispositional order shall remain in effect until all proceedings related to the petition or appeal are concluded.

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

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

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

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

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

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

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

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

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

(a) The child;

(b) The child's guardian ad litem;

(c) The child's parent;

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

(e) The Department; or

(f) The Nation's Child Welfare attorney.

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

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

- (b) The names, birth dates, addresses, and tribal affiliation of the child's parents;
- (c) A copy of the order adjudicating the child to be in need of protection or services and the order placing the child outside of the parental home; and
- (d) A statement of the facts and circumstances which the petitioner alleges establish that the conditions for guardianship specified in section 708.27-29-1(a)-(f) are met.

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

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

~~708.29-5.~~ 708.29-5. *Plea Hearing for Guardianship.* A plea hearing to determine whether any party wishes to contest a petition for guardianship shall take place no sooner than ten (10) days after the filing of the petition. At the hearing, the non-petitioning parties shall state whether they wish to contest the petition. Before accepting an admission or a plea of no contest to the allegations in the petition, the Court shall do all of the following:

- (a) Address the parties present and determine that the admission or plea of no contest is made voluntarily and with understanding of the nature of the facts alleged in the petition, the nature of the potential outcomes and possible dispositions by the Court and the nature of the legal consequences of that disposition;
- (b) Establish whether any promises or threats were made to elicit the admission or plea of no contest; and
- (c) Make inquiries to establish to the satisfaction of the Court that there is a factual basis for the admission or plea of no contest.

~~708.29-6.~~ 708.29-6.7. If the petition is not contested and if the Court accepts the admission or plea of no contest, the Court may immediately proceed to a dispositional hearing unless an adjournment is requested.

~~708.29-7.~~ 708.29-7.8. If the petition is contested or if the Court does not accept the admission or plea of no contest, the Court shall set a date for a fact-finding hearing which allows reasonable time for the parties to prepare but is not more than sixty (60) days after the plea hearing, unless the Court enters an order finding good cause to go outside the time limits.

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

~~708.29-8.~~ 708.29-8.9. *Fact Finding Hearing for Guardianship.* The Court shall hold a fact-finding hearing on the petition at which any party may present evidence relevant to the issue of whether the conditions for guardianship have been met. If the Court, at the conclusion of the fact-finding hearing, finds by clear and convincing evidence that the conditions for guardianship specified in section 708.29-1(a)-(f) have been met, the Court shall immediately proceed to a dispositional hearing unless an adjournment is requested.

708.29-~~9~~10. *Dispositional Hearing for Guardianship*. The Court shall hold a dispositional hearing at which any party may present evidence, including expert testimony, relevant to the disposition. In determining the appropriate disposition for guardianship, the Court shall use the best interests of the child as the prevailing factor to be considered by the Court. In making a decision about the appropriate disposition, the Court shall consider any report submitted by the Department and shall consider, but not be limited to, all of the following:

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

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

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

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

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

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

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

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

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

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

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

- (a) The date on which the child attains eighteen (18) years of age;

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(a) An order terminating parental rights does not affect a child's relationship with the child's extended biological family unless the Court expressly finds that it is in the child's best interest to terminate the child's relationship with his or her extended biological family.~~

708.32-47. 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

(E) The child has been left by the parent with any person, the parent knows or could discover the whereabouts of the child and the parent has failed to visit or communicate with the child for a period of six (6) consecutive months or longer.

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

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

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

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

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

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

(ii) The parent had good cause for having failed to communicate about the child with the person or persons who had physical custody of the

child or the Department throughout the three (3) or six (6) month time period alleged in the petition.

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

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

(1) That the child has been found to be in need of protection or services and placed, or continued in a placement, outside his or her home pursuant to one (1) or more dispositional orders containing the notice required by section 708.22-~~7~~8;

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

(3) That the child has been outside the home for a cumulative total period of six (6) months or longer pursuant to such orders; and that the parent has failed to meet the conditions established for the safe return of the child to the home and, if the child has been placed outside the home for less than fifteen (15) of the most recent twenty-two (22) months, that there is a substantial likelihood that the parent will not meet these conditions within the nine (9) months of the date on which the child will have been placed outside the home for fifteen (15) of the most recent twenty-two (22) months, not including any period following the termination of parental rights fact-finding hearing during which the child was a runaway from the out-of-home placement or was residing in a trial reunification home.

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

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

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

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

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

(1) The parent has been denied periods of physical placement by Court order in an action affecting the family or has been denied visitation under a dispositional order containing the notice required by section 708.~~20-7~~22-8, Wis. Stat. 48.356-~~(2);~~(2), or Wis. Stat. 938.356 (2); and

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

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

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



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

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

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

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

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

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

(h) *Incestuous Parenthood.* Incestuous parenthood shall be established by proving that the person whose parental rights are sought to be terminated is also related, either by blood or adoption, to the child's other parent in a degree of kinship closer than 2nd cousin.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (i) First degree intentional homicide [under Wis. Stat. 940.01];
- (ii) First degree reckless homicide [under Wis. Stat. 940.02];
- (iii) Felony murder [under Wis. Stat. 940.03];
- (iv) Second-degree intentional homicide [under Wis. Stat. 940.05]; or
- (v) A violation of the law of any other state or federal law, if that violation would be a violation of the above-mentioned felonies if committed in Wisconsin.

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

- (i) Battery, substantial battery, aggravated battery [under Wis. Stat. 940.19 (3), 1708 stats., or Wis. Stats. 940.19 (2), (4) or (5)];
- (ii) Sexual assault [under Wis. Stat. 940.225 (1) or (2)];
- (iii) Sexual assault of a child [under Wis. Stat. 948.02 (1) or (2)];
- (iv) Engaging in repeated acts of sexual assault of the same child [under Wis. Stat. 948.025];
- (v) Physical abuse of a child [under Wis. Stats. 948.03 (2) (a), (3) (a), or (5) (a) 1., 2., or 3.];
- (vi) Sexual ~~exploration~~exploitation of a child [under Wis. Stat. 948.05];
- (vii) Trafficking of a child [under Wis. Stat. 948.051];
- (viii) Incest with a child [under Wis. Stat. 948.06];
- (ix) Soliciting a child for prostitution [under Wis. Stat. 948.08];
- (x), Human trafficking [under Wis. Stat. 940.302 (2) if Wis. Stat. 940.302 (2) (a) 1. b. applies]; or
- (xi) A violation of the law of any other state or federal law, if that violation would be a violation listed under the above listed felonies if committed in Wisconsin.

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

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

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

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

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

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

- (a) Nation's Child Welfare attorney, ~~the~~;
- (b) Department, ~~or the~~;
- (c) child's parent in the case of a step-parent adoption.

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

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

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

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

708.35-4. *Temporary Order and Injunction Prohibiting Contact*. If the petition includes a statement of the grounds for involuntary suspension or termination of parental rights, the petitioner

may, at the time the petition is filed, also petition the Court for a temporary order and an injunction prohibiting the person whose parental rights are sought to be suspended or terminated from visiting or contacting the child who is the subject of the petition. Any petition under this section shall allege facts sufficient to show that prohibiting visitation or contact would be in the best interests of the child.

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

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

~~(a)~~ (a) The parent(s) of the child, including an alleged father if paternity has not been established; and

~~(b)~~ (b) The child's foster parent, guardian or legal custodian, if applicable. If the address has been marked confidential by the Court, the Court shall send a copy of the summons and petition to the home in which the child is placed via first-class U.S. mail; and.

~~(c) The Nation's Child Welfare attorney and the Department, if the petition is filed by anyone other than the Nation's Child Welfare attorney or the Department.~~

#### 708.36. Initial Hearing on the Suspension or Termination of Parental Rights Petition

708.36-1. The initial hearing on the petition to suspend or terminate parental rights shall be held within forty-five (45) days after the petition is filed. At the hearing the Court shall determine whether any party wishes to contest the petition and inform the parties of their rights.

708.36-2. If the petition is contested, the Court shall set a date for a fact-finding hearing to be held within sixty (60) days after the hearing on the petition, unless the Court enters an order finding good cause to go outside the time limits.

708.36-3. If the petition is not contested, the Court shall hear testimony in support of the allegations in the petition and may proceed immediately with a dispositional hearing if the parties agree. Before accepting an admission of the alleged facts in a petition, the Court shall:

(a) Address the parties present and determine that the admission is made voluntarily with understanding of the nature of the acts alleged in the petition and the potential outcomes and possible dispositions by the Court;

(b) Establish whether any promises or threats were made to elicit an admission; and

(c) Make such inquiries to establish a factual basis for the admission.

#### 708.37. Fact Finding Hearing for a Suspension or Termination of Parental Rights

708.37-1. The fact-finding hearing is a hearing conducted by the Court to determine whether there is clear and convincing evidence to establish that grounds exist for the suspension or termination of parental rights.

708.37-2. The fact-finding hearing shall be conducted according to the Oneida Judiciary Rules of Civil Procedure except that the Court may exclude the child from the hearing.

708.37-3. If grounds for the suspension or termination of parental rights are found by the Court, the Court shall find the parent(s) unfit. ~~A finding of unfitness shall not prevent a dismissal of a~~ suspension or termination of parental rights petition. ~~Unless the parties agree to proceed immediately with the dispositional hearing and the Court accepts, the Court shall set a date for a dispositional hearing no later than forty-five (45) days after the fact-finding hearing, unless the Court enters an order finding good cause to go outside the time limits.~~

#### **708.38. Department's Suspension or Termination of Parental Rights Report**

708.38-1. In any case that the Department is a party, the Department shall submit a written report to the Court prior to any dispositional hearing, with a copy to the parties by first-class mail no later than seven (7) days prior to the hearing, which shall contain all of the following:

- (a) The social history of the child and family, including any relevant medical conditions;
- (b) A statement of the facts supporting the need for suspension or termination of parental rights;
- (c) If the child has been previously adjudicated to be in need of protection or services, a statement of the steps the Department has taken to remedy the conditions responsible for Court intervention and the parent's response to and cooperation with these services. ~~If the child has been removed from the home, the report shall also include a statement of the reasons why the child cannot be returned safely to the family and the steps the Department has taken to effect this return;~~
- (d) A statement applying the standards and factors identified in sections 708.39-2 and 708.39-3 regarding the case before the Court; and
- (e) If the report recommends that the parental rights of both of the child's parents or the child's only living or known parent are to be suspended or terminated, the report shall contain a statement of the likelihood that the child will be adopted. ~~This statement shall include a presentation of the factors that might prevent adoption, those that may facilitate adoption, and the Department shall be responsible for accomplishing the adoption.~~
  - (1) If the Department determines that it is unlikely that the child will be adopted, or if adoption would not be in the best interests of the child, the report shall include a plan for placing the child in a permanent family setting. The plan shall include a recommendation for the appointment of a guardian for the child.

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

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

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

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

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

- (a) The likelihood of the child's adoption after suspension or termination;
- (b) Whether the child will be raised in an environment that is respectful of the child's race(s), culture(s), and heritage(s);



- (c) The age and health of the child, both at the time of the disposition and, if applicable, at the time the child was removed from the home;
- (d) Whether the child has substantial relationships with the parent or other family members, and whether it would be harmful to the child to sever these relationships;
- (e) The wishes of the child, if the child has the capacity to express their wishes;
- (f) The duration of the separation of the parent from the child; and
- (g) Whether the child will be able to enter into a more stable and permanent family relationship as a result of the suspension or termination, taking into account the conditions of the child's current placement, the likelihood of future placements and the results of prior placements.

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

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

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

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

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

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

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

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

- (1) A tribal or county department authorized to accept guardianship;
- (2) A child welfare agency licensed to accept guardianship;
- (3) The State of Wisconsin upon written confirmation from the State that they are willing to accept guardianship;
- (4) A relative with whom the child resides, if the relative has filed a petition to adopt the child or if the relative is a kinship care relative or is receiving payments for providing care and maintenance for the child; or
- (5) An individual who has been appointed guardian of the child by a court of a competent jurisdiction; or

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

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

- (a) If the Court dismisses the petition, the order shall contain the reasons for dismissal; or
- (b) If the disposition is for the suspension or termination of parental rights, the order shall contain all of the following:

- (1) The identity of any agency, department, or individual that has received guardianship of the child;
- (2) If an agency or department receives guardianship and custody of the child, an order ordering the child into the placement and care responsibility of the agency or department and assigning the agency or department primary responsibility for providing services to the child; and
- (3) A finding that the suspension or termination of parental rights is in the best interests of the child.

~~708.40-5. If an order is entered to terminate a parent's~~ (c) If the disposition is for the suspension or termination of parental rights, the order may contain all of the following:

- (1) A termination of the right of the parent to have contact with the minor child including contact in person, by mail, by telephone, or through third parties;
- (2) Order restraining a parent from contacting the minor child, the child's foster parent, the child's adoptive parent and/or the social services agency or agencies possessing information regarding the child;
- (3) Order that the biological parents' obligation to pay child support, except for arrearages, is hereby terminated; and
- (4) Order that any prior court order for custody, visitation, or contact, with the minor child is hereby terminated.

708.40-5. The Court shall provide a copy of the order suspending or terminating parental rights to the child's parent, guardian, and legal custodian; the other parties to the action; and the current or future foster parents for the purpose of pursuing adoption.

708.40-6. If an order is entered involuntarily suspending or terminating parental rights, the Court shall orally inform the parent(s) who appear in Court or place in the written order the ground(s) for suspension or termination of their parental rights specified in section 708.34-1(1), which provides that a prior involuntary suspension or termination of parental rights, under certain circumstances, is a ground for the suspension or termination of parental rights for another child.

708.40-6.7. If the Court suspends or terminates parental rights, the Department, or the Court if the Department is not a party to the action, ~~shall~~may forward the following information to the State of Wisconsin:

- (a) The name, date of birth, and tribal affiliation of the child whose birth parent's rights have been suspended or terminated;
- (b) The names and current addresses of the child's birth parents, guardian and legal custodian; and
- (c) Any medical or genetic information received by the Department.

708.40-7.8. If only one (1) parent consents ~~for~~to a voluntary suspension or termination of parental rights or if the grounds for involuntary suspension or termination of parental rights are found to exist as to only one (1) parent, the rights of only that parent may be suspended or terminated without affecting the rights of the other parent if the Court finds such suspension or termination to be in the best interest of the child.

#### **708.41. Adoption**

708.41-1. Adoptions under this law shall take the form of customary adoptions ~~unless~~when the Court ~~determines there is good cause for~~has granted a petition to suspend parental rights. When the Court grants a petition to terminate parental rights the adoption ~~to~~shall be closed.

708.41-2. *Customary Adoptions*. The purpose of customary adoption is not to permanently deprive the adopted child of connections to, or knowledge of, the adopted child's biological family, but to provide the adopted child a permanent home. The following shall apply to all customary adoptions and shall be contained in all adoptive orders and decrees:

(a) The relationship between an adoptive parent and adoptiveadopted child shall have all the same rights, responsibilities, and other legal consequences as the relationship between a biological child and parent;

(b) The adoptiveadopted child shall have an absolute right, absent a convincing and compelling reason to the contrary, to information and knowledge about his or her biological family and his or her Oneida heritage, if applicable. The adopted child may obtain adoption information from files maintained by the Court or Department;

(c) Adoption shall not prevent an adoptiveadopted child from inheriting from a biological parent in the same manner as any other biological child. The biological parents shall not be entitled to inherit from an adoptiveadopted child in the same manner as parents would otherwise be entitled to inherit. An adoptiveadopted child shall be entitled to inherit from adoptive parents, and vice versa, in the same manner as if biological parents and child;

(d) Although parental rights have been terminatedsuspended, the biological parent may retain certain residual parental rights when appropriate as determined by agreement between the adoptive parent and biological parent made through peacemaking, or by order of the Court. Such residual parental rights may include:

(1) The right to communication;

(2) The right to visitation;

(3) The right or obligation to contribute to support or education;

(4) The right to be consulted regarding the adopted child's religious affiliation, major medical treatment, marriage, or other matters of major importance in the child's life; and/or

(5) Such other residual rights the Court may deem appropriate, considering the circumstances.

(e) Adoption does not extinguish the relationships between the adopted child and the adopted child's extended biological family. ~~The~~ adopted child's extended biological family retains the right to reasonable communication and visitation with the adopted child, subject to reasonable controls of the adoptive parents.

708.41-3. *Closed Adoptions*. Closed adoptions occur in situations where ~~a~~ an adopted child needs a permanent home and it is necessary to sever all ties between the adopted child and his or her biological family. The following shall apply to all closed adoptions:

(a) The relationship between an adoptive parent and adoptiveadopted child shall have all the same rights, responsibilities, and other legal consequences as the relationship between a biological child and parent;

(b) The relationship between the adopted child and all persons whose relationship to the adopted child is derived through the biological parents shall be completely altered and all the rights, duties, and other legal consequences of those relationships shall cease to exist;

(c) The adopted child's biological family shall not be entitled to or have access to any information regarding said child;

(d) The adopted child shall be entitled to information and knowledge regarding his or her culture and heritage; and



(e) The adopted child shall be entitled to information regarding his or her biological family upon reaching the age of majority. The adopted child may obtain adoption information from files maintained by the Court or Department.

#### **708.42. Adoption Criteria and Eligibility**

708.42-1. *Criteria for Adoption.* Any child who is subject to this law may be adopted if any of the following criteria are met:

- (a) Both of the child's parents are deceased;
- (b) The parental rights of both of the child's parents with respect to the child have been suspended or terminated;
- (c) The parental rights of one of the child's parents with respect to the child have been suspended or terminated and the child's other parent is deceased; or
- (d) The person filing the petition for adoption is the spouse of the child's parent and either of the following applies:
  - (1) The child's other parent is deceased; or
  - (2) The parental rights of the child's other parent with respect to the child have been suspended or terminated.

708.42-2. *Eligibility.* The following persons are eligible to adopt a child who falls under the jurisdiction of this law pending the successful clearing of a background check:

- (a) A married adult couple;
- (b) Either spouse if the other spouse is a parent of the child; or
- (c) An unmarried adult.

708.42-3. If the person proposing to adopt the child cannot successfully clear a background check, and any convictions the person may possess have not been pardoned, forgiven, reversed, set aside or vacated, the Court may still deem the person eligible to adopt if the Court determines by clear and convincing evidence that the adoption would be in the best interests of the child.

#### **708.43. Adoption Procedure**

708.43-1. *Petition for Adoption.* A person proposing to adopt, or the Department, shall initiate a proceeding for the adoption of a child by filing a petition with the Court. The petition shall include the following information:

- (a) The name, birth date, address, and tribal affiliation of the petitioner;
- (b) The name, birth date, address, and tribal affiliation of the child;
- (c) The names, birth dates, addresses, and tribal affiliation of the child's biological parents;
- (d) The name by which the child shall be known if the petition is granted;
- (e) The relationship of the petitioner to the child; and
- (f) A copy of the order suspending or terminating parental rights of the child's biological parent(s).

708.43-2. Upon the filing of a petition for adoption, the Court shall schedule a hearing within sixty (60) days. ~~Notice of the hearing shall be served on the parties pursuant to the Oneida Judiciary Rules of Civil Procedure.~~

708.43-3. When a petition for adoption is filed, the Court shall order an investigation to determine whether the child is a proper subject for adoption and whether the petitioner's home is suitable for the child. ~~The Court shall order one (1) of the following to conduct the investigation:~~

- (a) The Court shall order one (1) of the following to conduct the investigation:

(a) (1) If the Department, or another agency or department, has guardianship of the child, the agency or department that has guardianship; or

(b) (2) If no agency or department has guardianship of the child and a relative, including a stepparent, has filed the petition for adoption, the Department.

(b) If the Court orders the Department to conduct the investigation, the Department may contract with a third-party agency to conduct the investigation.

708.43-4. The Department or other agency or department making the investigation shall file its report with the Court prior to the hearing on the petition and shall provide ~~the parties with~~ a copy of the report to the parties by first-class mail at least ~~three (3) business~~ seven (7) days prior to the hearing.

708.43-5. If the report of the investigation is unfavorable or if it discloses a situation which, in the opinion of the Court, raises a serious question as to the suitability of the proposed adoption, the Court may appoint a guardian ad litem for the child whose adoption is proposed.

708.43-6. During the hearing the parties may agree to attend peacemaking to establish an agreement regarding residual rights of a birth parent, birth sibling, or other birth relative of the child.

708.43-7. If after the hearing and a study of the report required by section 708.43-3 the Court is satisfied that the adoption is in the best interests of the child, the Court shall make an order granting the adoption. The order may change the name of the child to that requested by petitioners.

708.43-8. After the order of adoption is entered the relation of parent and child and all the rights, duties and other legal consequences of the natural relation of child and parent thereafter exists between the adopted child and the adoptive parents. The relationship between the adopted child and biological parents shall be completely altered and all the rights, duties, and other legal consequences of those relationships shall cease to exist, excluding any residual rights granted to the biological parents and extended family through customary adoption. If the biological parent is the spouse of the adoptive parent, the relationship shall be completely altered and those rights, duties, and other legal consequences shall cease to exist only with respect to the biological parent who is not the spouse of the adoptive parent.

708.43-9. ~~After~~ Within five (5) days after entry of the order granting ~~the a closed~~ adoption, the Department shall ~~promptly~~ mail a copy of the order to the State of Wisconsin Bureau of Vital Statistics and furnish any additional data needed for the issuance of a new birth certificate.

#### **708.44. Non-Compliance with a Residual Rights Agreement**

708.44-1. Any party to a residual rights agreement or the child who is the subject of the proceedings may petition the Court that approved the agreement to compel any person who is bound by the agreement to comply with the agreement. The petition shall allege facts sufficient to show that a person who is bound by the agreement is not in compliance with the agreement and that the petitioner, before filing the petition, attempted in good faith to resolve the dispute giving rise to the filing of the petition. The petition may also allege facts showing that the noncompliance with the agreement is not in the best interests of the child.

708.44-2. After receiving a petition for action regarding a residual rights contact agreement the Court shall set a date and time for a hearing on the petition and shall provide notice of the hearing to all parties to the agreement and may reappoint a guardian ad litem for the child.

708.44-3. If the Court finds, after hearing, that any person bound by the agreement is not in compliance with the agreement and that the petitioner, before filing the petition, attempted in good

faith to resolve the dispute giving rise to the filing of the petition, the Court shall issue an order requiring the person to comply with the agreement and may find a party in contempt.

708.44-4. The Court may not revoke a suspension or termination of parental rights order or an order of customary adoption because an adoptive parent or other custodian of the child or a birth parent, birth sibling, or other birth relative of the child fails to comply with a residual rights agreement; however, the parties may return to peacemaking to revise the agreement, or the Court may amend an order if it finds an amendment to the order is in the best interests of the child.

#### **708.45. Peacemaking and Mediation**

708.45-1. The Court may refer the parties to peacemaking or mediation if the parties agree to attend peacemaking or mediation. The Court shall not refer the parties to peacemaking or mediation if attending the session will cause undue hardship or would endanger the health or safety of a party.

708.45-2. When the parties attend peacemaking or mediation based on a referral from the Court, the Court shall enter an order finding good cause to suspend the time limits established under this law.

#### **708.46. Appeals**

708.46-1. Appeals of all orders issued under this law shall be heard by the Nation's Court of Appeals in accordance with the Rules of Appellate Procedure.

#### **708.47. Liability**

708.47-1. No liability shall attach to the Department, Indian Child Welfare Worker, the Nation's Child Welfare Attorney or any person acting under their authority for statements, acts or omissions made in good faith while in the course of activities taken under this law.

*End.*

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Adopted – BC-07-26-17-J

Amended – BC- - - -

**Title 7. Children, Elders and Family - Chapter 708**  
**Latiksa'shúha Laotilihwa'ke**  
*the children – their issues*  
**CHILDREN'S CODE**

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1

2 **708.1. Purpose and Policy**

3 708.1-1. *Purpose.* The purpose of this law is to provide for the welfare, care, and protection of  
4 Oneida children through the preservation of the family unit, while recognizing that in some  
5 circumstances it may be in the child's best interest to not be reunited with his or her family.  
6 Furthermore, this law strengthens family life by assisting parents in fulfilling their responsibilities  
7 as well as facilitating the return of Oneida children to the jurisdiction of the Nation and  
8 acknowledging the customs and traditions of the Nation when raising an Oneida child.

9 708.1-2. *Policy.* It is the policy of the Nation to ensure there is a standard process for conducting  
10 judicial proceedings and other procedures in which children and all other interested parties are  
11 provided fair hearings in addition to ensuring their legal rights are recognized and enforced, while  
12 protecting the public safety.

13

14 **708.2. Adoption, Amendment, Repeal**

15 708.2-1. This law was adopted by the Oneida Business Committee by resolution BC-07-26-17-J,  
16 and amended by resolution BC-\_\_-\_\_-\_\_-\_\_.

17 708.2-2. This law may be amended or repealed by the Oneida Business Committee and/or Oneida  
18 General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

708.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

708.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control. Provided that, this law repeals the following:

- (a) Resolution # BC-09-25-81 *Oneida Child Protective Board Ordinance*;
- (b) Resolution # BC-10-07-81-A *Appointing Members to the Oneida Child Protective Board*;
- (c) Resolution # BC-05-24-84-C *Definition of Extended Family Member*;
- (d) Resolution # BC-01-14-15-A *Amendment of Oneida Child Protective Board Ordinance*;
- (e) Resolution # BC-05-13-15 *Indian Child Welfare Act Policy*; and
- (f) Resolution # BC-12 -10-03-A *Oneida Child Protective Boards Stipends*.

708.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

### 708.3. Definitions

708.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

- (a) “Abuse” means any of the following:
  - (1) Physical injury inflicted on a child by other than accidental means;
  - (2) Sexual assault;
  - (3) Sexual exploitation of a child;
  - (4) Prostitution or trafficking of a child;
  - (5) Causing a child to view or listen to sexual activity or sexually explicit materials;
  - (6) Exposing a child to the manufacture, sale, or use of controlled substances; and/or
  - (7) Emotional damage for which the child’s parent, guardian, or legal custodian has neglected, refused, or been unable for reasons other than poverty to obtain the necessary treatment or take steps to address the issue.
- (b) “Advocate” means a person who is a non-attorney presented to the Court as the representative or advisor to a party.
- (c) “Alcohol and other drug abuse impairment” means a condition of a person which is exhibited by characteristics of habitual lack of self-control in the use of alcoholic beverages or controlled substances to the extent that the person’s health is substantially affected or endangered or the person’s social or economic functioning is substantially disrupted.
- (d) “Attorney” means a person trained and licensed to represent another person in Court, to prepare documents and to give advice or counsel on matters of law.
- (e) “Best interest of the child” means the interest of a child to:
  - (1) Have a full, meaningful, and loving relationship with both parents and family as much as possible;
  - (2) Be free from physical, sexual and emotional abuse;
  - (3) Be raised in conditions that foster and encourage the happiness, security, safety, welfare, physical and mental health, and emotional development of the child;
  - (4) Receive appropriate medical care;
  - (5) Receive appropriate education;

- 64 (6) Be raised in conditions which maximize the chances of the child becoming a  
65 contributing member of society; and  
66 (7) Be raised in an environment that is respectful of the child's race(s), culture(s),  
67 and heritage(s).
- 68 (f) "Business day" means Monday through Friday from 8:00 a.m. to 4:30 p.m., excluding  
69 holidays recognized by the Nation.
- 70 (g) "Child" means a person who is less than eighteen (18) years of age.
- 71 (h) "Clear and convincing evidence" means that a particular fact is substantially more  
72 likely than not to be true.
- 73 (i) "Counsel" means an attorney or advocate presented to the Court as the representative  
74 or advisor to a party.
- 75 (j) "Court" means the Oneida Nation Family Court, which is the branch of the Oneida  
76 Nation Judiciary that has the designated responsibility to oversee family matters.
- 77 (k) "Court of competent jurisdiction" means a state or tribal court that has jurisdiction and  
78 authority to do a certain act or hear a certain dispute.
- 79 (l) "Department" means the Oneida Nation Indian Child Welfare Department.
- 80 (m) "Disposition" means the Court's final ruling or decision on a case or legal issue.
- 81 (n) "Dispositional hearing" means a hearing for the Court to make its final determination  
82 of a case or issue.
- 83 (o) "Emotional damage" means harm to a child's psychological or intellectual  
84 functioning evidenced by one (1) or more of the following characteristics exhibited to a  
85 severe degree:
- 86 (1) anxiety;  
87 (2) depression;  
88 (3) withdrawal;  
89 (4) outward aggressive behavior; and/or  
90 (5) a substantial and observable change in behavior, emotional response, or  
91 cognition that is not within the normal range for the child's age and stage of  
92 development.
- 93 (p) "Expert" means a person with special training, experience, or expertise in a field  
94 beyond the knowledge of an ordinary person.
- 95 (q) "Extended family" means a person who has reached the age of eighteen (18) and who  
96 is the child's grandparent, aunt, uncle, brother, sister, brother-in-law, sister-in-law, niece,  
97 nephew, first, second, third or fourth cousin, or stepparent.
- 98 (r) "Fact-finding hearing" means a hearing for the Court to determine if the allegations in  
99 a petition under this law are proved by clear and convincing evidence.
- 100 (s) "Fictive kin" means any person or persons who, to the biological parents of the child  
101 at issue, have an emotional tie to that parent wherein they are like family.
- 102 (t) "Foster home" means any home which is licensed by the Department or applicable  
103 licensing agency and maintained by any individual(s) suitable for placement of children  
104 when taken into custody or pending court matters.
- 105 (u) "Good cause" means adequate or substantial grounds or reason to take a certain action,  
106 or to fail to take an action.
- 107 (v) "Group home" means any facility operated by a person required to be licensed by the  
108 Department and/or applicable licensing agency for the care and maintenance of five (5) to  
109 eight (8) children.

(w) “Guardian” means any person, agency or department appointed by the Court to care for and manage the child in a particular case before the Court. A guardian has the right to make major decisions affecting a child including education, religious and cultural upbringing, the right to consent to marriage, to enlistment in the armed forces, to major surgery and medical treatment and to adoption, or make recommendations as to adoption.

(x) “Guardian ad litem” means a person appointed by the Court to appear at any peacemaking, mediation, or hearing and tasked with representing the best interest of the person appointed for.

(y) “Holiday” means any holiday recognized by the Nation as identified in the Nation’s laws, rules and policies governing employment.

(z) “Imminent danger” means a risk of harm or injury that will occur immediately.

(aa) “Indian Child Welfare Worker” means a person employed by the Nation in the Indian Child Welfare Department tasked with the responsibility to carry out the duties, objectives and provisions of this law.

(bb) “Informal disposition” means a written agreement with all the parties describing the conditions and obligations that must be met to ensure the child is protected and to alleviate the condition that led to the referral to the Department. An informal disposition is utilized by the Department when the Department determines that the interest of the child does not require a formal Court intervention to provide protection and services to the child.

(cc) “Legal custodian” means any person other than a parent or guardian to whom legal custody of a child has been granted by court order and has the rights and responsibilities for the following:

- (1) To have physical custody of the child as determined by the Court, if physical custody is not with the person having legal custody;
- (2) To protect, educate and discipline the child so long as it is in the child’s best interest; and
- (3) To provide the child with adequate food, shelter, education, ordinary medical care and other basic needs, according to court order. In an emergency situation, a custodian shall have the authority to consent to surgery as well as any other emergency medical care needs.

(dd) “Mediation” means a method of dispute resolution that involves a neutral third party who tries to help disputing parties reach an agreement.

(ee) “Nation” means the Oneida Nation.

(ff) “Neglect” means failure, refusal, or inability on the part of a caregiver, for reasons other than poverty, to provide necessary care, food, clothing, medical or dental care, or shelter so as to seriously endanger the physical health of the child.

(gg) “Parent” means the biological or adoptive parent of a child.

(hh) “Parties” means the parent(s), guardian(s), and legal custodian(s) of the child who is the subject of the proceedings; the Department, in cases where they are the petitioner; a guardian ad litem, if one has been appointed by the Court; and anyone else permitted to file a petition under this law.

(ii) “Peacemaking” means a method of dispute resolution that is based on traditional methods of resolving disputes and addresses the needs of rebuilding relationships between people.

(jj) “Permanency Plan” means a plan designed to ensure that a child is reunified with his or her family whenever appropriate, or that the child quickly attains a placement or home providing long-term stability.

(kk) “Physical injury” includes, but is not limited to, any of the following:

(1) lacerations;

(2) fractured bones;

(3) burns;

(4) internal injuries;

(5) severe or frequent bruising;

(6) bodily injury which creates a substantial risk of death;

(7) bodily injury which causes serious permanent disfigurement;

(8) bodily injury which causes a permanent or protracted loss or impairment of the function of any bodily member or organ; or

(9) any other serious bodily injury.

(ll) “Plea hearing” means a hearing to determine whether any party wishes to contest a petition filed under this law.

(mm) “Probable cause” means there are sufficient facts and circumstances that would lead a reasonable person to believe that something is true.

(nn) “Protective plan” means an immediate short-term action that protects a child from present danger threats in order to allow for completion of the initial assessment, investigation and, if needed, the implementation of a safety plan.

(oo) “Reasonable effort” means an earnest and conscientious effort to take good faith steps to provide the services ordered by the Court which takes into consideration the characteristics of the parent or child, the level of cooperation of the parent and other relevant circumstances of the case.

(pp) “Relative” means any person connected with a child by blood, marriage or adoption.

(qq) “Reservation” means all the land within the exterior boundaries of the Reservation of the Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, and any lands added thereto pursuant to federal law.

(rr) “Shelter care facility” means a non-secure place of temporary care and physical custody for children, licensed by the Department and/or applicable licensing agency.

(ss) “Social history” means the social, economic, cultural and familial aspects of a person and how those aspects affect the person’s functioning and situation in life.

(tt) “Special treatment or care” means professional services which need to be provided to a child or family to protect the well-being of the child, prevent out-of-home placement, or meet the needs of the child.

(uu) “Stepparent” means the spouse or ex-spouse of a child’s parent who is not a biological parent of the child.

(vv) “Stipulation” means a formal legal acknowledgement and agreement made between opposing parties prior to a pending hearing or trial.

(ww) “Substantial parental relationship” means the acceptance and exercise of significant responsibility for the daily supervision, education, protection and care of a child.

(xx) “Service plan” means a plan or set of conditions ordered by the Court identifying concerns and behaviors of a parent, guardian or legal custodian that resulted in a child to be in need of protection or services, and the treatment services, goals and objectives to address and remedy the concerns and behaviors of the parent, guardian or legal custodian.



(yy) “Warrant” means an order issued by a court commanding a law enforcement officer to perform some act incident to the administration of justice.

#### 708.4. Scope

708.4-1. This law shall apply to all child welfare cases and legal proceedings in which the Nation has jurisdiction. Nothing in this law is meant to restrict or limit another court of competent jurisdiction from hearing a matter involving an Indian child.

#### 708.5. Jurisdiction

708.5-1. *Personal Jurisdiction.* The Court shall have personal jurisdiction over the following individuals:

(a) *Jurisdiction over an Oneida Child.* The Court shall have personal jurisdiction over any child who is present or resides within the boundaries of Brown and Outagamie County and is enrolled or eligible for enrollment in the Nation.

(b) *Jurisdiction over a Non-Oneida Child.* The Court shall have personal jurisdiction over any child not enrolled or eligible for enrollment in the Nation who is present or resides within the boundaries of the Reservation and is a sibling of a child that is enrolled or eligible for enrollment in the Nation if the child’s parent(s), guardian or legal custodian consents to the jurisdiction of the Court. Consent to the jurisdiction of the Court can be given by any of the following:

(1) The parent(s), guardian or legal custodian knowingly and voluntarily provides the Court with written consent to the jurisdiction of the Court; or

(2) The Court establishes on the record that the parent(s), guardian or legal custodian knowingly and voluntarily provides the Court with verbal consent to the jurisdiction of the Court.

708.5-2. *Jurisdiction over Children Alleged to be in Need of Protection or Services.* The Court shall have jurisdiction over a child alleged to be in need of protection or services if personal jurisdiction has been established and the child:

(a) is without a parent or guardian;

(b) has been abandoned;

(c) has a parent that relinquished custody of the child pursuant to the Nation’s laws or state law and has no other parent available to provide necessary care;

(d) has been the victim of abuse, including injury that is self-inflicted or inflicted by another;

(e) is at substantial risk of becoming the victim of abuse, including injury that is self-inflicted or inflicted by another, based on reliable and credible information that another child in the home has been the victim of such abuse;

(f) has a parent, guardian, or legal custodian who signs the petition requesting jurisdiction under this subsection and is unable or needs assistance to care for or provide necessary special treatment or care for the child, and the child has no other parent available to provide necessary care;

(g) has a guardian or legal custodian who is unable or needs assistance to care for or provide necessary special treatment or care for the child, but is unwilling or unable to sign the petition requesting jurisdiction under this subsection;

(h) has been placed for care or adoption in violation of the Nation’s laws or state law;

- (i) is receiving inadequate care during the period of time a parent is missing, incarcerated, hospitalized or institutionalized;
- (j) is at least twelve (12) years of age, signs the petition requesting jurisdiction under this subsection and is in need of special treatment or care which the parent, guardian or legal custodian is unwilling, neglecting, unable or needs assistance to provide;
- (k) has a parent, guardian or legal custodian who neglects, refuses or is unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to seriously endanger the physical health of the child;
- (l) has a parent, guardian or legal custodian who is at substantial risk of neglecting, refusing or being unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of the child, based on reliable and credible information that the child's parent, guardian or legal custodian has neglected, refused or been unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of another child in the home;
- (m) is suffering emotional damage for which the parent, guardian or legal custodian has neglected, refused or been unable and is neglecting, refusing or unable, for reasons other than poverty, to obtain necessary treatment or to take necessary steps to improve the symptoms;
- (n) is suffering from an alcohol and other drug abuse impairment, exhibited to a severe degree, for which the parent, guardian or legal custodian is neglecting, refusing or unable to provide treatment; or
- (o) is non-compliant with the Nation's or State's immunization laws.

708.5-3. *Jurisdiction over other Matters Relating to Children.* If jurisdiction has been established under section 708.5-1 and all requirements of this law have been met the Court may:

- (a) terminate or suspend parental rights to a child;
- (b) appoint, revise, and/or remove a guardian; and
- (c) hold adoption proceedings.

708.5-4. *Transfer of Cases from other Courts.* If personal jurisdiction has been established the Court has jurisdiction over any action transferred to the Court from any court of competent jurisdiction.

- (a) While a case is being transferred to the Court from another court, any time limits established by this law shall be tolled until the next hearing on the matter before the Court.

708.5-5. *Transfer of Cases to other Courts.* The Court may transfer a case under this law to a court of competent jurisdiction where the other court has a significant interest in the child and the transfer would be in the best interest of the child.

708.5-6. Any orders made by the Court under this law, or any orders made by a court of competent jurisdiction regarding child welfare matters, shall supersede any other order made by this Court or a court of competent jurisdiction regarding custody or placement of a child until the Children's Code or other child welfare orders are dismissed.

## **708.6. Nation's Child Welfare Attorney**

708.6-1. A Child Welfare attorney shall represent the Nation in all proceedings under this law. The Child Welfare attorney shall be one of the following:

- (a) An attorney from the Oneida Law Office;
- (b) An attorney contracted by the Oneida Law Office; or

(c) An attorney contracted by the Department.

**708.7. Indian Child Welfare Department Duties and Responsibilities**

**708.7-1. Indian Child Welfare Worker.** The Indian Child Welfare Worker shall carry out the duties and responsibilities set forth in this law which include, but are not limited to the following:

- (a) Receive, examine, and investigate complaints and allegations that a child is in need of protection or services for the purpose of determining the appropriate response under this law, which may include notifying law enforcement;
- (b) Receive referral information, conduct intake inquiries, and determine whether to initiate child welfare proceedings;
- (c) Determine whether a child should be held pursuant to the emergency provisions of this law;
- (d) Make appropriate referrals of cases to other agencies when appropriate, and share information with other agencies if their assistance appears to be needed or desirable;
- (e) Maintain records;
- (f) Enter into informal dispositions or protective plans with families;
- (g) Refer counseling or any other functions or services to the child and/or family as designated by the Court;
- (h) Identify and develop resources within the community that may be utilized by the Department and Court;
- (i) Make reasonable efforts to obtain necessary services for the child and family and investigate and develop resources for the child and family to utilize;
- (j) Accept legal custody of children when ordered by the Court;
- (k) Make reports and recommendations to the Court;
- (l) Make recommendations to the Nation's Child Welfare attorney;
- (m) Request transfer from state court to the Nation's court when appropriate;
- (n) Perform any other functions ordered by the Court within the limitations of the law;
- (o) Develop appropriate plans and conduct reviews;
- (p) Negotiate agreements for services, record sharing, referral, and funding for child family service records within the Department;
- (q) Provide measures and procedures for preserving the confidential nature of child and family service records within the Department;
- (r) Participate in continuing training, conferences and workshops pertinent to child welfare issues;
- (s) Explain the court proceedings to the child in language and terms appropriate to the child's age and maturity level when a guardian ad litem is not appointed for a child; and
- (t) Maintain a knowledge and understanding of all relevant laws and regulations.

**708.7-2. Department.** In performing the duties set forth in this law, the Department shall:

- (a) Identify and refer parties to resources in the community calculated to resolve the problems presented in petitions filed in Court, such as the various psychiatric, psychological, therapeutic, counseling, and other social services available within and outside the Nation when necessary;
- (b) Identify and refer parties to resources in the community designed to enhance the child's potential as a member of the Nation;
- (c) Investigate, inspect, and license foster homes, and monitor and supervise foster homes and children in foster care;

- (d) Adhere to the placement preference order stated in section 708.11;
- (e) Enter into memorandums of understanding or agreement with the Oneida Trust Enrollment Committee or Department, Oneida Police Department, Oneida Nation Child Support Agency and any other appropriate department in order to carry out the provisions of this law; and
- (f) Share information with other social service agencies, law enforcement agencies, and other entities of the Nation as it pertains to children under the jurisdiction of this law.

#### **708.8. Guardian ad litem**

708.8-1. *Appointment.* The appointment of a guardian ad litem shall be as follows:

- (a) The Court may appoint a guardian ad litem for any child who is the subject of a child in need of protection or services proceeding;
- (b) The Court shall appoint a guardian ad litem for any child who is the subject of a proceeding to terminate or suspend parental rights, whether voluntary or involuntary, for a child who is the subject of a contested adoption proceeding, and for a child who is the subject of a contested guardianship proceeding;
- (c) The Court shall appoint a guardian ad litem for a minor parent petitioning for the voluntary termination of their parental rights; and
- (d) A guardian ad litem may be appointed for any other circumstance the Court deems necessary.

708.8-2. *Qualifications.*

- (a) A guardian ad litem shall be an adult who:
  - (1) is at least twenty one (21) years of age;
  - (2) is currently certified as a guardian ad litem and in good standing;
  - (3) has never been convicted of a felony unless the person received a pardon or forgiveness; and
  - (4) has never been convicted of any crime against a child.
- (b) No person shall be appointed guardian ad litem in that proceeding who:
  - (1) has a personal interest in the outcome of the case, a party to the proceeding, or any other interest that has the potential to corrupt a person's motivation or decision making, because of an actual or potential divergence between the person's self-interests, and the best interests of the case;
  - (2) appears as counsel or an advocate in the proceeding on behalf of any party; or
  - (3) is related to a party of the proceeding, the Judge for the proceeding, or an appointing Judge by blood, marriage, adoption or related by a social tie that could be reasonably interpreted as a conflict of interest.
- (c) A guardian ad litem may be recognized as certified by the Court if he or she:
  - (1) has completed guardian ad litem training provided by the Court, another Indian tribe, or a state; or
  - (2) is recognized as a certified guardian ad litem by another jurisdiction.

708.8-3. *Responsibilities.* The guardian ad litem has none of the rights or duties of a general guardian. The guardian ad litem shall:

- (a) investigate and review all relevant information, records and documents, as well as interview the child, parent(s), social workers, and all other relevant persons to gather facts when appropriate;
- (b) consider the importance of the child's culture, heritage and traditions;

- (c) consider, but shall not be bound by, the wishes of the child or the positions of others as to the best interests of the child;
- (d) explain the role of the guardian ad litem and the court proceedings to the child in language and terms appropriate to the child's age and maturity level;
- (e) provide a written or oral report to the Court regarding the best interests of the child, including conclusions and recommendations and the facts upon which they are based;
- (f) recommend evaluations, assessments, services and treatment of the child and the child's family when appropriate;
- (g) inform the court of any concerns or possible issues regarding the child or the child's family;
- (h) represent the best interests of the child;
- (i) perform other duties as directed by the Court; and
- (j) comply with all laws, policies and rules of the Nation governing the conduct of a guardian ad litem.

708.8-4. *Compensation.* The guardian ad litem shall be compensated at a rate that the Court determines is reasonable. The Court shall compensate the guardian ad litem for his or her fees. The parties shall reimburse the Court for the guardian ad litem fees. The Court may apportion the amount of reimbursement each party shall pay based on the ability to pay or assess the cost equally between the parties. The Court may determine an appropriate time frame for the reimbursement to occur. The Court may waive the guardian ad litem expense if the cost of the guardian ad litem will impose an immediate and substantial hardship on the parties.

#### **708.9. Advocate**

708.9-1. The parent, guardian and legal custodian of a child has the right to obtain an advocate to represent and advise him or her throughout any proceeding under this law at his or her own expense.

#### **708.9-2. *Qualifications.***

(a) An advocate shall be an adult who:

- (1) is at least twenty one (21) years of age;
- (2) is admitted to practice before the Oneida Judiciary;
- (2) has never been convicted of a felony unless the person received a pardon or forgiveness; and
- (3) has never been convicted of any crime against a child.

708.9-3. An advocate shall comply with all laws, rules and policies of the Nation governing advocates.

#### **708.10 Cultural Wellness Facilitator and Healer**

708.10-1. The Department may utilize a Cultural Wellness Facilitator and Healer, or similar position, throughout all child welfare proceedings.

708.10-2. The Cultural Wellness Facilitator and Healer may provide:

- (a) wellness sessions utilizing culturally based and appropriate healing methods;
- (b) training on Oneida culture, language and traditions; and
- (c) any other service that may be necessary.

**708.11. Order of Placement Preferences**

708.11-1. The following order of placement preferences shall be followed when it is necessary to place a child outside of the home under this law:

- (a) A member of the child's immediate or extended family;
- (b) A family clan member;
- (c) A member of the Nation;
- (d) Descendants of the Nation;
- (e) A member of another federally recognized tribe;
- (f) Fictive kin within the Nation community;
- (g) Fictive kin outside the Nation community; or
- (h) Any other person or persons not listed above.

708.11-2. The order of placement preferences listed in section 708.11-1. are prioritized from the most preference given to a child placed in a home in accordance with section 708.11-1(a) and the least amount of preference given to a child placed in a home in accordance with section 708.11-1(h).

708.11-3. In order to deviate from the placement preferences listed in section 708.11-1, the Court shall consider the best interest of the child when determining whether there is good cause to go outside the placement preference.

(a) Good cause to go outside the placement preferences shall be determined based on any of the following:

- (1) When appropriate, the request from the child's parent or the child, when the child is age twelve (12) or older;
- (2) Any extraordinary physical, mental or emotional health needs of the child requiring highly specialized treatment services as established by an expert;
- (3) The unavailability of a suitable placement after diligent efforts have been made to place the child in the placement preference listed in section 708.11-1; or
- (4) Any other reason deemed by the Court to be in the best interest of the child.

(b) The party requesting to deviate from the placement preferences listed in 708.11-1 has the burden of establishing good cause.

**708.12. Notice; General Terms**

708.12-1. Service of documents and notices shall be as specified in this law. If a method of service is not specified in this law, then service shall be by first-class mail to the recently verified last-known address of the party. If a party's whereabouts are unknown and cannot be found after diligent effort, service shall be by publication as described in the Oneida Judiciary Rules of Civil Procedure.

708.12-2. The Court shall provide the parties with notice of all hearings at least seven (7) days prior to the hearing, with the purpose of providing the parties an opportunity to be heard.

(a) *Exception.* In circumstances where a hearing is scheduled and it is not possible to provide notice at least seven (7) days prior to the hearing, the Court shall make an appropriate effort to notice all parties of the hearing.

708.12-3. When the Department is required to perform personal service, the Indian Child Welfare Worker may deliver the document(s) directly to the party(s) if such service is appropriate and safe under the circumstances. In the alternative, personal service may be accomplished according to the Oneida Judiciary Rules of Civil Procedure.

708.12-4. In all proceedings under this law, the Department may withhold the placement provider's identifying information from the child's parent, guardian, or legal custodian if there are reasonable grounds to believe that disclosure would result in imminent danger to the child or anyone else. A parent, guardian, or legal custodian may request judicial review of the decision to withhold the identifying information.

### **708.13. Hearings (General)**

708.13-1. If the Court finds that it is in the best interest of the child, the Court may exclude the child from participating in a hearing conducted in accordance with this law.

708.13-2. The Oneida Judiciary Rules of Evidence are not binding at emergency custody hearings, dispositional hearings, or a hearing about changes in placement, revision of dispositional orders, extension of dispositional orders, or termination of guardianship orders. At those hearings, the Court shall admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant, or unduly repetitious testimony. Hearsay evidence may be admitted if it has demonstrable circumstantial guarantees of trustworthiness. The Court shall give effect to the rules of privilege recognized by laws of the Nation. The Court shall apply the basic principles of relevancy, materiality, and probative value to proof of all questions of fact.

708.13-3. If an alleged father appears at a hearing under this law, the Court may order the Department to refer the matter to the Oneida Nation Child Support Agency to adjudicate paternity. If the Court enters such an order, then the Department may sign documents required by the Oneida Nation Child Support Agency on behalf of the family for the limited purpose of initiating a paternity action. While paternity is being established, the Court shall enter an order finding good cause to suspend the time limits established under this law.

708.13-4. At any time, the Court or the Department may refer the matter to the Nation's Child Support Agency.

### **708.14. Discovery and Records**

708.14-1. Upon written request, the parties and their counsel shall have the right to inspect, copy or photograph social, psychiatric, psychological, medical, and school reports, and records concerning the child including reports of preliminary inquiries, predisposition studies and supervision records relating to the child which are in the possession of the Nation's Child Welfare attorney or the Department that pertain to any case under this law.

708.14-2. 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.

708.14-3. If a request for discovery is refused, the person may submit an application to the Court requesting an order granting discovery. Motions for discovery shall certify that a request for discovery has been made and refused.

708.14-4. If the discovery violates a privileged communication or a work product rule, the Court may deny, in whole or part, otherwise limit or set conditions on the discovery authorized.

708.14-5. The identity of the individual that initiated the investigation by contacting the Department, shall be redacted in all documents that are made available to the parties.



708.14-6. In addition to the discovery procedures permitted under this law, the discovery procedures permitted under the Oneida Judiciary Rules of Civil Procedure shall apply in all proceedings under this law.

708.14-7. The Department may make an ex parte request to the Court to conduct an in camera review to determine what information should and should not be released to the parties and their counsel. In making that determination, the Court shall balance what is necessary to a fair determination of the child welfare legal matter, including access to records, against the interest in protecting the child from the risk of harm. After the Court conducts the in camera review, the decision regarding the release of records shall be provided to the parties in writing.

#### **708.15. Taking a Child into Custody**

708.15-1. *Grounds for Taking a Child into Custody.* A child may be taken into custody without a Court order by an Indian Child Welfare Worker or law enforcement officer if there are reasonable grounds to believe:

(a) A warrant for the child's apprehension has been issued by the Court or another court of competent jurisdiction to take the child into custody;

(b) The child is suffering from illness or injury or is in immediate danger from his or her surroundings and removal from those surroundings is necessary; and/or

(c) The child has violated the conditions of an order issued pursuant to this law.

708.15-2. The Court may enter an order directing that a child be taken into custody upon a showing satisfactory to the judge that the welfare of the child demands that the child be immediately removed from his or her present custody.

708.15-3. A person taking the child into custody, under this section, shall immediately attempt to notify the parent(s), guardian(s), and legal custodian(s) of the child by the most practical means. Attempts to satisfy notification shall continue until either the parent(s), guardian(s), and legal custodian(s) of the child is notified, or the child is delivered to an Indian Child Welfare Worker, whichever occurs first. If the child is delivered to the Indian Child Welfare Worker before the parent(s), guardian(s), and legal custodian(s) is notified, the Indian Child Welfare Worker, or another person at his or her direction, shall continue the attempt to notify until the parent(s), guardian(s), and legal custodian(s) of the child is notified.

708.15-4. Once the child is taken into custody and turned over to the care of the Department, the Department shall make every effort to release the child immediately to the child's parent(s), guardian(s), and legal custodian(s), so long as it is in the child's best interest and the parent(s), guardian(s), and legal custodian(s) is willing to receive the child.

708.15-5. *Probable Cause for Taking a Child into Custody.* A child may be held in custody if the Indian Child Welfare Worker determines the child is within the jurisdiction of the Court and probable cause exists to believe any of the following if the child is not held in custody:

(a) The child will cause injury to himself or herself or be subject to injury by others;

(b) The child will be subject to injury by others, based on a determination that if another child in the home is not held that child will be subject to injury by others;

(c) The parent, guardian or legal custodian of the child or other responsible adult is neglecting, refusing, unable or unavailable to provide adequate supervision and care, and that services to ensure the child's safety and well-being are not available or would be inadequate;

(d) The child meets the criteria for probable cause for taking a child into custody specified in section 708.15-5(c), based on a determination that another child in the home meets any of the criteria; or

(e) The child will run away or be taken away so as to be unavailable for proceedings of the Court.

708.15-6. *Holding a Child in Custody.* A child held in custody may be held in any of the following places as long as the places are in the child's best interest and all people residing or regularly visiting the premises have cleared a background check:

(a) The home of a relative, except that a child may not be held in the home of a relative that has been convicted of the first-degree intentional homicide or the second-degree intentional homicide of a parent of the child, or any crime against a child, and the conviction has not been pardoned, forgiven, reversed, set aside or vacated, unless the person making the custody decision determines by clear and convincing evidence that the placement would be in the best interests of the child. The person making the custody decision shall consider the wishes of the child in making that determination;

(b) A licensed foster home;

(c) A licensed group home;

(d) A non-secure facility operated by a licensed child welfare agency;

(e) A licensed private or public shelter care facility;

(f) A hospital or other medical or mental health facility; or

(g) The home of a person not a relative, if the placement does not exceed thirty (30) days, though the placement may be extended for up to an additional thirty (30) days by the Indian Child Welfare Worker, and if the person has not had a child care license refused, revoked, or suspended within the last two (2) years.

708.15-7. When holding a child in custody for emergency placement the use of the preferences for placement stated in section 708.11-1 are preferred, but not mandatory. If the preferences for placement are not followed, the Department shall try to transition that child into a home that fits the order of preferences for placement as quickly as deemed appropriate by the Department.

708.15-8. If a child is held in custody, the Indian Child Welfare Worker shall notify the child's parent(s), guardian(s), and legal custodian(s) of the reasons for holding the child and of the child's whereabouts except when the Indian Child Welfare Worker believes that notice would present imminent danger to the child. If the parent, guardian, or legal custodian is not immediately available, the Indian Child Welfare Worker or another person designated by the worker shall provide notice as soon as possible.

708.15-9. The Indian Child Welfare Worker shall also notify the parent, guardian, and legal custodian of the following:

(a) the date, time and place of the emergency custody hearing;

(b) the nature and possible outcomes of the hearing;

(c) the right to present and cross-examine witnesses; and

(d) the right to retain counsel at his or her own expense.

708.15-10. When the child is age twelve (12) or older, the Indian Child Welfare Worker shall notify the child of the date, time, and place and the nature and possible outcomes of the emergency custody hearing.

**708.16. Emergency Custody Hearing**

708.16-1. If a child who has been taken into custody under section 708.15-5 is not released, a hearing to determine whether the child shall continue to be held in custody under the criteria of probable cause for taking a child into custody under section 708.15-5(a)-(e) shall be conducted by the Court as soon as possible but no later than seventy-two (72) hours after the time the decision to hold the child was made, excluding Saturdays, Sundays, and holidays. By the time of the hearing, a petition for a child in need of protection or services under section 708.17 shall be filed unless the Department seeks and receives an extension pursuant to section 708.16-2. The child shall be released from custody if a hearing is not held within the specified timelines.

708.16-2. If no petition has been filed by the time of the hearing, a child may be held in custody with approval of the Court for an additional seventy-two (72) hours from the time of the hearing, excluding Saturdays, Sundays, and holidays, only if, as a result of the facts brought forth at the hearing, the Court determines that probable cause exists to believe any of the following:

- (a) That additional time is required to determine whether the filing of a petition initiating proceedings under this law is necessary;
- (b) That the child is an imminent danger to himself or herself or to others; or
- (c) The parent, guardian, and legal custodian of the child or other responsible adult is neglecting, refusing, unable, or unavailable to provide adequate supervision and care.

708.16-3. The Court may grant a one-time extension under section 708.16-2 for a petition. In the event a petition is not filed within the extension period, the Court shall order the child's immediate release from custody. For any parties not present at the hearing, the Department shall serve the petition on those parties by certified mail, return receipt requested.

708.16-4. Prior to the start of the hearing, the Court shall inform the parent, guardian, or legal custodian of the following:

- (a) allegations that have been made or may be made;
- (b) the nature and possible outcomes of the hearing and possible future hearings;
- (c) the right to present and cross-examine witnesses; and
- (d) the right to retain counsel at his or her own expense.

708.16-5. If present at the hearing, the Court may permit the parent to provide the names and other identifying information of three (3) relatives of the child or other individuals eighteen (18) years of age or older whose homes the parent wishes the Court to consider as placements for the child. If the parent does not provide this information at the hearing, the Department shall permit the parent to provide the information at a later date.

708.16-6. All orders to hold a child in custody shall be in writing.

- (a) All orders to hold a child in custody shall include all of the following:
  - (1) A finding that continued placement of the child in his or her home would be contrary to the best interests of the child;
  - (2) A finding that the Department and/or anyone else providing services to the child had reasonable grounds to remove the child from the home based on the child's best interest;
  - (3) A finding that the Department has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's best interests are the paramount concerns;
  - (4) The Department made reasonable efforts to make it possible for the child to return safely home; and

(5) If the child has one (1) or more siblings, who have also been removed from the home, a finding as to whether the Department has made reasonable efforts to place the child in a placement that enables the sibling group to remain together, unless the Court determines that a joint placement would be contrary to the safety or well-being of the child or any of those siblings, in which case the Court shall order the Department make reasonable efforts to provide for frequent visitation or other ongoing interaction between the child and the siblings, unless the Court determines that such visitation or interaction would be contrary to the safety or well-being of the child or any of those siblings.

(b) An order to hold a child in custody may include the following:

(1) an transfer of the legal custody of the child, including decisions about health care and education.

708.16-7. An order to hold a child in custody remains in effect until a dispositional order is granted, the petition is withdrawn or dismissed, or the order is modified or terminated by further order of the Court.

708.16-8. An order to hold a child in custody may be re-heard upon motion of any party if, in the Court's discretion, good cause is found, whether or not counsel was present.

#### **708.17. Petition for a Child in Need of Protection or Services**

708.17-1. The Nation's Child Welfare attorney or the Department shall initiate proceedings under this section by filing a petition with the Court, signed by a person who has knowledge of the facts alleged or is informed of them and believes them to be true. Upon filing with the Court, the Department shall provide a copy of the petition to the parties by personal service or, if personal service is not possible, by certified mail with return receipt requested.

708.17-2. The petition shall include the following:

(a) The name, birth date, address, and tribal affiliation of the child;

(b) The names, birth dates, addresses, and tribal affiliation of the child's parent, guardian, legal custodian or spouse, if any; or if no such person can be identified, the name and address of the nearest relative;

(c) Whether the child is in custody, and, if so, the place where the child is being held and the date and time he or she was taken into custody unless there is reasonable cause to believe that such disclosure would result in imminent danger to the child or legal custodian;

(d) A Uniform Child Custody Jurisdiction and Enforcement Act affidavit;

(e) A plain and concise statement of facts upon which the allegations are based, including the dates, times, and location at which the alleged acts occurred. If the child is being held in custody outside his or her home, the statement shall include information showing that continued placement of the child in the home would be contrary to the welfare of the child and the efforts that were made to prevent the removal of the child, while assuring that the child's health, welfare, and safety are the paramount concerns; and

(f) Any other information as deemed necessary by the Court.

708.17-3. The petition shall state if any of the facts required for a petition are not known or cannot be ascertained by the petitioner.

708.17-4. A petition may be amended at any time at the discretion of the Court. Upon filing with the Court, the Department shall provide a copy of the amended petition to the parties by certified mail with return receipt requested.

**708.18. Consent Decree**

708.18-1. *Consent Decree.* At any time after the filing of a petition pursuant to section 708.17 and before the entry of judgment, the Court may suspend the proceedings and place the child under supervision in the home or present placement of the child. The Court may establish terms and conditions applicable to the child and the child's parent, guardian or legal custodian. The order under this section shall be known as a consent decree and must be agreed to by the child who is twelve (12) years of age or older, the parent, guardian or legal custodian, and the person filing the petition. The consent decree shall be reduced to writing and given to the parties.

708.18-2. *Requirements of a Consent Decree.* If at the time the consent decree is entered into the child is placed outside the home and if the consent decree maintains the child in that placement, the consent decree shall include all of the following:

(a) A finding that placement of the child in his or her home would be contrary to the welfare of the child;

(b) A finding as to whether the Department has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's health and safety and best interests are the paramount concerns;

(c) If a permanency plan has previously been prepared for the child, a finding as to whether the Department has made reasonable efforts to achieve the permanency goal of the child's permanency plan; and

(d) If the child has one or more siblings who have also been removed from the home, the consent decree shall include a finding as to whether the Department has made reasonable efforts to place the child in a placement that enables the sibling group to remain together, unless the Court determines that the placement of the siblings together would be contrary to the safety, well-being and best interests of the child or any of those siblings, in which case the Court shall order the department to make reasonable efforts to provide for frequent visitation or other ongoing interaction between the child and the siblings, unless the Court determines that such visitation or interaction would be contrary to the safety, well-being or best interests of the child or any of those siblings.

708.18-3. *Time Limits of Consent Decree.* A consent decree shall remain in effect up to six (6) months unless the child, parent, guardian, or legal custodian is discharged sooner by the Court. The time limits under this law shall be tolled during the pendency of the consent decree.

708.18-4. *Extension of a Consent Decree.* Upon the motion of the Court or the request of the child, parent, guardian, legal custodian, child's guardian ad litem, or the Department, the Court may, after giving notice to the parties to the consent decree, extend the decree for up to an additional six (6) months in the absence of objection to the extension by the parties to the initial consent decree. If the child, parent, guardian, legal custodian, or child's guardian ad litem objects to the extension, the Court shall schedule a hearing and make a determination on the issue of extension.

708.18-5. If, prior to discharge by the Court, or the expiration of the consent decree, the Court finds after conducting a hearing that the child, parent, guardian, or legal custodian has failed to fulfill the express terms and conditions of the consent decree, the hearing under which the child was placed on supervision may be continued to conclusion as if the consent decree had never been entered.

**708.19. Plea Hearing for a Child in Need of Protection or Services**

708.19-1. A plea hearing shall take place on a date which allows reasonable time for the parties to prepare but is within forty-five (45) days after the filing of a petition, unless the Court enters an order finding good cause to go outside of the time limits.

708.19-2. If a petition is not contested, the Court shall set a date for the dispositional hearing which allows reasonable time for the parties to prepare but is within forty-five (45) days after the plea hearing, unless the Court enters an order finding good cause to go outside the time limits. If all the parties agree and the Department has submitted a court report pursuant to section 708.21, the Court may proceed immediately with the dispositional hearing.

708.19-3. If the petition is contested, the Court shall set a date for the fact-finding hearing which allows reasonable time for the parties to prepare but is within sixty (60) days after the plea hearing, unless the Court enters an order finding good cause to go outside the time limits.

708.19-4. Before accepting an admission or plea of no contest of the alleged facts in a petition, the Court shall:

(a) Address the parties present and determine that the plea of no contest or admission is made voluntarily with understanding of the nature of the acts alleged in the petition and the potential outcomes;

(b) Establish whether any promises or threats were made to elicit the plea of no contest or admission; and

(c) Make inquiries that establish a factual basis for the plea of no contest or admission.

708.19-5. At the plea hearing the Department may request placement of the child outside of the child's home in accordance with the placement preferences in section 708.11-1, if notice of the Department's intent to seek out of home placement of the child was provided to the parties prior to the hearing in substantial compliance with section 708.15-9. In the request for placement of the child outside of the child's home the Department shall present as evidence specific information as outlined in 708.16-6(a)(1)-(5).

708.19-6. If the Court orders the out of home placement of the child, the order shall be in writing and shall contain the information required by section 708.16-6(a)(1)-(5).

**708.20. Fact finding Hearing for a Child in Need of Protection or Services**

708.20-1. The fact-finding hearing is a hearing conducted by the Court to determine whether there is clear and convincing evidence to establish that the child is in need of protection or services.

708.20-2. The fact-finding hearing shall be conducted according to the Oneida Judiciary Rules of Civil Procedure except that the Court may exclude the child from the hearing.

708.20-3. At the close of the fact-finding hearing, the Court shall set a date for the dispositional hearing which allows a reasonable time for the parties to prepare but is no more than forty-five (45) days after the fact-finding hearing, unless the Court enters an order finding good cause to go outside the time limits. If all the parties agree and the Department has submitted court report pursuant to section 708.21, the Court may proceed immediately with the dispositional hearing.

**708.21. Department's Disposition Report for a Child in Need of Protection or Services**

708.21-1. Before the dispositional hearing, the Department shall submit a written report to the Court, with a copy provided to the parties by first-class mail at least seven (7) days prior to the hearing, which shall contain all of the following:

(a) The social history of the child and family;

- (b) A strategic plan for the care of and assistance to the child and family calculated to resolve the concerns presented in the petition;
- (c) A detailed explanation showing the necessity for the proposed plan of disposition and the benefits to the child and family under the proposed plan; and
- (d) If an out-of-home placement is being recommended, specific reasons for recommending that placement.

708.21-2. If the Department is recommending out-of-home placement, the written report shall include all of the following:

- (a) The location of the placement and where it fits within the placement preferences.
- (b) A recommendation as to whether the Court should establish a child support obligation for the parents;
- (c) Specific information showing that continued placement of the child in his or her home would be contrary to the best interests of the child and specific information showing that the Department has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's best interests are the paramount concerns;
- (d) If the child has one (1) or more siblings who have been removed from the home or for whom an out-of-home placement is recommended, specific information showing that Department has made reasonable efforts to place the child in a placement that enables the sibling group to remain together, unless the Department recommends that the child and his or her siblings not be placed together, in which case the report shall include specific information showing that placement of the children together would be contrary to the best interests of the child or any of those siblings; and
- (e) If a recommendation is made that the child and his or her siblings not be placed together specific information showing that the Department has made reasonable efforts to provide for frequent visitation or other ongoing interaction between the child and the siblings, unless the Department recommends that such visitation or interaction not be provided, in which case the report shall include specific information showing that such visitation or interaction would be contrary to best interests of the child or any of those siblings;

#### **708.22. Dispositional Hearing for a Child in Need of Protection or Services**

708.22-1. At a dispositional hearing, any party may present evidence relevant to the issue of disposition, including expert testimony, and may make alternative dispositional recommendations.

708.22-2. During a dispositional hearing, if the Department is recommending placement of the child outside of the child's home in accordance with the placement preferences in section 708.11-1, the Department shall present as evidence specific information showing all of the following:

- (a) That continued placement of the child in his or her home would be contrary to the best interests of the child;
- (b) That the Department has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's best interests are the paramount concerns;
- (c) If the child has one (1) or more siblings who have been removed from the home or for whom an out-of-home placement is recommended, that the Department has made reasonable efforts to place the child in a placement that enables the sibling group to remain together, unless the Department recommends that the child and his or her siblings not be placed together, in which case the Department shall present as evidence specific information showing that placement of the children together would be contrary to the best interests of the child or any of those siblings; and



(d) If a recommendation is made that the child and his or her siblings not be placed together, that the Department has made reasonable efforts to provide for frequent visitation or other ongoing interaction between the child and the siblings, unless the Department recommends that such visitation or interaction not be provided, in which case the Department shall present as evidence specific information showing that such visitation or interaction would be contrary to the best interests of the child or any of those siblings.

708.22-3. The Court's dispositional order shall employ those means necessary to maintain and protect the best interests of the child which are the least restrictive of the rights of the parent and child and which assure the care, treatment or rehabilitation of the child and the family consistent with the protection of the public. When appropriate, and, in cases of child abuse or neglect when it is consistent with the best interest of the child in terms of physical safety and physical health, the family unit shall be preserved and there shall be a policy of transferring custody of a child from the parent only when there is no less drastic alternative. If there is no less drastic alternative for a child than transferring custody from the parent, the Court shall consider transferring custody pursuant to the preferences for placement set forth in section 708.11-1.

708.22-4. *Dispositional Orders*. The Court's dispositional order shall be in writing and shall contain:

(a) The service plan and specific services to be provided to the child and family, and if custody of the child is to be transferred to effect the service plan, the identity of the legal custodian;

(b) If the child is placed outside the home, where the child will be placed. If the Court finds that disclosing identifying information related to placement of the child would result in imminent danger to the child or anyone else, the Court may order the name and address of whom the child is placed with withheld from the parent or guardian;

(c) The date of the expiration of the court's order;

(1) A dispositional order made before the child reaches eighteen (18) years of age that places or continues the placement of the child in his or her home shall terminate one (1) year after the date on which the order is granted unless the Court specifies a shorter period of time or the Court terminates the order sooner.

(2) A dispositional order made before the child reaches eighteen (18) years of age that places or continues the placement of the child outside of the home shall terminate on the latest of the following dates, unless the Court specifies a shorter period or the Court terminates the order sooner:

(A) The date on which the child attains eighteen (18) years of age;

(B) The date that is one (1) year after the date on which the order is granted; and

(C) The date on which the child is granted a high school or high school equivalency diploma or the date on which the child reaches nineteen (19) years of age, whichever occurs first, if the child is a full-time student at a secondary school or its vocational or technical equivalent and is reasonably expected to complete the program before reaching nineteen (19) years of age.

(d) If the child is placed outside the home, a finding that continued placement of the child in his or her home would be contrary to the welfare of the child and a finding as to whether the Department has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's best interests are the paramount concerns. The Court

shall make the findings specified in this subsection on a case-by-case basis based on circumstances specific to the child;

(e) If the child is placed outside the home under the supervision of the Department, an order ordering the child into the placement and care responsibility of the Department and assigning the Department primary responsibility for providing services to the child and family;

(f) If the child is placed outside the home and if the child has one (1) or more siblings who have also been placed outside the home, a finding as to whether the Department has made reasonable efforts to place the child in a placement that enables the sibling group to remain together, unless the Court determines that placement of the children together would be contrary to the best interests of the child or any of those siblings, in which case the Court shall order the Department to make reasonable efforts to provide for frequent visitation or other ongoing interaction between the child and the siblings, unless the Court determines that such visitation or interaction would be contrary to the best interests of the child or any of those siblings;

(g) A statement of the conditions with which the parties are required to comply; and

(h) If the Court finds that it would be in the best interest of the child, the Court may set reasonable rules of parental visitation.

(1) If the Court denies a parent visitation, the Court shall enter conditions that shall be met by the parent in order for the parent to be granted visitation.

708.22-5. *Service plans and Conditions.* In a proceeding in which a child has been found to be in need of protection or services, the Court may order the child's parent, guardian and legal custodian to comply with any conditions and/or service plan determined by the Court to be necessary for the child's welfare.

(a) The service plan or conditions ordered by the Court shall contain the following information:

(1) The identification of the problems or conditions that resulted in the abuse or neglect of a child;

(2) The treatment goals and objectives for each condition or requirement established in the plan. If the child has been removed from the home, the service plan must include, but is not limited to, the conditions or requirements that must be established for the safe return of the child to the family;

(3) The specific treatment objectives that clearly identify the separate roles and responsibilities of all parties addressed in the service plan, including the Department's specific responsibilities to make reasonable efforts to assist the parent, guardian or legal custodian in their efforts toward reunification with the child; and

(4) A notice that completion of a service plan does not guarantee the return of a child and that completion of a service plan without a change in behavior that caused removal in the first instance may result in the child remaining outside the home.

(b) A service plan may include recommendations and the dispositional order may require the child's parent, guardian and legal custodian to participate in:

(1) Outpatient mental health treatment;

(2) Substance abuse treatment;

(3) Anger management;

(4) Individual or family counseling;

- (5) Parent training and education;
- (6) Cultural wellness treatment and training; and/or
- (7) Any other treatment as deemed appropriate by the Court.

708.22-6. If the Court finds that the parent was convicted of committing a crime against the life and bodily security of a child or a crime against a child, contained within Chapters 940 and 948 of the Wisconsin Statutes or another similar law in another jurisdiction, the Court may find that the Department is not required to make reasonable efforts with respect to the parent to make it possible for the child to return safely to his or her home.

708.22-7. The Court shall provide a copy of the dispositional order to the child's parent, guardian, and legal custodian, and other parties to the action.

708.22-8. Whenever the Court orders a child to be placed outside his or her home or denies a parent visitation because the child is in need of protection or services, the Court shall orally inform the parent who appears in Court of any grounds for suspension or termination of parental rights which may be applicable and of the conditions necessary for the child to be returned to the home or for the parent to be granted visitation. The Court shall also include this information in the written dispositional order provided to the parent.

### **708.23. Permanency Plans**

708.23-1. The Department shall prepare a written permanency plan anytime a child is placed outside the home pursuant to dispositional order that finds the child is in need of protection or services.

(a) The permanency plan shall include all of the following:

- (1) The name, birth date, address, and tribal affiliation of the child;
- (2) The names, birth dates, addresses, and tribal affiliation of the child's parent(s), guardian(s), and legal custodian(s);
- (3) The date on which the child was removed from the home;
- (4) A statement as to the availability of a safe and appropriate placement with an extended family member;
- (5) The goal(s) of the permanency plan which may include one or more of the following: reunification, adoption, guardianship, placement with a fit and willing relative, or long-term foster care;
- (6) Date by which it is likely the goal(s) of the permanency plan will likely be achieved;
- (7) A description of the services offered and any services provided in an effort to prevent removal of the child from the home or to return the child to the home, while assuring that the best interests of the child are the paramount concerns;
- (8) If the child has one (1) or more siblings who have been removed from the home, a description of the efforts made to place the child in a placement that enables the sibling group to remain together. If a decision is made to not place the siblings together, a description of the efforts made to provide for frequent and ongoing visitation or other ongoing interaction between the child and siblings;
- (9) Information about the child's education; and
- (10) Any other appropriate information as deemed necessary by the Court or the Department.

708.23-2. The Department shall file the initial permanency plan with the Court within sixty (60) days after the date the child was first removed from the home unless the child is returned to the home within that time period.

708.23-3. The Court shall hold a hearing to review the permanency plan no later than six (6) months after the date on which the child was first removed from the home and every six months thereafter for as long as the child is placed outside the home and is found to be in need of protection or services.

(a) At least seven (7) days before the date of the hearing, the Department shall file the updated permanency plan with the Court and provide a copy to the parties by first-class mail.

(b) All parties, including foster parent(s) shall have a right to be heard at the permanency plan hearing. Any party may submit written comments to the Court no less than three (3) business days prior to the hearing date.

708.23-4. After the hearing, the Court shall enter a written order addressing the following:

(a) The continuing necessity for and the safety and appropriateness of the placement;

(b) The compliance with the permanency plan by the Department and any other service providers, the child's parent(s), and the child;

(c) Efforts taken to involve appropriate service providers and Department staff in meeting the special needs of the child and the child's parent(s);

(d) The progress toward eliminating the causes for the child's placement outside the home and returning the child safely to the home or obtaining a permanent placement for the child;

(e) The date by which it is likely that the child will be returned to the home or placed for adoption, with a guardian, with a fit and willing relative, or in some other permanent living arrangement;

(f) Whether reasonable efforts were made by the Department to achieve the permanency plan goal(s);

(g) Whether reasonable efforts were made by the Department to place the child in a placement that enables the sibling group to remain together or have frequent visitation or other ongoing interaction; and

(h) The date of the next review hearing, if appropriate.

#### **708.24. Change in Placement**

708.24-1. The Department, the Nation's Child Welfare attorney, or a party to the dispositional order may request a change in the placement of the child who is the subject of the dispositional order by filing a motion with the Court. The Court may also propose a change in placement on its own motion.

708.24-2. The request for a change in placement shall contain the name and address of the new placement requested and shall state what new information is available that affects the advisability of the current placement.

708.24-3. If the proposed change in placement moves the child outside of his or her home, the request shall contain specific information showing that continued placement of the child in the home would be contrary to the best interests of the child and if the Department is making the request, specific information showing that the Department has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's best interests are the paramount concerns.

708.24-4. Upon filing with the Court, the Department shall provide a copy of the request for a change in placement to the parties by first-class mail.

(a) The Department shall schedule a hearing prior to placing the child outside of the home, unless emergency conditions that necessitate an immediate change in the placement of a child apply.

(b) A hearing is not required when the child currently placed outside the home transfers to another out-of-home placement.

(1) A party may request a hearing when the child is transferred to a different out-of-home placement by submitting a written request to the Court within ten (10) days of being served with the notice of the proposed change.

708.24-5. If a hearing is held, any party may present evidence relevant to the issue of the change in placement. In addition, the Court shall give a foster parent or other legal custodian a right to be heard at the hearing by permitting the foster parent or other legal custodian to make a written or oral statement during the hearing, or to submit a written statement prior to the hearing, relevant to the issue of change in placement.

708.24-6. *Emergency Change in Placement.* If emergency conditions necessitate an immediate change in the placement of a child, the Department may remove the child to a new placement, whether or not authorized by the existing dispositional order. The Department shall notify the parties of the emergency change in placement by personal service as soon as possible but no later than seventy-two (72) hours after the emergency change in placement excluding Saturdays, Sundays, and holidays. If the emergency conditions necessitate an immediate change in placement of a child placed in the home to a placement outside the home, the Department shall schedule the matter for a hearing as soon as possible but no later than seventy-two (72) hours after the emergency change in placement is made, excluding Saturdays, Sundays, and holidays.

708.24-7. The parties may agree to a change in placement by signing a stipulation and filing it with the Court for approval.

708.24-8. No change in placement may extend the expiration date of the original dispositional order, except that if the change in placement is from a placement in the child's home to a placement outside the home the Court may extend the expiration date of the original dispositional order to the latest of the following dates, unless the Court specifies a shorter period:

(a) The date on which the child reaches eighteen (18) years of age;

(b) The date that is one (1) year after the date on which the change-in-placement order is granted; or

(c) The date on which the child is granted a high school or high school equivalency diploma or the date on which the child reaches nineteen (19) years of age, whichever occurs first, if the child is a full-time student at a secondary school or its vocational or technical equivalent and is reasonably expected to complete the program before reaching nineteen (19) years of age.

708.24-9. If the change in placement is from a placement outside the home to a placement in the child's home and if the expiration date of the original dispositional order is more than one (1) year after the date on which the change-in-placement order is granted, the Court shall shorten the expiration date of the original dispositional order to the date that is one (1) year after the date on which the change-in-placement order is granted or to an earlier date as specified by the Court.

## **708.25. Trial Reunification**

708.25-1. The Department or the Nation's Child Welfare attorney may request the Court to order a trial reunification. A trial reunification occurs when a child placed in an out-of-home placement resides in the home of a parent, guardian, or legal custodian from which the child was removed for

a period of seven (7) consecutive days or longer, but not exceeding one hundred fifty (150) days, for the purpose of determining the appropriateness of changing the placement of the child to that home. A trial reunification is not a change in placement under section 708.24.

*708.25-2. Request for Trial Reunification.* The Department or the Nation's Child Welfare attorney shall include the following in the request for a trial reunification:

- (a) The name and address of the requested trial reunification home;
- (b) A statement describing why the trial reunification is in the best interests of the child; and
- (c) A statement describing how the trial reunification satisfies the objective of the child's permanency plan.

*708.25-3. Emergency Removal of a Child.* A request for a trial reunification may not be made on the sole grounds that an emergency condition necessitates an immediate removal of the child from the child's out-of-home placement. If an emergency condition necessitates such an immediate removal, the Department shall proceed with an emergency change in placement as described in section 708.24-6.

*708.25-4. Notice.* The Department or Nation's Child Welfare attorney shall submit the request to the Court. Upon filing with the Court and at least seven (7) days before the date of reunification, the Department shall provide the parent, guardian, legal custodian, and any other party written notice of the proposed reunification by first-class mail. The notice shall contain the information that is required to be included in the request under section 708.25-2.

*708.25-5. Trial Reunification Hearing.* Any party who is entitled to receive notice of a requested trial reunification may obtain a hearing on the matter by filing an objection with the Court within ten (10) days after the trial reunification request was filed with the Court.

- (a) If no objection against the trial reunification is filed, the Court may issue an order for the trial reunification.
- (b) If an objection is filed, a hearing shall be held within forty five (45) days after the request was filed with the Court. A trial reunification shall not occur until after the hearing. Not less than three (3) business days before the hearing the Court shall provide notice of the hearing to all parties.

- (1) If a hearing is held and the trial reunification would remove a child from a foster home or other placement with a legal custodian, the Court shall give the foster parent or other legal custodian a right to be heard at the hearing by permitting the foster parent or legal custodian to make a written or oral statement relating to the child and the requested trial reunification.

- (2) The Court may appoint a guardian ad litem for the child during the trial reunification hearing.

*708.25-6. Order.* If the Court finds that the trial reunification is in the best interest of the child and that the trial reunification satisfies the objectives of the child's permanency plan, the Court shall order the trial reunification. The trial reunification shall terminate ninety (90) days after the date of the order, unless the Court specifies a shorter period in the order, or extends or revokes the trial reunification. No trial reunification order may extend the expiration date of the original dispositional order or any extension of the dispositional order.

*708.25-7. Extension of Trial Reunification.* The Department may request an extension of a trial reunification.

- (a) *Extension Request.* The request shall contain a statement describing how the trial reunification continues to be in the best interests of the child. No later than seven (7) days

prior to the expiration of the trial reunification, the Department shall submit the request to the Court and shall cause notice of the request to be provided to all parties by first-class mail.

(b) *Extension Hearing.* Any party may obtain a hearing on the requested extension by filing an objection with the Court within ten (10) days after the extension request was filed with the Court.

(1) If no objection is filed, the Court may order an extension of the trial reunification.

(2) If an objection is filed, the Court shall schedule a hearing on the matter. If the Court is unable to conduct a hearing on the matter before the trial reunification expires, the trial reunification shall remain in effect until the Court is able hold the hearing. Not less than three (3) business days before the hearing the Court shall provide notice of the hearing to all parties.

(c) *Extension Order.* If the Court finds that the trial reunification continues to be in the best interests of the child, the Court shall grant an order extending the trial reunification for a period specified by the Court. Any number of extensions may be granted, but the total period for a trial reunification may not exceed one hundred and fifty (150) days.

708.25-8. *End of Trial Reunification Period.* When a trial reunification period ends, the Department shall do one (1) of the following:

(a) Return the child to his or her out-of-home placement. The Department may do so without further order of the Court, but within five (5) days after the return of the child to his or her out-of-home placement the Department shall provide the parties with written notice of the following by first-class mail:

(1) the date of the return of the child to the out-of-home placement; and

(2) the address of that placement to all parties, unless providing the address would present imminent danger to the child;

(b) Request a change in placement under section 708.24 to place the child in a new out-of-home placement; or

(c) Request a change in placement under section 708.24 to place the child in the trial reunification home.

708.25-9. *Revocation of Trial Reunification.* The Department may determine that a trial reunification is no longer in the best interests of the child and revoke the trial reunification before the specified trial reunification period ends.

(a) *Revocation Request.* If the Department determines that the trial reunification is no longer in the best interests of the child, the Department, without prior order by the Court, may remove the child from the trial reunification home and place the child in the child's previous out-of-home placement or place the child in a new out-of-home placement.

(1) If the Department places the child in the child's previous out-of-home placement, within three (3) business days of removing the child from the trial reunification home, the Department shall submit a request for revocation of the trial reunification to the Court and shall provide notice of the request to all parties by first-class mail. The request shall contain the following information:

(A) the date on which the child was removed from the trial reunification home;

(B) the address of the child's current placement, unless providing the address would present imminent danger to the child; and



(C) the reasons for the proposed revocation.

(2) If the Department places the child in a new out-of-home placement, within three (3) business days of removing the child from the trial reunification home, the Department shall request a change in placement under section 708.22. The procedures specified in section 708.24, including all notice procedures, apply to a change in placement requested under this subsection, except that the request shall include the date on which the child was removed from the trial reunification home in addition to the information required in 708.24-2. The trial reunification is revoked when the change in placement order is granted.

(b) *Revocation Hearing.* Any party may obtain a hearing on the matter by filing an objection with the Court within ten (10) days after the request was filed with the Court.

(1) If no objection is filed, the Court may issue a revocation order.

(2) If an objection is filed, the Court shall schedule a hearing on the matter. Not less than three (3) business days before the hearing the Court shall provide notice of the hearing to all parties.

(c) *Revocation Order.* If the Court finds that the trial reunification is no longer in the best interests of the child who has been placed in his or her previous out-of-home placement, the Court shall grant an order revoking the trial reunification.

708.25-10. *Prohibited Trial Reunifications.* The Court may not order a trial reunification in the home of an adult who has been convicted of the first-degree intentional homicide or the second-degree intentional homicide of a parent of the child or any crime against a child, if the conviction has not been reversed, set aside, vacated or pardoned. If a parent in whose home a child is placed for a trial reunification is convicted of homicide or a crime against a child, and the conviction has not been reversed, set aside, vacated or pardoned, the Court shall revoke the trial reunification and the child shall be returned to his or her previous out-of-home placement, or placed in a new out-of-home placement.

(a) *Exception.* A prohibition against trial reunifications based on homicide of a parent or a crime against a child does not apply if the Court determines by clear and convincing evidence that the placement would be in the best interests of the child.

## **708.26. Revision of Dispositional Orders**

708.26-1. A party, or the Court on its own motion, may request a revision in the dispositional order that does not involve a change in placement.

708.26-2. The request or Court proposal shall set forth in detail the nature of the proposed revision and what new information is available that affects the advisability of the Court's disposition. The request for revision shall be filed with the Court with notice provided to the parties by first-class mail.

708.26-3. The Court shall hold a hearing on the matter prior to any revision of the dispositional order if the request or Court proposal indicates that new information is available that affects the advisability of the Court's dispositional order, unless the parties file a signed stipulation and the Court approves.

708.26-4. If a hearing is held, any party may present evidence relevant to the issue of revision of the dispositional order. In addition, the Court shall give a foster parent or other legal custodian a right to be heard at the hearing by permitting the foster parent or other legal custodian to make a written or oral statement during the hearing, or to submit a written statement prior to the hearing, relevant to the issue of revision.

**708.27. Extension of Dispositional Orders**

708.27-1. A party, or the Court on its own motion, may request an extension of a dispositional order. The request shall be filed with the Court with notice to the parties by first-class mail.

708.27-2. No order may be extended without a hearing, unless the parties file a signed stipulation and the Court approves.

708.27-3. Any party may present evidence relevant to the issue of extension. If the child is placed outside of his or her home, the Department shall present as evidence specific information showing that the Department has made reasonable efforts to achieve the permanency goal of the child's permanency plan. In addition, the Court shall give a foster parent or other legal custodian a right to be heard at the hearing by permitting the foster parent or other legal custodian to make a written or oral statement during the hearing, or to submit a written statement prior to the hearing, relevant to the issue of extension.

708.27-4. The Court shall make findings of fact and conclusions of law based on the evidence. The findings of fact shall include a finding as to whether reasonable efforts were made by the Department to achieve the permanency goal of the child's permanency plan if applicable.

708.27-5. If a request to extend a dispositional order is made prior to the termination of the order, but the Court is unable to conduct a hearing on the request prior to the termination date, the order shall remain in effect until such time as an extension hearing is conducted.

**708.28. Continuation of Dispositional Orders**

708.28-1. If a petition for suspension or termination of parental rights or guardianship is filed or an appeal from a suspension or termination of parental rights or guardianship judgment is filed during the year in which a child in need of protection or services dispositional order is in effect, the dispositional order shall remain in effect until all proceedings related to the petition or appeal are concluded.

**708.29. Guardianship for Certain Children in Need of Protection or Services**

708.29-1. *Conditions for Guardianship.* The Court may appoint a guardian for a child if the Court finds all of the following:

(a) That the child has been found to be in need of protection or services under this law and has been placed outside of his or her home pursuant to one (1) or more Court orders, or that the child has been found to be in need of protection or services and placement of the child in the home of a guardian under this section has been recommended by the Department at the dispositional hearing;

(b) That the person nominated as the guardian of the child is a person with whom the child has been placed or in whose home placement of the child is recommended by the Department and that it is likely that the child will continue to be placed with that person for an extended period of time or until the child attains the age of eighteen (18) years;

(c) That, if appointed, it is likely that the person would be willing and able to serve as the child's guardian for an extended period of time or until the child attains the age of eighteen (18) years;

(d) That it is not in the best interests of the child that a petition to suspend or terminate parental rights be filed with respect to the child;

(e) That the child's parents are neglecting, refusing or unable to carry out the duties of a guardian; and

(f) That the Department has made reasonable efforts to make it possible for the child to return to his or her home, while assuring that the child's best interests are the paramount concerns, but that reunification of the child with the child's parent(s) is unlikely or contrary to the best interests of the child and that further reunification efforts are unlikely to be made or are contrary to the best interests of the child or that the Department has made reasonable efforts to prevent the removal of the child from his or her home, while assuring the child's best interests, but that continued placement of the child in the home would be contrary to the best interests of the child.

708.29-2. *Who May File a Petition for Guardianship.* Any of the following persons may file a petition for the appointment of a guardian for a child under this section:

- (a) The child;
- (b) The child's guardian ad litem;
- (c) The child's parent;
- (d) The person with whom the child is placed or in whose home placement of the child is recommended by the Department;
- (e) The Department; or
- (f) The Nation's Child Welfare attorney.

708.29-3. *Petition for Guardianship.* A proceeding for the appointment of a guardian for a child shall be initiated by a petition which shall include the following:

- (a) The name, birth date, address, and tribal affiliation of the child;
- (b) The names, birth dates, addresses, and tribal affiliation of the child's parents;
- (c) A copy of the order adjudicating the child to be in need of protection or services and the order placing the child outside of the parental home; and
- (d) A statement of the facts and circumstances which the petitioner alleges establish that the conditions for guardianship specified in section 708.29-1(a)-(f) are met.

708.29-4. *Notice of Petition for Guardianship.* Upon filing with the Court and at least seven (7) days prior to the plea hearing, the party that filed the guardianship petition shall provide a copy of the petition to the other parties by personal service or, if personal service is not possible, by certified mail with return receipt requested.

708.29-5. *Presence of the Proposed Guardian.* The proposed guardian shall be present at all guardianship hearings. The Court may waive the appearance requirement for the proposed guardian if the Court determines there is good cause.

708.29-6. *Plea Hearing for Guardianship.* A plea hearing to determine whether any party wishes to contest a petition for guardianship shall take place no sooner than ten (10) days after the filing of the petition. At the hearing, the non-petitioning parties shall state whether they wish to contest the petition. Before accepting an admission or a plea of no contest to the allegations in the petition, the Court shall do all of the following:

- (a) Address the parties present and determine that the admission or plea of no contest is made voluntarily and with understanding of the nature of the facts alleged in the petition, the nature of the potential outcomes and possible dispositions by the Court and the nature of the legal consequences of that disposition;
- (b) Establish whether any promises or threats were made to elicit the admission or plea of no contest; and
- (c) Make inquiries to establish to the satisfaction of the Court that there is a factual basis for the admission or plea of no contest.

708.29-7. If the petition is not contested and if the Court accepts the admission or plea of no contest, the Court may immediately proceed to a dispositional hearing unless an adjournment is requested.

708.29-8. If the petition is contested or if the Court does not accept the admission or plea of no contest, the Court shall set a date for a fact-finding hearing which allows reasonable time for the parties to prepare but is not more than sixty (60) days after the plea hearing, unless the Court enters an order finding good cause to go outside the time limits.

(a) If the petition is contested, the Court shall order the Department to file with the Court a report containing as much information relating to the appointment of a guardian as is reasonably ascertainable, including an assessment of the conditions for guardianship specified in section 708.29-1(a)-(f). Upon filing with the Court and at least seven (7) days prior to the hearing, the Department shall provide the parent, guardian, legal custodian, proposed guardian, and any other parties a written copy of the report by first-class mail.

708.29-9. *Fact Finding Hearing for Guardianship.* The Court shall hold a fact-finding hearing on the petition at which any party may present evidence relevant to the issue of whether the conditions for guardianship have been met. If the Court, at the conclusion of the fact-finding hearing, finds by clear and convincing evidence that the conditions for guardianship specified in section 708.29-1(a)-(f) have been met, the Court shall immediately proceed to a dispositional hearing unless an adjournment is requested.

708.29-10. *Dispositional Hearing for Guardianship.* The Court shall hold a dispositional hearing at which any party may present evidence, including expert testimony, relevant to the disposition. In determining the appropriate disposition for guardianship, the Court shall use the best interests of the child as the prevailing factor to be considered by the Court. In making a decision about the appropriate disposition, the Court shall consider any report submitted by the Department and shall consider, but not be limited to, all of the following:

- (a) Whether the person would be a suitable guardian of the child;
- (b) The willingness and ability of the person to serve as the child's guardian for an extended period of time or until the child reaches the age of eighteen (18) years; and
- (c) The wishes of the child, if the child has the capacity to express their wishes.

708.29-11. *Dispositional Order for Guardianship.* After receiving any evidence relating to the disposition, the Court shall enter one of the following dispositions and issue a written decision consistent with the Oneida Judiciary Rules of Civil Procedure:

- (a) A disposition dismissing the petition if the Court determines that appointment of the person as the child's guardian is not in the best interests of the child; or
- (b) A disposition ordering that the proposed guardian be appointed as the child's guardian if the Court determines that such an appointment is in the best interests of the child.

708.29-12. If the Court appoints a guardian for the child, the Court may dismiss the dispositional order finding that the child is in need of protection or services.

### **708.30. Revisions of Guardianship Order**

708.30-1. Any person authorized to file a guardianship petition or the Court, on its own motion may request a revision in a guardianship order.

708.30-2. The motion or Court proposal shall set forth in detail the nature of the proposed revision, shall allege facts sufficient to show that there has been a substantial change in circumstances since the last order affecting the guardianship was entered and that the proposed revision would be in the best interests of the child and shall allege any other information that affects the advisability of

the Court's disposition. The motion for the revision shall be filed with the Court and, upon filing, a written copy shall be provided to all parties by first-class mail.

- (a) The Court may order the Department to file with the Court a report containing as much information relating to the revision of the guardianship as is reasonably ascertainable. Upon filing with the Court and at least seven (7) days prior to the revision hearing, the Department shall provide the parties with a written copy of the report by first-class mail.

708.30-3. The Court shall hold a hearing on the matter prior to any revision of the guardianship order if the motion or Court proposal indicates that new information is available which affects the advisability of the Court's guardianship order, unless the parties file a signed stipulation and the Court approves.

### **708.31. Termination of Guardianship**

708.31-1. A guardianship under this law shall continue until any of the following are met, whichever occurs earlier:

- (a) The date on which the child attains eighteen (18) years of age;
- (b) The date on which the child is granted a high school or high school equivalency diploma or the date on which the child reaches nineteen (19) years of age, whichever occurs first, if the child is a full-time student at a secondary school or its vocational or technical equivalent and is reasonably expected to complete the program before reaching nineteen (19) years of age; or
- (c) The date on which the Court terminates the guardianship order.

708.31-2. A parent of the child may request that a guardianship order be terminated. The request shall allege facts sufficient to show that there has been a substantial change in circumstances since the last order affecting the guardianship was entered, that the parent is willing and able to carry out the duties of a guardian and that the proposed termination of guardianship would be in the best interests of the child. The Court shall hold a hearing on the matter unless the parties file a signed stipulation and the Court approves.

- (a) The Court may order the Department to file with the Court a report containing as much information relating to the termination of the guardianship as is reasonably ascertainable, including a re-assessment of the conditions for guardianship specified in section 708.29-1(a)-(f). Upon filing with the Court and at least seven (7) days prior to the termination hearing, the Department shall provide the parties with a written copy of the report by first-class mail.

708.31-3. Any person authorized to file a petition for guardianship may request that an appointed guardian be removed for cause or the Court may, on its own motion, propose such a removal. The request or Court proposal shall allege facts sufficient to show that the guardian is or has been neglecting, is or has been refusing, or is or has been unable to discharge the guardian's trust and may allege facts relating to any other information that affects the advisability of the Court's disposition. The Court shall hold a hearing on the matter.

708.31-4. A guardian appointed under this law may resign at any time if the resignation is accepted by the Court.

**708.32. Suspension or Termination of Parental Rights**

708.32-1. It is the philosophy of the Nation that children deserve a sense of permanency and belonging throughout their lives and at the same time they deserve to have knowledge about their unique cultural heritage including their tribal customs, history, language, religion and values.

708.32-2. It is the philosophy of the Nation that a united and complete family unit is of the utmost value to the community and the individual family members, and that the parent-child relationship is of such vital importance that it should be suspended or terminated only as a last resort when all efforts have failed to avoid suspension or termination and it is in the best interests of the child concerned to proceed with the suspension or termination of parental rights.

708.32-3. *Suspension of Parental Rights.* The suspension of parental rights is the permanent suspension of the rights of biological parents to provide for the care, custody, and control of their child.

708.32-4. *Termination of Parental Rights.* The termination of parental rights means that all rights, powers, privileges, immunities, duties and obligations existing between biological parent and child are permanently severed.

708.32-5. The Court may suspend or terminate a parent's rights on a voluntary or involuntary basis.

708.32-6. An order suspending or terminating parental rights permanently severs all legal rights and duties between the parent whose parental rights are suspended or terminated and the child.

708.32-7. The suspension or termination of parental rights shall not adversely affect the child's rights and privileges as a member of the Nation, nor as a member of any tribe to which the child is entitled to membership, nor shall it affect the child's enrollment status with the Nation, nor shall it interfere with the child's cultural level and traditional and spiritual growth as a member of the Nation.

**708.33. Voluntary Suspension or Termination of Parental Rights**

708.33-1. The Court may suspend or terminate the parental rights of a parent after the parent has given his or her consent. When such voluntary consent is given and the Department has submitted a court report pursuant to section 708.38, the Court may proceed immediately to a dispositional hearing.

708.33-2. The Court may accept a voluntary consent to suspension or termination of parental rights only if the parent appears personally at the hearing and gives his or her consent to the suspension or termination of his or her parental rights. The Court may accept the consent only after the judge has explained the effect of suspension or termination of parental rights and has questioned the parent, and/or has permitted counsel who represents any of the parties to question the parent, and is satisfied that the consent is informed and voluntary. If the Court finds that it would be difficult or impossible for the parent to appear in person at the hearing, the Court may allow the parent to appear by telephone or live audiovisual means.

708.33-3. If in any proceeding to suspend or terminate parental rights voluntarily any party has reason to doubt the capacity of a parent to give informed and voluntary consent to the suspension or termination, he or she shall so inform the Court. The Court shall then inquire into the capacity of that parent in any appropriate way and shall make a finding as to whether or not the parent is capable of giving informed and voluntary consent to the suspension or termination. If in the Court's discretion a person is found incapable of knowingly and voluntarily consenting to the suspension or termination of their parental rights, the Court shall dismiss the voluntary proceedings.

without prejudice. That dismissal shall not preclude an involuntary suspension or termination of the parent's rights.

708.33-4. A parent who has executed a consent under this section may withdraw the consent for any reason at any time prior to the entry of a final order suspending or terminating parental rights.

708.33-5. Any consent given under this section prior to or within ten (10) days after the birth of the child is not valid.

708.33-6. The parties, and the placement provider or adoptive resource, may agree to attend peacemaking to establish an agreement regarding post-voluntary suspension or termination of parental rights contact with a birth parent, birth sibling, or other birth relative of the child.

(a) Any party to a post-voluntary suspension or termination contact agreement or the child who is the subject of the proceedings may petition the Court that approved the agreement to compel any person who is bound by the agreement to comply with the agreement. The petition shall allege facts sufficient to show that a person who is bound by the agreement is not in compliance with the agreement and that the petitioner, before filing the petition, attempted in good faith to resolve the dispute giving rise to the filing of the petition. The petition may also allege facts showing that the noncompliance with the agreement is not in the best interests of the child.

(b) After receiving a petition for action regarding a post-voluntary suspension or termination contact agreement the Court shall set a date and time for a hearing on the petition and shall provide notice of the hearing to all parties to the agreement and may reappoint a guardian ad litem for the child.

(c) If the Court finds, after hearing, that any person bound by the agreement is not in compliance with the agreement and that the petitioner, before filing the petition, attempted in good faith to resolve the dispute giving rise to the filing of the petition, the Court shall issue an order requiring the person to comply with the agreement and may find a party in contempt.

(d) The Court may not revoke a suspension or termination of parental rights order or an order of adoption because an adoptive parent or other custodian of the child or a birth parent, birth sibling, or other birth relative of the child fails to comply with a post-voluntary suspension or termination contact agreement; however, the parties may return to peacemaking to revise the agreement, or the Court may amend an order if it finds an amendment to the order is in the best interests of the child.

#### **708.34. Grounds for Involuntary Suspension or Termination of Parental Rights**

708.34-1. Grounds for suspension or termination of parental rights shall be any of the following:

(a) *Abandonment*. Abandonment occurs when a parent either deserts a child without any regard for the child's physical health, safety or welfare and with the intention of wholly abandoning the child, or in some instances, fails to provide necessary care for their child.

(1) Abandonment shall be established by proving any of the following:

(A) That the child has been left without provision for the child's care or support, the petitioner has investigated the circumstances surrounding the matter and for sixty (60) consecutive days the petitioner has been unable to find either parent;

(B) That the child has been left by the parent without provision for the child's care or support in a place or manner that exposes the child to substantial risk of great bodily harm or death;

(C) That a court of competent jurisdiction has found any of the following:

(i) That a child has been abandoned under Wis. Stat. 48.13 (2) or under a law of any other state or a federal law that is comparable to the state law;

(ii) That the child was abandoned when the child was under one (1) year of age or has found that the parent abandoned the child when the child was under one (1) year of age in violation of Wis. Stat. 948.20 or in violation of the law of any other state or federal law, if that violation would be a violation of abandonment of a child under Wis. Stat. 948.20 if committed in this state;

(D) That the child has been placed, or continued in a placement, outside the parent's home by a Court order containing the required notice and the parent has failed to visit or communicate with the child for a period of three (3) months or longer; or

(E) The child has been left by the parent with any person, the parent knows or could discover the whereabouts of the child and the parent has failed to visit or communicate with the child for a period of six (6) consecutive months or longer.

(2) Incidental contact between parent and child shall not preclude the Court from finding that the parent has failed to visit or communicate with the child. The time periods under sections 708.34-1(a)(1)(D) and 708.34-1(a)(1)(E) shall not include any periods during which the parent has been prohibited by Court order from visiting or communicating with the child.

(3) Abandonment is not established under sections 708.34-1(a)(1)(D) and 708.34-1(a)(1)(E) if the parent proves all of the following by clear and convincing evidence:

(A) That the parent had good cause for having failed to visit with the child throughout the three (3) or six (6) month time period alleged in the petition.

(B) That the parent had good cause for having failed to communicate with the child throughout the three (3) or six (6) month time period alleged in the petition.

(C) If the parent proves good cause under section 708.34-1(a)(3)(B), including good cause based on evidence that the child's age or condition would have rendered any communication with the child meaningless, that one (1) of the following occurred:

(i) The parent communicated about the child with the person or persons who had physical custody of the child during the three (3) or six (6) month time period alleged in the petition, whichever is applicable, or, with the Department during the three (3) month time period alleged in the petition.

(ii) The parent had good cause for having failed to communicate about the child with the person or persons who had physical custody of the child or the Department throughout the three (3) or six (6) month time period alleged in the petition.



1510 (b) *Relinquishment*. Relinquishment occurs when a parent gives up or abandons their child  
1511 and all rights to their child. Relinquishment shall be established by proving that a court of  
1512 competent jurisdiction has found that the parent has relinquished custody of the child when  
1513 the child was seventy-two (72) hours old or younger.

1514 (c) *Continuing Need of Protection or Services*. Continuing need of protection or services  
1515 shall be established by proving any of the following:

1516 (1) That the child has been found to be in need of protection or services and placed,  
1517 or continued in a placement, outside his or her home pursuant to one (1) or more  
1518 dispositional orders containing the notice required by section 708.22-8;

1519 (2) That the Department has made a reasonable effort to provide the services  
1520 ordered by the Court;

1521 (3) That the child has been outside the home for a cumulative total period of six (6)  
1522 months or longer pursuant to such orders; and that the parent has failed to meet the  
1523 conditions established for the safe return of the child to the home and, if the child  
1524 has been placed outside the home for less than fifteen (15) of the most recent  
1525 twenty-two (22) months, that there is a substantial likelihood that the parent will  
1526 not meet these conditions as of the date on which the child will have been placed  
1527 outside the home for fifteen (15) of the most recent twenty-two (22) months, not  
1528 including any period during which the child was a runaway from the out-of-home  
1529 placement or was residing in a trial reunification home.

1530 (d) *Continuing Parental Disability*. Continuing parental disability shall be established by  
1531 proving that:

1532 (1) The parent is presently, and for a cumulative total period of at least two (2)  
1533 years within the five (5) years immediately prior to the filing of the petition has  
1534 been, an inpatient at one (1) or more hospitals as defined in either the Nation's laws  
1535 or state law;

1536 (2) The condition of the parent is likely to continue indefinitely; and

1537 (3) The child is not being provided with adequate care by a relative who has legal  
1538 custody of the child, or by a parent or a guardian.

1539 (e) *Continuing Denial of Periods of Physical Placement or Visitation*. Continuing denial  
1540 of periods of physical placement or visitation shall be established by proving all of the  
1541 following:

1542 (1) The parent has been denied periods of physical placement by Court order in an  
1543 action affecting the family or has been denied visitation under a dispositional order  
1544 containing the notice required by section 708.22-8, Wis. Stat. 48.356(2), or Wis.  
1545 Stat. 938.356 (2); and

1546 (2) A Court order has denied the parent periods of physical placement or visitation  
1547 for at least one (1) year.

1548 (f) *Child Abuse*. Child abuse shall be established by proving that the parent has committed  
1549 child abuse against the child who is the subject of the petition and proving either of the  
1550 following:

1551 (1) That the parent has caused death or injury to a child resulting in a felony  
1552 conviction; or

1553 (2) That a child has previously been removed from the parent's home pursuant to a  
1554 dispositional order after an adjudication that the child is in need of protection or  
1555 services.

(g) *Failure to Assume Parental Responsibility.* Failure to assume parental responsibility shall be established by proving that the parent or the person(s) who may be the parent of the child have not had a substantial parental relationship with the child.

(1) In evaluating whether the person has had a substantial parental relationship with the child, the Court may consider such factors, including, but not limited to, the following:

(A) Whether the person has expressed concern for or interest in the support, care or well-being of the child;

(B) Whether the person has neglected or refused to provide care or support for the child; and

(C) Whether, with respect to a person who is or may be the father of the child, the person has expressed concern for or interest in the support, care or well-being of the mother during her pregnancy.

(h) *Incestuous Parenthood.* Incestuous parenthood shall be established by proving that the person whose parental rights are sought to be terminated is also related, either by blood or adoption, to the child's other parent in a degree of kinship closer than 2nd cousin.

(i) *Homicide or Solicitation to Commit Homicide of a Parent.* Homicide or solicitation to commit homicide of a parent, which shall be established by proving that a parent of the child has been a victim of first-degree intentional homicide, first-degree reckless homicide or 2nd-degree intentional homicide or a crime under federal law or the law of any other state that is comparable to any of those crimes, or has been the intended victim of a solicitation to commit first-degree intentional homicide or a crime under federal law or the law of any other state that is comparable to that crime, and that the person whose parental rights are sought to be terminated has been convicted of that intentional or reckless homicide, solicitation or crime as evidenced by a final judgment of conviction.

(j) *Parenthood as a Result of Sexual Assault.*

(1) Parenthood as a result of sexual assault shall be established by proving that the child was conceived as a result of one of the following:

(A) First degree sexual assault [under Wis. Stats. 940.225(1)];

(B) Second degree sexual assault [under Wis. Stat. 940.225 (2)];

(C) Third degree sexual assault [under Wis. Stat. 940.225(3)];

(D) First degree sexual assault of a child [under Wis. Stat. 948.02(1)];

(E) Second degree sexual assault of a child [under Wis. Stat. 948.02 (2)];

(F) Engaging in repeated acts of sexual assault of the same child [under Wis. Stat. 948.025]; or

(G) Sexual assault of a child placed in substitute care [under Wis. Stat. 948.085].

(2) Conception as a result of sexual assault may be proved by a final judgment of conviction or other evidence produced at a suspension or termination of parental rights fact-finding hearing indicating that the person who may be the parent of the child committed, during a possible time of conception, a sexual assault as specified in this section against the other parent of the child.

(3) If the conviction or other evidence indicates that the child was conceived as a result of a sexual assault in violation of Wis. Stat. 948.02 (1) or (2) or 948.085, the parent of the child may be heard on his or her desire for the suspension or termination of the other parent's parental rights.

1602 (k) *Commission of a Felony Against a Child.*

1603 (1) Commission of a serious felony against the child, shall be established by  
1604 proving that the child was the victim of a serious felony and parent was convicted  
1605 of that serious felony.

1606 (2) In this subsection, “serious felony” means any of the following:

1607 (A) The commission of, the aiding or abetting of, or the solicitation,  
1608 conspiracy or attempt to commit, a violation of any of the following:

1609 (i) First degree intentional homicide [under Wis. Stat. 940.01];

1610 (ii) First degree reckless homicide [under Wis. Stat. 940.02];

1611 (iii) Felony murder [under Wis. Stat. 940.03];

1612 (iv) Second-degree intentional homicide [under Wis. Stat. 940.05]; or

1613 (v) A violation of the law of any other state or federal law, if that  
1614 violation would be a violation of the above-mentioned felonies if  
1615 committed in Wisconsin.

1616 (B) The commission of a violation of any of the following:

1617 (i) Battery, substantial battery, aggravated battery [under Wis. Stat.  
1618 940.19 (3), 1708 stats., or Wis. Stats. 940.19 (2), (4) or (5)];

1619 (ii) Sexual assault [under Wis. Stat. 940.225 (1) or (2)];

1620 (iii) Sexual assault of a child [under Wis. Stat. 948.02 (1) or (2)];

1621 (iv) Engaging in repeated acts of sexual assault of the same child [under  
1622 Wis. Stat. 948.025];

1623 (v) Physical abuse of a child [under Wis. Stats. 948.03 (2) (a), (3) (a),  
1624 or (5) (a) 1., 2., or 3.];

1625 (vi) Sexual exploitation of a child [under Wis. Stat. 948.05];

1626 (vii) Trafficking of a child [under Wis. Stat. 948.051];

1627 (viii) Incest with a child [under Wis. Stat. 948.06];

1628 (ix) Soliciting a child for prostitution [under Wis. Stat. 948.08];

1629 (x), Human trafficking [under Wis. Stat. 940.302 (2) if Wis. Stat.  
1630 940.302 (2) (a) 1. b. applies]; or

1631 (xi) A violation of the law of any other state or federal law, if that  
1632 violation would be a violation listed under the above listed felonies if  
1633 committed in Wisconsin.

1634 (C) The commission of a violation of neglecting a child under Wis. Stat.  
1635 948.21 or a violation of the law of any other state or federal law, if that  
1636 violation would be a violation of Wis. Stat. 948.21 if committed in this state,  
1637 that resulted in the death of the victim.

1638 (l) *Prior Involuntary Suspension or Termination of Parental Rights of Another Child.*

1639 Prior involuntary suspension or termination of parental rights to another child shall be  
1640 established by proving all of the following:

1641 (1) That the child who is the subject of the petition is in need of protection or  
1642 services under section 708.5-2(b), (d), or (k); or that the child who is the subject of  
1643 the petition was born after the filing of a petition under this subsection whose  
1644 subject is a sibling of the child; and

1645 (2) That, within three (3) years prior to the date the Court determined the child to  
1646 be in need of protection or services as specified in section 708.34-1 (l) (1) or, in the  
1647 case of a child born after the filing of a petition as specified in section 708.34-1 (l)

(1), within three (3) years prior to the date of birth of the child, a Court has ordered the suspension or termination of parental rights with respect to another child of the person whose parental rights are sought to be suspended or terminated on one or more of the grounds specified in this section.

**708.35. Petition for Suspension or Termination of Parental Rights**

708.35-1. *Who May File a Petition for Suspension or Termination of Parental Rights.* A petition for the suspension or termination of parental rights shall be filed by the:

- (a) Nation's Child Welfare attorney;
- (b) Department; or
- (c) child's parent in the case of a step-parent adoption.

708.35-2. A petition for the suspension or termination of parental rights shall be filed when the child has been placed outside of his or her home for fifteen (15) of the most recent twenty-two (22) months or if grounds exist for suspension or termination of parental rights unless any of the following applies:

- (a) The child is being cared for by a fit and willing relative of the child;
- (b) The child's permanency plan indicates and provides documentation that suspension or termination of parental rights to the child is not in the best interests of the child;
- (c) The Department, if required by a dispositional order, failed to make reasonable efforts to make it possible for the child to return safely to his or her home or did not provide or refer services to the family of the child for the safe return of the child to his or her home that were consistent with the permanency plan; or
- (d) Grounds for an involuntary suspension or termination of parental rights do not exist.

708.35-3. A petition for the suspension or termination of parental rights shall include the following information:

- (a) The name, birth date, address, and tribal affiliation of the child;
- (b) The names, birth dates, addresses, and tribal affiliation of the child's parents;
- (c) A Uniform Child Custody Jurisdiction and Enforcement Act affidavit; and
- (d) One (1) of the following:
  - (1) A statement that consent will be given to voluntary suspension or termination of parental rights as provided in section 708.33; or
  - (2) A statement of the grounds for involuntary suspension or termination of parental rights under section 708.34 and a statement of the facts and circumstances which the petitioner alleges establish these grounds.

708.35-4. *Temporary Order and Injunction Prohibiting Contact.* If the petition includes a statement of the grounds for involuntary suspension or termination of parental rights, the petitioner may, at the time the petition is filed, also petition the Court for a temporary order and an injunction prohibiting the person whose parental rights are sought to be suspended or terminated from visiting or contacting the child who is the subject of the petition. Any petition under this section shall allege facts sufficient to show that prohibiting visitation or contact would be in the best interests of the child.

- (a) The Court may grant an injunction prohibiting the respondent from visiting or contacting the child if the Court determines that the prohibition would be in the best interests of the child. An injunction under this subsection is effective according to its terms but may not remain in effect beyond the date the Court dismisses the petition for suspension

or termination of parental rights or issues an order suspending or terminating parental rights.

708.35-5. Upon filing with the Court and at least seven (7) days prior to the initial hearing, the petitioner shall serve the summons and petition upon the following persons by personal service or, if personal service is not possible, by certified mail, return receipt requested:

(a) The parent(s) of the child, including an alleged father if paternity has not been established; and

(b) The child's foster parent, guardian or legal custodian, if applicable. If the address has been marked confidential by the Court, the Court shall send a copy of the summons and petition to the home in which the child is placed via first-class U.S. mail.

### **708.36. Initial Hearing on the Suspension or Termination of Parental Rights Petition**

708.36-1. The initial hearing on the petition to suspend or terminate parental rights shall be held within forty-five (45) days after the petition is filed. At the hearing the Court shall determine whether any party wishes to contest the petition and inform the parties of their rights.

708.36-2. If the petition is contested, the Court shall set a date for a fact-finding hearing to be held within sixty (60) days after the hearing on the petition, unless the Court enters an order finding good cause to go outside the time limits.

708.36-3. If the petition is not contested, the Court shall hear testimony in support of the allegations in the petition and may proceed immediately with a dispositional hearing if the parties agree. Before accepting an admission of the alleged facts in a petition, the Court shall:

(a) Address the parties present and determine that the admission is made voluntarily with understanding of the nature of the acts alleged in the petition and the potential outcomes and possible dispositions by the Court;

(b) Establish whether any promises or threats were made to elicit an admission; and

(c) Make such inquiries to establish a factual basis for the admission.

### **708.37. Fact Finding Hearing for a Suspension or Termination of Parental Rights**

708.37-1. The fact-finding hearing is a hearing conducted by the Court to determine whether there is clear and convincing evidence to establish that grounds exist for the suspension or termination of parental rights.

708.37-2. The fact-finding hearing shall be conducted according to the Oneida Judiciary Rules of Civil Procedure except that the Court may exclude the child from the hearing.

708.37-3. If grounds for the suspension or termination of parental rights are found by the Court, the Court shall find the parent(s) unfit. A finding of unfitness shall not prevent a dismissal of a suspension or termination of parental rights petition. Unless the parties agree to proceed immediately with the dispositional hearing and the Court accepts, the Court shall set a date for a dispositional hearing no later than forty-five (45) days after the fact-finding hearing, unless the Court enters an order finding good cause to go outside the time limits.

### **708.38. Department's Suspension or Termination of Parental Rights Report**

708.38-1. In any case that the Department is a party, the Department shall submit a written report to the Court prior to any dispositional hearing, with a copy to the parties by first-class mail no later than seven (7) days prior to the hearing, which shall contain all of the following:

(a) The social history of the child and family, including any relevant medical conditions;

(b) A statement of the facts supporting the need for suspension or termination of parental rights;

(c) If the child has been previously adjudicated to be in need of protection or services, a statement of the steps the Department has taken to remedy the conditions responsible for Court intervention and the parent's response to and cooperation with these services. If the child has been removed from the home, the report shall also include a statement of the reasons why the child cannot be returned safely to the family and the steps the Department has taken to effect this return;

(d) A statement applying the standards and factors identified in sections 708.39-2 and 708.39-3 regarding the case before the Court; and

(e) If the report recommends that the parental rights of both of the child's parents or the child's only living or known parent are to be suspended or terminated, the report shall contain a statement of the likelihood that the child will be adopted. This statement shall include a presentation of the factors that might prevent adoption, those that may facilitate adoption, and the Department shall be responsible for accomplishing the adoption.

(1) If the Department determines that it is unlikely that the child will be adopted, or if adoption would not be in the best interests of the child, the report shall include a plan for placing the child in a permanent family setting. The plan shall include a recommendation for the appointment of a guardian for the child.

708.38-2. The Court may order a report as specified under this section to be prepared by the Department in those cases where the Department is not a party.

### **708.39. Standards and Factors**

708.39-1. In making a decision about the appropriate disposition for suspension or termination of parental rights, the Court shall consider the standards and factors enumerated in this section and any report submitted by the Department.

708.39-2. The best interests of the child shall be the prevailing standard considered by the Court in determining the disposition of all suspension and termination of parental rights proceedings.

708.39-3. In considering the best interests of the child the Court shall also consider, but not be limited to, the following factors:

(a) The likelihood of the child's adoption after suspension or termination;

(b) Whether the child will be raised in an environment that is respectful of the child's race(s), culture(s), and heritage(s);

(c) The age and health of the child, both at the time of the disposition and, if applicable, at the time the child was removed from the home;

(d) Whether the child has substantial relationships with the parent or other family members, and whether it would be harmful to the child to sever these relationships;

(e) The wishes of the child, if the child has the capacity to express their wishes;

(f) The duration of the separation of the parent from the child; and

(g) Whether the child will be able to enter into a more stable and permanent family relationship as a result of the suspension or termination, taking into account the conditions of the child's current placement, the likelihood of future placements and the results of prior placements.

**708.40. Dispositional Hearings for Suspension or Termination of Parental Rights**

708.40-1. Any party may present evidence relevant to the issue of disposition, including expert testimony, and may make alternative dispositional recommendations to the Court. After receiving any evidence related to the disposition, the Court shall enter a disposition and issue a written decision consistent with the Oneida Judiciary Rules of Civil Procedure.

(a) The Court shall give the foster parent or other legal custodian a right to be heard at the dispositional hearing by permitting the foster parent or other legal custodian to make a written or oral statement during the dispositional hearing, or to submit a written statement prior to disposition, relevant to the issue of disposition.

708.40-2. The Court shall enter one (1) of the following dispositions:

(a) The Court may dismiss the petition if it finds the evidence does not warrant the suspension or termination of parental rights or if the Court finds that a parent is attempting to voluntarily suspend or terminate their parental rights for the sole purpose of avoiding a child support obligation; or

(b) The Court may enter an order suspending or terminating the parental rights of one or both parents.

708.40-3. If the rights of both parents, or of the only living parent, are suspended or terminated and if a guardian has not been appointed, the Court shall do one (1) of the following while adhering to the placement preferences pursuant to section 708.11-1 when possible:

(a) Transfer guardianship and custody of the child pending adoptive placement to:

(1) A tribal or county department authorized to accept guardianship;

(2) A child welfare agency licensed to accept guardianship;

(3) The State of Wisconsin upon written confirmation from the State that they are willing to accept guardianship;

(4) A relative with whom the child resides, if the relative has filed a petition to adopt the child or if the relative is a kinship care relative or is receiving payments for providing care and maintenance for the child; or

(5) An individual who has been appointed guardian of the child by a court of a competent jurisdiction; or

(b) Appoint a guardian and transfer guardianship and custody of the child to the guardian.

708.40-4. The written Court order shall include the following:

(a) If the Court dismisses the petition, the order shall contain the reasons for dismissal; or

(b) If the disposition is for the suspension or termination of parental rights, the order shall contain all of the following:

(1) The identity of any agency, department, or individual that has received guardianship of the child;

(2) If an agency or department receives guardianship and custody of the child, an order ordering the child into the placement and care responsibility of the agency or department and assigning the agency or department primary responsibility for providing services to the child; and

(3) A finding that the suspension or termination of parental rights is in the best interests of the child.

(c) If the disposition is for the suspension or termination of parental rights, the order may contain all of the following:

(1) A termination of the right of the parent to have contact with the minor child including contact in person, by mail, by telephone, or through third parties;

(2) Order restraining a parent from contacting the minor child, the child's foster parent, the child's adoptive parent and/or the social services agency or agencies possessing information regarding the child;

(3) Order that the biological parents' obligation to pay child support, except for arrearages, is hereby terminated; and

(4) Order that any prior court order for custody, visitation, or contact, with the minor child is hereby terminated.

708.40-5. The Court shall provide a copy of the order suspending or terminating parental rights to the child's parent, guardian, and legal custodian; the other parties to the action; and the current or future foster parents for the purpose of pursuing adoption.

708.40-6. If an order is entered involuntarily suspending or terminating parental rights, the Court shall orally inform the parent(s) who appear in Court or place in the written order the ground for suspension or termination of their parental rights specified in section 708.34-1(l), which provides that a prior involuntary suspension or termination of parental rights, under certain circumstances, is a ground for the suspension or termination of parental rights for another child.

708.40-7. If the Court suspends or terminates parental rights, the Department, or the Court if the Department is not a party to the action, may forward the following information to the State of Wisconsin:

(a) The name, date of birth, and tribal affiliation of the child whose birth parent's rights have been suspended or terminated;

(b) The names and current addresses of the child's birth parents, guardian and legal custodian; and

(c) Any medical or genetic information received by the Department.

708.40-8. If only one (1) parent consents to a voluntary suspension or termination of parental rights or if the grounds for involuntary suspension or termination of parental rights are found to exist as to only one (1) parent, the rights of only that parent may be suspended or terminated without affecting the rights of the other parent if the Court finds such suspension or termination to be in the best interest of the child.

#### **708.41. Adoption**

708.41-1. Adoptions under this law shall take the form of customary adoptions when the Court has granted a petition to suspend parental rights. When the Court grants a petition to terminate parental rights the adoption shall be closed.

708.41-2. *Customary Adoptions.* The purpose of customary adoption is not to permanently deprive the adopted child of connections to, or knowledge of, the adopted child's biological family, but to provide the adopted child a permanent home. The following shall apply to all customary adoptions and shall be contained in all adoptive orders and decrees:

(a) The relationship between an adoptive parent and adopted child shall have all the same rights, responsibilities, and other legal consequences as the relationship between a biological child and parent;

(b) The adopted child shall have an absolute right, absent a convincing and compelling reason to the contrary, to information and knowledge about his or her biological family and his or her Oneida heritage, if applicable. The adopted child may obtain adoption information from files maintained by the Court or Department;

(c) Adoption shall not prevent an adopted child from inheriting from a biological parent in the same manner as any other biological child. The biological parents shall not be entitled



to inherit from an adopted child in the same manner as parents would otherwise be entitled to inherit. An adopted child shall be entitled to inherit from adoptive parents, and vice versa, in the same manner as if biological parents and child;

(d) Although parental rights have been suspended, the biological parent may retain certain residual parental rights when appropriate as determined by agreement between the adoptive parent and biological parent made through peacemaking, or by order of the Court. Such residual parental rights may include:

(1) The right to communication;

(2) The right to visitation;

(3) The right or obligation to contribute to support or education;

(4) The right to be consulted regarding the adopted child's religious affiliation, major medical treatment, marriage, or other matters of major importance in the child's life; and/or

(5) Such other residual rights the Court may deem appropriate, considering the circumstances.

(e) Adoption does not extinguish the relationships between the adopted child and the adopted child's extended biological family. The adopted child's extended biological family retains the right to reasonable communication and visitation with the adopted child, subject to reasonable controls of the adoptive parents.

708.41-3. *Closed Adoptions*. Closed adoptions occur in situations where an adopted child needs a permanent home and it is necessary to sever all ties between the adopted child and his or her biological family. The following shall apply to all closed adoptions:

(a) The relationship between an adoptive parent and adopted child shall have all the same rights, responsibilities, and other legal consequences as the relationship between a biological child and parent;

(b) The relationship between the adopted child and all persons whose relationship to the adopted child is derived through the biological parents shall be completely altered and all the rights, duties, and other legal consequences of those relationships shall cease to exist;

(c) The adopted child's biological family shall not be entitled to or have access to any information regarding said child;

(d) The adopted child shall be entitled to information and knowledge regarding his or her culture and heritage; and

(e) The adopted child shall be entitled to information regarding his or her biological family upon reaching the age of majority. The adopted child may obtain adoption information from files maintained by the Court or Department.

## **708.42. Adoption Criteria and Eligibility**

708.42-1. *Criteria for Adoption*. Any child who is subject to this law may be adopted if any of the following criteria are met:

(a) Both of the child's parents are deceased;

(b) The parental rights of both of the child's parents with respect to the child have been suspended or terminated;

(c) The parental rights of one of the child's parents with respect to the child have been suspended or terminated and the child's other parent is deceased; or

(d) The person filing the petition for adoption is the spouse of the child's parent and either of the following applies:

- (1) The child's other parent is deceased; or  
(2) The parental rights of the child's other parent with respect to the child have been suspended or terminated.

708.42-2. *Eligibility*. The following persons are eligible to adopt a child who falls under the jurisdiction of this law pending the successful clearing of a background check:

- (a) A married adult couple;  
(b) Either spouse if the other spouse is a parent of the child; or  
(c) An unmarried adult.

708.42-3. If the person proposing to adopt the child cannot successfully clear a background check, and any convictions the person may possess have not been pardoned, forgiven, reversed, set aside or vacated, the Court may still deem the person eligible to adopt if the Court determines by clear and convincing evidence that the adoption would be in the best interests of the child.

### **708.43. Adoption Procedure**

708.43-1. *Petition for Adoption*. A person proposing to adopt, or the Department, shall initiate a proceeding for the adoption of a child by filing a petition with the Court. The petition shall include the following information:

- (a) The name, birth date, address, and tribal affiliation of the petitioner;  
(b) The name, birth date, address, and tribal affiliation of the child;  
(c) The names, birth dates, addresses, and tribal affiliation of the child's biological parents;  
(d) The name by which the child shall be known if the petition is granted;  
(e) The relationship of the petitioner to the child; and  
(f) A copy of the order suspending or terminating parental rights of the child's biological parent(s).

708.43-2. Upon the filing of a petition for adoption, the Court shall schedule a hearing within sixty (60) days.

708.43-3. When a petition for adoption is filed, the Court shall order an investigation to determine whether the child is a proper subject for adoption and whether the petitioner's home is suitable for the child.

- (a) The Court shall order one (1) of the following to conduct the investigation:  
(1) If the Department, or another agency or department, has guardianship of the child, the agency or department that has guardianship; or  
(2) If no agency or department has guardianship of the child and a relative, including a stepparent, has filed the petition for adoption, the Department.  
(b) If the Court orders the Department to conduct the investigation, the Department may contract with a third-party agency to conduct the investigation.

708.43-4. The Department or other agency or department making the investigation shall file its report with the Court prior to the hearing on the petition and shall provide a copy of the report to the parties by first-class mail at least seven (7) days prior to the hearing.

708.43-5. If the report of the investigation is unfavorable or if it discloses a situation which, in the opinion of the Court, raises a serious question as to the suitability of the proposed adoption, the Court may appoint a guardian ad litem for the child whose adoption is proposed.

708.43-6. During the hearing the parties may agree to attend peacemaking to establish an agreement regarding residual rights of a birth parent, birth sibling, or other birth relative of the child.

1965 708.43-7. If after the hearing and a study of the report required by section 708.43-3 the Court is  
1966 satisfied that the adoption is in the best interests of the child, the Court shall make an order granting  
1967 the adoption. The order may change the name of the child to that requested by petitioners.

1968 708.43-8. After the order of adoption is entered the relation of parent and child and all the rights,  
1969 duties and other legal consequences of the natural relation of child and parent thereafter exists  
1970 between the adopted child and the adoptive parents. The relationship between the adopted child  
1971 and biological parents shall be completely altered and all the rights, duties, and other legal  
1972 consequences of those relationships shall cease to exist, excluding any residual rights granted to  
1973 the biological parents and extended family through customary adoption. If the biological parent  
1974 is the spouse of the adoptive parent, the relationship shall be completely altered and those rights,  
1975 duties, and other legal consequences shall cease to exist only with respect to the biological parent  
1976 who is not the spouse of the adoptive parent.

1977 708.43-9. Within five (5) days after entry of the order granting a closed adoption, the Department  
1978 shall mail a copy of the order to the State of Wisconsin Bureau of Vital Statistics and furnish any  
1979 additional data needed for the issuance of a new birth certificate.

#### 1980 1981 **708.44. Non-Compliance with a Residual Rights Agreement**

1982 708.44-1. Any party to a residual rights agreement or the child who is the subject of the  
1983 proceedings may petition the Court that approved the agreement to compel any person who is  
1984 bound by the agreement to comply with the agreement. The petition shall allege facts sufficient to  
1985 show that a person who is bound by the agreement is not in compliance with the agreement and  
1986 that the petitioner, before filing the petition, attempted in good faith to resolve the dispute giving  
1987 rise to the filing of the petition. The petition may also allege facts showing that the noncompliance  
1988 with the agreement is not in the best interests of the child.

1989 708.44-2. After receiving a petition for action regarding a residual rights contact agreement the  
1990 Court shall set a date and time for a hearing on the petition and shall provide notice of the hearing  
1991 to all parties to the agreement and may reappoint a guardian ad litem for the child.

1992 708.44-3. If the Court finds, after hearing, that any person bound by the agreement is not in  
1993 compliance with the agreement and that the petitioner, before filing the petition, attempted in good  
1994 faith to resolve the dispute giving rise to the filing of the petition, the Court shall issue an order  
1995 requiring the person to comply with the agreement and may find a party in contempt.

1996 708.44-4. The Court may not revoke a suspension or termination of parental rights order or an  
1997 order of customary adoption because an adoptive parent or other custodian of the child or a birth  
1998 parent, birth sibling, or other birth relative of the child fails to comply with a residual rights  
1999 agreement; however, the parties may return to peacemaking to revise the agreement, or the Court  
2000 may amend an order if it finds an amendment to the order is in the best interests of the child.

#### 2001 2002 **708.45. Peacemaking and Mediation**

2003 708.45-1. The Court may refer the parties to peacemaking or mediation if the parties agree to  
2004 attend peacemaking or mediation. The Court shall not refer the parties to peacemaking or  
2005 mediation if attending the session will cause undue hardship or would endanger the health or safety  
2006 of a party.

2007 708.45-2. When the parties attend peacemaking or mediation based on a referral from the Court,  
2008 the Court shall enter an order finding good cause to suspend the time limits established under this  
2009 law.

2011 **708.46. Appeals**

2012 708.46-1. Appeals of all orders issued under this law shall be heard by the Nation's Court of  
2013 Appeals in accordance with the Rules of Appellate Procedure.  
2014

2015 **708.47. Liability**

2016 708.47-1. No liability shall attach to the Department, Indian Child Welfare Worker, the Nation's  
2017 Child Welfare Attorney or any person acting under their authority for statements, acts or omissions  
2018 made in good faith while in the course of activities taken under this law.  
2019

2020 *End.*

2021 Adopted – BC-07-26-17-J

2022 Amended – BC-\_\_-\_\_-\_\_-\_\_



## CHILDREN'S CODE AMENDMENTS LEGISLATIVE ANALYSIS

### SECTION 1. EXECUTIVE SUMMARY

| <i>Analysis by the Legislative Reference Office</i> |  |
|---|--|
| Intent of the Proposed Amendments                   | <ul style="list-style-type: none"> <li>Provide that any orders made by the Court under this law, or any orders made by a court of competent jurisdiction regarding child welfare matters, shall supersede any other order made by this Court or a court of competent jurisdiction regarding custody or placement of a child until the Children's Code or other child welfare orders are dismissed [7 O.C. 708.5-6];</li> <li>Provide that the Department may enter into a protective plan with a family [7 O.C. 708.7-1(f)];</li> <li>Update the general notice provisions in the Children's Code, as well as notice provisions throughout the Children's Code to provide greater clarification on providing notice in child welfare matters [7 O.C. 708.12];</li> <li>Allow the Department to withhold the placement provider's identifying information from the child's parent, guardian, or legal custodian if there are reasonable grounds to believe that disclosure would result in imminent danger to the child or anyone else, but that a parent, guardian, or legal custodian may request judicial review of the decision to withhold the identifying information [7 O.C. 708.12-4];</li> <li>Provide clarification on how a matter is referred to the Oneida Nation Child Support Agency for initiating a paternity action, and allow the Department may sign documents required by the Oneida Nation Child Support Agency on behalf of the family for the limited purpose of initiating a paternity action [7 O.C. 708.13-3];</li> <li>Provide that 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. [7 O.C. 708.14-2].</li> <li>Allow the Department to make an ex parte request to the Court to conduct an in-camera review to determine what information should and should not be released to the parties and their counsel [7 O.C. 708.14-7];</li> <li>Allow a child to be held in custody in a hospital or other medical or mental health facility [7 O.C. 708.15-6(f)];</li> <li>Provide information that may be, but is not required to be, included in the Court's order to hold a child in custody [7 O.C. 7008.16-6(b)];</li> <li>Allow the Department to request the placement of the child outside of the child's home at the plea hearing [7 O.C. 708.19-5];</li> <li>Allow for the suspension of parental rights in addition to the termination of parental rights [7 O.C. 708.32];</li> <li>Update the continuing need of protection or services ground for involuntary suspension or termination of parental rights to be consistent with recent revisions to State statute [7 O.C. 708.34-1(c)];</li> </ul> |

|                            |   |
|----------------------------|---|
|                            | <ul style="list-style-type: none"> <li>Provide information that may be, but is not required to be, included in the Court's order of disposition for the suspension or termination of parental rights [7 O.C. 708.40-4(c)];</li> <li>Clarify that an adoption under this law shall take the form of customary adoption when the Court has granted a petition to suspend parental rights, and take the form of a closed adoption when the Court has granted a petition to terminate parental rights [7 O.C. 708.41-1];</li> <li>Allow the Department to contract with a third-party agency to conduct an adoption investigation that may have been ordered by the Court [7 O.C. 708.43-3(b)]; and</li> <li>Make other minor drafting revisions throughout the Children's Code.</li> </ul> |
| <b>Purpose</b>             | The purpose of this law is to provide for the welfare, care, and protection of Oneida children through the preservation of the family unit, while recognizing that in some circumstances it may be in the child's best interest to not be reunited with his or her family. Furthermore, this law strengthens family life by assisting parents in fulfilling their responsibilities as well as facilitating the return of Oneida children to the jurisdiction of the Nation and acknowledging the customs and traditions of the Nation when raising an Oneida child. [7 O.C. 708.1-1].   |
| <b>Affected Entities</b>   | Indian Child Welfare Department ("the Department"), Oneida Family Court ("the Court"), Oneida Law Office  |
| <b>Related Legislation</b> | Oneida Judiciary Rules of Civil Procedure, Oneida Judiciary Rules of Evidence, Family Court law, Paternity law, Child Support law   |
| <b>Public Meeting</b>      | A public meeting was held in accordance with the Legislative Procedures Act on June 15, 2022, with a public comment period held open until June 22, 2022.   |
| <b>Fiscal Impact</b>       | A fiscal impact statement has not yet been requested.   |

## SECTION 2. LEGISLATIVE DEVELOPMENT

- A. Background.** The Children's Code was adopted by the Oneida Business Committee on July 26, 2017, through the adoption of resolution BC-07-26-17-J for the purpose of providing 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, the Children's Code strengthens family life by assisting parents in fulfilling their responsibilities as well as facilitating the return of Oneida children to the jurisdiction of the Nation and acknowledging the customs and traditions of the Nation when raising an Oneida child. [7 O.C. 708.1-1]. It is the policy of the Nation to ensure there is a standard process for conducting judicial proceedings and other procedures in which children and all other interested parties are provided fair hearings in addition to ensuring their legal rights are recognized and enforced, while protecting the public safety. [7 O.C. 708.1-2].
- B. Request for Amendments.** 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 amendments to the Children's Code regarding customary adoption be changed to allow for a suspension of rights rather than a termination of rights 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. The Legislative Operating Committee added the Children's Code amendments to its Active Files List on October 7, 2020.

C. The Legislative Operating Committee is now seeking amendments to the Children's Code.

### SECTION 3. CONSULTATION AND OUTREACH

A. Representatives from the following departments or entities participated in the development of the amendments to the Children's Code and this legislative analysis:

- Oneida Law Office;
- Indian Child Welfare Department; and
- Oneida Family Court.

B. The following laws were reviewed in the drafting of this analysis:

- Oneida Judiciary Rules of Civil Procedure;
- Family Court Law;
- Paternity law;
- Child Support law; and
- Child Custody, Placement, and Visitation law.

### SECTION 4. PROCESS

A. The development of the proposed amendments to the Children's Code complies with the process set forth in the Legislative Procedures Act (LPA).

- On October 7, 2020, the Legislative Operating Committee added the Law to its Active Files List.
- On April 20, 2022, the Legislative Operating Committee approved the draft of the proposed amendments to the Children's Code and directed that a legislative analysis be developed.
- On May 4, 2022, the Legislative Operating Committee approved the updated draft and the legislative analysis for Children's Code amendments.
- On May 18, 2022, the Legislative Operating Committee approved the public meeting packet and forwarded the Children's Code amendments to a public meeting to be held on June 15, 2022.
- The public meeting was held on June 15, 2022, in person in the Business Committee Conference Room in the Norbert Hill Center as well as on Microsoft Teams. No individuals provided public comment during the public meeting.
- The public comment period was then held open until June 22, 2022. One (1) submission of written comments was received during the public comment period.
- On July 6, 2022, the Legislative Operating Committee accepted the public comments and the public comment review memorandum and deferred these items to a work meeting for further consideration.
- On July 14, 2022, the Legislative Operating Committee reviewed and considered the public comment that was received.

B. At the time this legislative analysis was developed the following work meetings had been held regarding the development of this Law:

- October 13, 2020: LOC work session with the Indian Child Welfare Department and Oneida Law Office.

- April 12, 2021: LOC work session with the Oneida Family Court.
- April 12, 2021: LOC work session with the Indian Child Welfare Department and Oneida Law Office.
- April 26, 2021: LOC work session with the Oneida Family Court.
- June 4, 2021: Work session with the Indian Child Welfare Department and the Oneida Law Office.
- February 16, 2022: LOC work session with Oneida Law Office.
- April 12, 2022: LOC work session with the Indian Child Welfare Department, Oneida Law Office, and the Oneida Family Court.
- May 12, 2022: LOC work session.
- July 14, 2022: LOC work session.

## SECTION 5. CONTENTS OF THE LEGISLATION

**A. *Hierarchy of Child Welfare Court Orders.*** A new provision added to the Children’s Code through these amendments provides that any orders made by the Court under this law, or any orders made by a court of competent jurisdiction regarding child welfare matters, shall supersede any other order made by this Court or a court of competent jurisdiction regarding custody or placement of a child until the Children’s Code or other child welfare orders are dismissed. [7 O.C. 708.5-6].

- *Effect.* The overall purpose of this provision is to provide clarification that any orders made by the Court under this law, or any orders made by a court of competent jurisdiction regarding child welfare matters, shall supersede any other order made by this Court or a court of competent jurisdiction regarding custody or placement of a child until the Children’s Code or other child welfare orders are dismissed. This clarification was added to prevent an individual from seeking a custody or placement order for a child in this Court or a court of competent jurisdiction in an attempt to trump a child welfare order.

**B. *Protective Plans.*** The Children’s Code provides the various duties and responsibilities of the Indian Child Welfare Worker. [7 O.C. 708.7-1]. The Children’s Code provides that an Indian Child Welfare worker may enter into informal dispositions with families. [7 O.C. 708.7-1(f)]. The proposed amendments to the Children’s Code revise the responsibilities and duties of the Indian Child Welfare work to include that they also may enter into a protective plan with a family. *Id.* Definitions for both informal dispositions and protective plans were then added to the Children’s Code. Informal disposition is defined in the Children’s Code as a written agreement with all the parties describing the conditions and obligations that must be met to ensure the child is protected and to alleviate the condition that led to the referral to the Department. [7 O.C. 708.3-1(bb)]. An informal disposition is utilized by the Department when the Department determines that the interest of the child does not require a formal Court intervention to provide protection and services to the child. *Id.* Protective plan is defined as an immediate short-term action that protects a child from present danger threats in order to allow for completion of the initial assessment, investigation and, if needed, the implementation of a safety plan. [7 O.C. 708.3-1(nn)].

- *Effect.* The proposed amendments to the Children’s Code provide greater clarification as to the duties and responsibilities of the Indian Child Welfare workers.

**C. *General Notice Provisions.*** The proposed amendments to the Children’s Code update the general notice provisions in the Children’s Code. The proposed amendments to the Children’s Code provide that service of documents and notices shall be as specified in this law, and if a method of service is not



specified in this law then service shall be by first-class mail to the recently verified last-known address of the party. [7 O.C. 708.12-1]. If a party's whereabouts are unknown and cannot be found after diligent effort, service shall be by publication as described in the Oneida Judiciary Rules of Civil Procedure. *Id.* The proposed amendments provide that the Court shall provide the parties with notice of all hearings at least seven (7) days prior to the hearing, with the purpose of providing the parties an opportunity to be heard, except in situations where a hearing is scheduled and it is not possible to provide notice at least seven (7) days prior to the hearing, the Court shall make an appropriate effort to notice all parties of the hearing. [7 O.C. 708.12-2]. Additionally, the proposed amendments provide that when the Department is required to perform personal service, the Indian Child Welfare Worker may deliver the document(s) directly to the party(s) if such service is appropriate and safe under the circumstances, and in the alternative, personal service may be accomplished according to the Oneida Judiciary Rules of Civil Procedure. The proposed amendments also include a new provision which provides that in all proceedings under this law, the Department may withhold the placement provider's identifying information from the child's parent, guardian, or legal custodian if there are reasonable grounds to believe that disclosure would result in imminent danger to the child or anyone else, but that a parent, guardian, or legal custodian may request judicial review of the decision to withhold the identifying information. [7 O.C. 708.12-4]. Previously the Children's Code provided general provisions on the notice of petitions, and provided that petitions alleging that a child is in need of protection or services may be given to the parties directly by the Nation's Child Welfare attorney or the Indian Child Welfare Worker or served on the parties pursuant to the Oneida Judiciary Rules of Civil Procedure. While petitions for termination of parental rights, guardianship, and adoption shall be served on all other parties pursuant to the Oneida Judiciary Rules of Civil Procedure. The Children's previously provided that all parties shall be notified of all subsequent hearings under this law by first-class mail to the recently verified last-known address of the party.

- *Effect.* Updates were made to the general notice provisions in the Children's Code to provide greater clarification on how notice is provided to the parties involved in child welfare matters. The prior simple reference to following the Oneida Judiciary Rules of Civil Procedure did not provide the Indian Child Welfare Department and the Oneida Law Office the guidance they needed in how notice should occur, because the Oneida Judiciary Rules of Civil Procedures did not address the notice of particular documents or processes contained in the Children's Code. The new provisions provide the necessary clarification to guide notice practices under the Children's Code.

**D. Notice Provisions Throughout the Law.** In addition to the general notice provisions that have been amended in section 708.12, notice provisions have been clarified and updated throughout the Children's Code including:

- *Section 708.16-3.* The proposed amendments to the Children's Code remove a provision which states that prior to the start of a hearing for emergency custody, the Court shall provide a copy of the petition to the parent, guardian, and legal custodian, if present, and to the child if he or she is twelve (12) years of age or older. Instead, the proposed amendments now provide that for any parties not present at the hearing, the Department shall serve the petition on those parties by verified mail, return receipt requested.
- *Section 708.17-1.* The proposed amendments to the Children's Code provide that upon filing with the Court, the Department shall provide a copy of the petition for a child in need of protection or services to the parties by personal service or, if personal service is not possible, by certified mail with return receipt requested.

- 151       ▪ *Section 708.17-5.* The proposed amendments to the Children’s Code provide that upon  
152       filing with the Court, the Department shall provide a copy of the amended petition to the  
153       parties by certified mail with return receipt requested. Previously, this section of the  
154       Children’s Code provided that an amended petition may be given to the parties directly by  
155       the Nation’s Child Welfare attorney or the Indian Child Welfare Worker or served on the  
156       parties pursuant to the Oneida Judiciary Rules of Civil Procedure.
- 157       ▪ *Section 708.21-1.* The Children’s Code provides that before the dispositional hearing, the  
158       Department shall submit a written report to the Court, with a copy provided to the parties  
159       at least seven (7) days prior to the hearing. The proposed amendments to the Children’s  
160       Code clarify that the copy of the written report shall be provided to the parties by first-class  
161       mail.
- 162       ▪ *Section 708.23-3.* The proposed amendments to the Children’s Code provide that at least  
163       seven (7) days before the date of the permanency plan hearing, the Department shall file  
164       the updated permanency plan with the Court and provide a copy to the parties by first-class  
165       mail. Previously, this section of the Children’s Code required that at least five (5) business  
166       days before the date of the hearing the Department shall provide a copy of the updated  
167       permanency plan to the Court and the parties.
- 168       ▪ *Section 708.24-4.* The proposed amendments to the Children’s Code provide that upon  
169       filing with the Court, the Department shall provide a copy of the request for a change in  
170       placement to the parties by first-class mail. Previously, this section of the Children’s Code  
171       provided that written notice of the proposed change in placement shall be sent to all of the  
172       parties pursuant to the Oneida Judiciary Rules of Civil Procedure.
- 173       ▪ *Section 708.24-6.* The proposed amendments to the Children’s Code provide that the  
174       Department shall notify the parties of the emergency change in placement by personal  
175       service as soon as possible but no later than seventy-two (72) hours after the emergency  
176       change in placement excluding Saturdays, Sundays, and holidays. Previously, this section  
177       of the Children’s Code provided that notice of the emergency change in placement shall be  
178       sent to the parties as soon as possible but no later than seventy-two (72) hours after the  
179       emergency change in placement excluding Saturdays, Sundays, and holidays.
- 180       ▪ *Section 708.25-4.* The proposed amendments to the Children’s Code provide that upon  
181       filing a request for trial reunification with the Court and at least seven (7) days before the  
182       date of reunification, the Department shall provide the parent, guardian, legal custodian,  
183       and any other party written notice of the proposed reunification by first-class mail.  
184       Previously, this section of the Children’s Code provided that Department or Nation’s Child  
185       Welfare attorney shall provide the parent, guardian, legal custodian, and any other party  
186       written notice pursuant to the Oneida Judiciary Rules of Civil Procedure.
- 187       ▪ *Section 708.24-7.* The proposed amendments to the Children’s Code provide that no later  
188       than seven (7) days prior to the expiration of the trial reunification, the Department shall  
189       submit the request for an extension of the trial reunification to the Court and shall cause  
190       notice of the request to be provided to all parties by first-class mail. Previously, this section  
191       of the Children’s Code provided that no later than ten (10) days prior to the expiration of  
192       the trial reunification, the Department shall submit the request to the Court and shall cause  
193       notice of the request to be provided to all parties.

- 194       ▪ *Section 708.25-8.* The proposed amendments to the Children’s Code clarify that the  
195       Department is required to provide written notice of the end of a trial reunification period  
196       to the parties by first-class mail.
- 197       ▪ *Section 708.25-9(a)(1).* The proposed amendments to the Children’s Code clarify that the  
198       Department’s request for revocation of the trial reunification is required to be provided by  
199       first-class mail.
- 200       ▪ *Section 708.26-2.* The proposed amendments to the Children’s Code clarify that the  
201       Department’s request for a revision of the dispositional order is required to be provided to  
202       the parties by first-class mail. Previously, this section of the Children’s Code provided that  
203       notice be provided to the parties pursuant to the Oneida Judiciary Rules of Civil Procedure.
- 204       ▪ *Section 708.27-1.* The proposed amendments to the Children’s Code clarify that the  
205       Department’s request for an extension of the dispositional order is required to be provided  
206       to the parties by first-class mail. Previously, this section of the Children’s Code provided  
207       that notice be provided to the parties pursuant to the Oneida Judiciary Rules of Civil  
208       Procedure.
- 209       ▪ *Section 708.29.4.* The proposed amendments to the Children’s Code provide that upon  
210       filing with the Court and at least seven (7) days prior to the plea hearing, the party that filed  
211       the guardianship petition shall provide a copy of the petition to the other parties by personal  
212       service or, if personal service is not possible, by certified mail with return receipt requested.
- 213       ▪ *Section 708.29-8(a).* The proposed amendments to the Children’s Code provide that upon  
214       filing with the Court and at least seven (7) days prior to the fact-finding hearing, the  
215       Department shall provide the parent, guardian, legal custodian, proposed guardian, and any  
216       other parties a written copy of the report by first-class mail. Previously, this section of the  
217       Children’s Code provided that the Department shall file its report with the Court prior to  
218       the fact-finding hearing and shall provide the parties with a copy of the report at least three  
219       (3) business days prior to the hearing.
- 220       ▪ *Section 708.30-2.* The proposed amendments to the Children’s Code provide that the  
221       motion for a revision of guardianship shall be filed with the Court and, upon filing, a written  
222       copy shall be provided to all parties by first-class mail. Previously, the notice of revision  
223       was required to be filed with the Court with notice provided to the parties pursuant to the  
224       Oneida Judiciary Rules of Civil Procedure. Additionally, the proposed amendments to  
225       subsection (a) of 708.30-2 provide that upon filing with the Court and at least seven (7)  
226       days prior to the revision hearing, the Department shall provide the parties with a written  
227       copy of their report by first-class mail. Previously, subsection (a) provided that the  
228       department shall file its report with the Court prior to the hearing on the revision of  
229       guardianship and shall provide the parties with a copy of the report at least three (3)  
230       business days prior to the hearing.
- 231       ▪ *Section 708.31-2(a).* The proposed amendments to the Children’s Code provide that upon  
232       filing with the Court and at least seven (7) days prior to the termination hearing, the  
233       Department shall provide the parties with a written copy of the report for the termination  
234       of a guardianship by first class mail. Previously, the Children’s Code provided that the  
235       Department shall file its report with the Court prior to the hearing on the termination of  
236       guardianship and shall provide the parties with a copy of the report at least three (3)  
237       business days prior to the hearing.

- 238       ▪ *Section 708.35-5.* The proposed amendments to the Children’s Code provide that upon  
239       filing with the Court and at least seven (7) days prior to the initial hearing, the petitioner  
240       shall serve the summons and petition upon the following persons by personal service or, if  
241       personal service is not possible, by certified mail, return receipt requested: The parent(s)  
242       of the child, including an alleged father if paternity has not been established; and The  
243       child’s foster parent, guardian or legal custodian, if applicable. Previously, the Children’s  
244       Code provided that the petitioner shall ensure the summons and petition are served upon  
245       the following persons pursuant to the Oneida Judiciary Rules of Civil Procedure: The  
246       parent(s) of the child, including an alleged father if paternity has not been established; The  
247       child’s foster parent, guardian or legal custodian, if applicable; and The Nation’s Child  
248       Welfare attorney and the Department, if the petition is filed by anyone other than the  
249       Nation’s Child Welfare attorney or the Department.
  - 250       ▪ *Section 708.43-4.* The proposed amendments to the Children’s Code provide that the  
251       Department or other agency or department making the adoption investigation shall file its  
252       report with the Court prior to the hearing on the petition and shall provide a copy of the  
253       report to the parties by first-class mail at least seven (7) days prior to the hearing.  
254       Previously, this section of the Law provided that the Department or other agency or  
255       department making the investigation shall file its report with the Court prior to the hearing  
256       on the petition and shall provide the parties with a copy of the report at least three (3)  
257       business days prior to the hearing.
  - 258       ▪ *Section 708.43-9.* The proposed amendments to the Children’s Code provide that within  
259       five (5) days after entry of the order granting a closed adoption, the Department shall mail  
260       a copy of the order to the State of Wisconsin Bureau of Vital Statistics and furnish any  
261       additional data needed for the issuance of a new birth certificate. Previously this section  
262       provided that after entry of the order granting the adoption, the Department shall promptly  
263       mail a copy of the order to the State of Wisconsin Bureau of Vital Statistics and furnish  
264       any additional data needed for the issuance of a new birth certificate.
  - 265       ▪ *Effect.* Revisions to specific notice requirements throughout the Children’s Code were made to  
266       provide greater clarification on how notice shall occur.
- 267 **E. *Referral of a Paternity Action to the Oneida Nation Child Support Agency.*** The proposed  
268 amendments to the Children’s Code addresses referrals for paternity actions. The proposed amendments  
269 provides that if an alleged father appears at a hearing under this law, the Court may order the  
270 Department to refer the matter to the Oneida Nation Child Support Agency to adjudicate paternity. [7  
271 *O.C. 708.13-3*]. There is a new provision added to the that that provides that if the Court enters such  
272 an order, then the Department may sign documents required by the Oneida Nation Child Support  
273 Agency on behalf of the family for the limited purpose of initiating a paternity action. *Id.* While  
274 paternity is being established, the Court shall enter an order finding good cause to suspend the time  
275 limits established under this law. *Id.* Previously, the Children’s Code provided that if an alleged father  
276 appears at a hearing under this law, the Court may refer the matter to the Oneida Nation Child Support  
277 Agency to adjudicate paternity.
- 278       ▪ *Effect.* The proposed amendments to the Children’s Code provide greater clarification on how a  
279       referral to the Oneida Nation Child Support Agency occurs – that the Court may order the  
280       Department to refer the matter to the Oneida Nation Child Support Agency – so it is not the Court  
281       itself that refers the matter to the Oneida Nation Child Support Agency. Authority was given to the

Department to sign documents required by the Oneida Nation Child Support Agency on behalf of the family for the limited purpose of initiating a paternity action, so that a situation could be avoided where a paternity action is unable to be initiated because the mother of the child is unable to or not around to sign the necessary documents.

F. ***Access of Records for a Guardian Ad Litem.*** The proposed amendments add a new provision to the Children's Code which provides that 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. [7 O.C. 708.14-2].

- *Effect.* 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 intends to avoid unnecessary delay in seeking other consent authorization for access to records, 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 or other department of the Nation should not be necessary when the order made by the Court already addresses the release of information to the GAL. This amendment clarifies this issue and intends to avoid unnecessary delay in the future.

G. ***Withholding the Release of Information.*** The proposed amendments add a new provision to the Children's Code which provides that the Department may make an ex parte request to the Court to conduct an in-camera review to determine what information should and should not be released to the parties and their counsel. [7 O.C. 708.14-7]. In making that determination, the Court is required to balance what is necessary to a fair determination of the child welfare legal matter, including access to records, against the interest in protecting the child from the risk of harm. *Id.* After the Court conducts the in-camera review, the decision regarding the release of records shall be provided to the parties in writing. *Id.*

- *Effect.* The Children's Code provides that 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. [7 O.C. 708.14-1]. The Indian Child Welfare Department expressed concerns that the Department may have certain records which if released could cause harm to the child. This provision was added to give the Department a method to seek intervention by the Court to determine if certain records can be withheld in the interest in protecting the child.

H. ***Holding a Child in Custody.*** The Children's Code provides a list of options for where a child may be held in custody as long as the place is in the best interest of the child and all people residing or regularly visiting the premises have cleared a background check. [7 O.C. 708.15-6]. The proposed amendments

to the Children's Code add a new option to the list of where a child may be held in custody at, which is a hospital or other medical or mental health facility. [7 O.C. 708.15-6].

- *Effect.* The option to hold a child in custody in a hospital or other medical or mental health facility was added to address child welfare cases where the child may need to be hospitalized or held in a medical facility. This provides greater flexibility in determining where a child should be held in custody that best meets the needs and interests of the child.

**I. *Order for Holding a Child in Custody at an Emergency Custody Hearing.*** The Children's Code provides that all orders to hold a child in custody at an emergency custody hearing shall be in writing and provides what information is required to be included in the order. [7 O.C. 7008.16-6(a)]. The proposed amendments to the Children's Code will now include the addition of information that may be, but not required to be, included in the order to hold a child in custody. [7 O.C. 7008.16-6(b)]. Now an order to hold a child in custody may include a transfer of the legal custody of the child, including decisions about health care and education.

- *Effect.* Allowing an order to hold a child in custody at an emergency custody hearing to include a transfer of the legal custody of the child, including decisions about health care and education, allow for legal custody to be transferred to the Department or the other parent, if necessary, especially if medical decisions need to be made on behalf of the child.

**J. *Request for Out of Home Placement of the Child at the Plea Hearing.*** The proposed amendments to the Children's Code provide that at the plea hearing the Department may request placement of the child outside of the child's home in accordance with the placement preferences in section 708.11-1, if notice of the Department's intent to seek out of home placement of the child was provided to the parties prior to the hearing in substantial compliance with section 708.15-9. [7 O.C. 708.19-5]. The Children's Code will not require that in the request for placement of the child outside of the child's home the Department shall present as evidence specific information as outlined in 708.16-6(a)(1)-(5). *Id.* If the Court orders the out of home placement of the child, the order shall be in writing and shall contain the information required by section 708.16-6(a)(1)-(5). [7 O.C. 708.19-6]. Previously, the Children's Code did not allow for the Department to request the out of home placement of a child at the plea hearing.

- *Effect.* The proposed amendments to the Children's Code will allow for the Department to request the placement of a child outside of the child's home at the plea hearing. Currently, it has been interpreted that a request for the placement of the child outside of the child's home can only occur at an emergency custody hearing or at the dispositional hearing for a child in need of protection or services. The Department requested this amendment so that the Department would have the ability to avoid taking a child into emergency custody when the parents are already in agreement with a protective plan and the child is already staying out of home under the protective plan. This allows the Department to avoid unnecessary litigation and pressure to the family if the emergency custody hearing can be skipped, and the department can file a petition for a child in need of protection or services and request the ordered out of home placement at the time of the plea hearing. A protective plan is a safety tool the Department can implement during the Initial Assessment stage of a case. Initial Assessment lasts sixty (60) days and during that time the Indian Child Welfare Department workers gather information, and a determination is made whether a petition for a child in need of protection or services needs to be filed. Parents have to agree to a protective plan and the plan can only last for sixty (60) days. There isn't a formal order placing the child out of home within a protective plan because a protective plan is temporary and agreed to by the parents. When the sixty (60) days for the initial assessment ends, if it is clear that a petition for a child in need of protection

or services needs to be filed, then the Department would like the ability to skip a contentious emergency custody hearing and simply file a petition and ask for an order for out of home placement at the first hearing, which is the plea hearing. An emergency custody hearing is also not the best option in these situations because an “emergency” does not necessarily exist because the child is safe under the protective plan and staying out of the home.

**K. *Withholding Identifying Information in the Dispositional Report.*** The proposed amendments to the Children’s Code eliminated section 708.21-3 of the Code which provided that the Department may request the Court to withhold identifying information from the child’s parent, guardian, or legal custodian if there are reasonable grounds to believe that disclosure would result in imminent danger to the child or anyone else.

- *Effect.* Section 708.21-3 of the Children’s Code- which provided that the Department may request the Court to withhold identifying information in the dispositional report from the child’s parent, guardian or legal custodian if there are reasonable grounds to believe that disclosure would result in imminent danger to the child or anyone else - was eliminated from the Children’s Code because it was duplicative of section 708.12-4 – a new, more general, addition to the Code – which provides that in all proceedings under this law, the Department may withhold the placement provider’s identifying information from the child’s parent, guardian, or legal custodian if there are reasonable grounds to believe that disclosure would result in imminent danger to the child or anyone else. Section 708.12-4 then allows a parent, guardian, or legal custodian may request judicial review of the decision to withhold the identifying information.

**L. *Copy of the Dispositional Order to the Child.*** The proposed amendments to the Children’s Code remove the requirement to provide a copy of the dispositional order to the child is the child is age twelve (12) or older.

- *Effect.* After much discussion between the Indian Child Welfare Department, Oneida Law Office, and Oneida Family Court it was determined that it may not be appropriate to provide a child age twelve (12) or older a copy of the dispositional order due to the nature of the information that may be included in the dispositional order and therefore this provision of the Children’s Code should be removed.

**M. *Capacity of the Child to Express their Wishes.*** The Children’s Code provides that in making a decision about the appropriate disposition, the Court shall consider any report submitted by the Department and shall consider, but not be limited to, whether the person would be a suitable guardian of the child, the willingness and ability of the person to serve as the child’s guardian for an extended period of time or until the child reaches the age of eighteen (18) years, and the wishes of the child. The proposed amendments to the Children’s Code clarify that the wishes of the child should only be considered when the child has the capacity to express their wishes. This same revision occurs in section 708.39-3 of the Children’s Code.

- *Effect.* The proposed amendments provide clarification that the wishes of the child should be taken into consideration by the Court when the child has the capacity to express their wishes.

**N. *Suspension of Parental Rights.*** The proposed amendments to the Children’s Code now allow for the suspension of parental rights in addition to the termination of parental rights. The suspension of parental rights is the permanent suspension of the rights of biological parents to provide for the care, custody, and control of their child. [7 O.C. 708.32-3]. It is the philosophy of the Nation that children deserve a sense of permanency and belonging throughout their lives and at the same time they deserve to have knowledge about their unique cultural heritage including their tribal customs, history, language,

religion, and values. [7 O.C. 708.32-1]. Much like the termination of parental rights, the suspension of parental rights should only be used as a last resort when all efforts have failed to avoid suspension or termination and it is in the best interests of the child concerned to proceed with the suspension or termination of parental rights. [7 O.C. 708.32-2]. The suspension of parental rights can occur on a voluntary or involuntary basis. [7 O.C. 708.32-5]. An order suspending or terminating parental rights permanently severs all legal rights and duties between the parent whose parental rights are suspended or terminated and the child. [7 O.C. 708.32-6]. 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. [7 O.C. 708.32-6]. The suspension of parental rights is handled the same way as the termination of parental rights in regard to the process for the voluntary suspension or termination [7 O.C. 708.33], grounds for involuntary suspension or termination [7 O.C. 708.34], the petition for the suspension or termination [7 O.C. 708.35], the initial hearing on the suspension or termination [7 O.C. 708.36], the fact-finding hearing for the suspension or termination [7 O.C. 708.37], the Department's suspension or termination of parental rights report [7 O.C. 708.38], standards and factors to be utilized by the Court when making a decision [7 O.C. 708.39], and the dispositional hearing for the suspension or termination of parental rights [7 O.C. 708.40].

- **Effect.** The proposed amendments to the Children's Code add in provision regarding the suspension of parental rights, in addition to the termination of parental rights that was already included in the Children's Code. This provides one more option for finding the best solution to a child welfare matter to best meet the needs of the child.

**O. Continuing Need of Protection or Services as a Ground for Involuntary Suspension or Termination of Parental Rights.** The Children's Code provides various grounds for suspension or termination of parental rights. [7 O.C. 708.34-1]. Specifically, the Children's Code provides what needs to be proved to demonstrate that the child is in continuing need of protection or services – which is a ground for the suspension or termination of parental rights. [7 O.C. 708.34-1(c)]. The proposed amendments to the Children's Code provides that it must be provided that the child has been outside the home for a cumulative total period of six (6) months or longer pursuant to such orders; and that the parent has failed to meet the conditions established for the safe return of the child to the home and, if the child has been placed outside the home for less than fifteen (15) of the most recent twenty-two (22) months, that there is a substantial likelihood that the parent will not meet these conditions as of the date on which the child will have been placed outside the home for fifteen (15) of the most recent twenty-two (22) months, not including any period during which the child was a runaway from the out-of-home placement or was residing in a trial reunification home. [7 O.C. 708.34-1(c)(3)]. Previously the Children's required that it be proved that the child has been outside the home for a cumulative total period of six (6) months or longer pursuant to such orders; and that the parent has failed to meet the conditions established for the safe return of the child to the home and there is a substantial likelihood that the parent will not meet these conditions within the nine (9) month period following the termination of parental rights fact-finding hearing.

- **Effect.** This proposed revision to the Children's Code was made to be consistent with recent revisions to Wis. Stat. §48.415(2). Although the Nation is under no obligation to amend its laws to be consistent with laws of the State, concern was expressed that it may be beneficial to ensure the Nation's grounds for suspension or termination of parental rights are consistent with the State's



grounds so that if a case transfers after being filed in State court, we are not in a position where we have to dismiss the petition if the grounds pled in State court are different from the grounds found in the Children's Code, causing the Department to have to refile, assuming they have a factual basis to do so.

**P. *Order of Disposition for the Suspension or Termination of Parental Rights.*** The Children's Code provides that if the disposition of the Court is for the suspension or termination of parental rights, the order shall be in writing, and the Children's Code then provides the information that is required to be included in that order. [7 O.C. 708.40-4(b)]. The proposed amendments to the Children's Code now provide what the order for the disposition for the suspension or termination of parental rights may, but is not required, to include. [7 O.C. 708.40-4(c)]. If the disposition is for the suspension or termination of parental rights, the order may contain a termination of the right of the parent to have contact with the minor child including contact in person, by mail, by telephone, or through third parties; an order restraining a parent from contacting the minor child, the child's foster parent, the child's adoptive parent and/or the social services agency or agencies possessing information regarding the child; an order that the biological parents' obligation to pay child support, except for arrearages, is hereby terminated; and an order that any prior court order for custody, visitation, or contact, with the minor child is hereby terminated. [7 O.C. 708.40-4(c)(1)-(4)]. The proposed amendments now also require that the Court provide a copy of the order suspending or terminating parental rights to the child's parent, guardian, and legal custodian; the other parties to the action; and the current or future foster parents for the purpose of pursuing adoption.

- *Effect.* The purpose of this proposed amendment to the Children's Code is to provide greater clarification as to what information may be included in the Court's order for the disposition for the suspension or termination of parental rights but is not required to be included. Additionally, requiring that the Court provide a copy of the order suspending or terminating parental rights to the child's parent, guardian, and legal custodian; the other parties to the action; and the current or future foster parents for the purpose of pursuing adoption ensures that foster parents or relative placement providers – particularly those not licensed by Nation – have as method to obtain a copy of the suspension or termination of parental rights order that they will need to attach to the petition for adoption, since they may not have access to the Department's records otherwise.

**Q. *Form of Adoption.*** The proposed amendments to the Children's Code provide clarification on adoption now that suspension of parental rights is available. The amendments provide that an adoption under this law shall take the form of customary adoption when the Court has granted a petition to suspend parental rights. [7 O.C. 708.41-1]. When the Court grants a petition to terminate parental rights, the adoption shall be closed. *Id.* Previously, the Law provided that adoptions shall take the form of customary adoptions unless the Court determines there is good cause for the adoption to be closed.

- *Effect.* Previously, the Children's Code only provided for the termination of parental rights. Now that the suspension of parental rights is also allowed under the Children's Code, this proposed amendment provides guidance on what form of adoption should be sought and utilized based on whether a suspension or termination of parental rights occur. The Department sought amendments to the Children's Code so that customary adoptions would occur when a suspension of parental rights occurs, rather than a termination of parental rights. The Department sought this amendment because in order to qualify for Adoption Assistance with the State, for a customary adoption, it had to be a suspension of parental rights that occurred and not a termination of parental rights. The

Department wanted to ensure that adopting families under the Children's Code had access to support and financial assistance under the State.

- R. *Adoption Investigations.*** The Children's Code provides that when a petition for adoption is filed, the Court shall order an investigation to determine whether the child is a proper subject for adoption and whether the petitioner's home is suitable for the child. [7 O.C. 708.43-3]. The Court shall order one of the following to conduct the investigation: if the Department, or another agency or department, has guardianship of the child, the agency or department that has guardianship; or if no agency or department has guardianship of the child and a relative, including a stepparent, has filed the petition for adoption, the Department. [7 O.C. 708.43-3(a)(1)-(2)]. The proposed amendment to the Law clarifies that if the Court orders the Department to conduct the investigation, the Department may contract with a third-party agency to conduct the investigation. [7 O.C. 708.43-3(b)].
- *Effect.* The proposed amendment to the Children's Code allows the Department to contract with a third-party agency to conduct an adoption investigation that may have been ordered by the Court. This provides greater flexibility to the Department in balancing their resources and time when ordered to conduct an investigation.
- S. *Other Revisions.*** Other minor drafting revisions are made throughout the Children's Code

## SECTION 6. EXISTING LEGISLATION

- A. *Related Legislation.*** The following laws of the Nation are related to the Children's Code:

- *Paternity Law.* The purpose of the Paternity law is to establish paternity of Oneida children and other Indian children in order to protect the best interest of these children regarding such matters as enrollment, customs and traditions of the Tribe, survivorship and inheritance, health, support, and social security benefits. [7 O.C. 703.1-1]. It is the policy of this law to legally establish paternity in order to recognize and identify the father of Oneida children and other Indian children, when necessary. [7 O.C. 703.1-2].
  - The Children's Code provides that if an alleged father appears at a hearing under this law, the Court may order the Department to refer the matter to the Oneida Nation Child Support Agency to adjudicate paternity. [7 O.C. 708.13-3]. If the Court enters such an order, then the Department may sign documents required by the Oneida Nation Child Support Agency on behalf of the family for the limited purpose of initiating a paternity action. *Id.* While paternity is being established, the Court shall enter an order finding good cause to suspend the time limits established under this law. *Id.*
    - The process for adjudicating paternity is then provided by the Paternity law. [7 O.C. 703.1-6].
- *Oneida Judiciary Rules of Civil Procedure.* The Oneida Judiciary Rules of Civil Procedure governs all civil actions that fall under the jurisdiction of the Nation to ensure that there is a consistent set of rules governing the process for civil claims, in order to ensure equal and fair treatment to all persons who come before the Tribal Courts to have their disputes resolved. [8 O.C. 803.1-1, 803.1-2].
  - The Children's Code provides that service of documents and notices shall be as specified in this law. If a method of service is not specified in this law, then service shall be by first-class mail to the recently verified last-known address of the party. If a party's whereabouts are unknown and cannot be found after diligent effort, service

shall be by publication as described in the Oneida Judiciary Rules of Civil Procedure.  
[7 O.C. 708.12-1].

- The Oneida Judiciary Rules of Civil Procedure provides that when the other party's whereabouts are unknown and cannot be found after diligent effort, service may be completed by publication. The publication shall be in the Tribal newspaper or in a newspaper of general circulation in the area of the party's last known address and shall be designated as "Legal Notice." This notice shall be published at least two (2) times within a thirty (30) day period. The two (2) notices shall be published at least ten (10) days before the hearing. Copies of the two (2) published notices and an affidavit of service stating the facts surrounding the failure of personal and mail service shall be filed with the Court as proof of service. The Court may, on its own, order different time limits for service by publication. [8 O.C. 803.5-6(c)].
- The Children's Code provides that when the Department is required to perform personal service, the Indian Child Welfare Worker may deliver the document(s) directly to the party(s) if such service is appropriate and safe under the circumstances. In the alternative, personal service may be accomplished according to the Oneida Judiciary Rules of Civil Procedure. [7 O.C. 708.12-3].
  - The Oneida Judiciary Rules of Civil Procedure provides that personal service shall consist of delivering to the party a copy of the paper being served by a law enforcement officer or other person, who is not a party to the action and who is at least eighteen (18) years of age. An affidavit of service shall be filed with the Court as proof of service. Personal service shall be completed by hand delivering the required papers to any of the following: The party named in the action or proceeding; An individual residing at the party's home or usual place of abode, so long as the person signing for delivery is at least eighteen (18) years of age; An officer, manager, agent, or partner of a non-individual party; or an attorney or advocate of the party, if represented. [8 O.C. 803.5-6(a)].
- The Children's Code provides that in addition to the discovery procedures permitted under this law, the discovery procedures permitted under the Oneida Judiciary Rules of Civil Procedure shall apply in all proceedings under this law. [7 O.C. 708.14-5].
  - The Oneida Judiciary Rules of Civil Procedure provides procedures for discovery including the scope, required disclosures, limitations, time for required disclosures, required pretrial disclosures, protective orders, supplementing disclosures and responses, signatures required and the effect of signatures, failure to disclose and information produced. [8 O.C. 803.14].
- The Children's Code provides that the fact-finding hearing for a child in need of protection or services shall be conducted according to the Oneida Judiciary Rules of Civil Procedure except that the Court may exclude the child from the hearing. [7 O.C. 708.20-2].
  - The Oneida Judiciary Rules of Civil Procedure provides general hearing procedures. [8 O.C. 803.38].
- The Children's Code provides that after receiving any evidence relating to the disposition for guardianship, the Court shall enter a disposition and issue a written

588 decision consistent with the Oneida Judiciary Rules of Civil Procedure. [7 O.C. 708.29-  
589 11].

- 590       ▪ The Oneida Judiciary Rules of Civil Procedure provides procedure for entering  
591       and enforcing a judgment of the Court. [8 O.C. 803.31].
- 592       ▪ The Children's Code provides that the fact-finding hearing for the suspension or  
593       termination of parental rights shall be conducted according to the Oneida Judiciary  
594       Rules of Civil Procedure except that the Court may exclude the child from the hearing.  
595       [7 O.C. 708.37-2].
- 596       ▪ The Oneida Judiciary Rules of Civil Procedure provides general hearing  
597       procedures. [8 O.C. 803.38].
- 598       ▪ The Children's Code provides that after receiving any evidence relating to the  
599       disposition for the suspension or termination of parental rights, the Court shall enter a  
600       disposition and issue a written decision consistent with the Oneida Judiciary Rules of  
601       Civil Procedure. [7 O.C. 708.40-1].
- 602       ▪ The Oneida Judiciary Rules of Civil Procedure provides procedure for entering  
603       and enforcing a judgment of the Court. [8 O.C. 803.31].
- 604       ▪ *Family Court Law.* The purpose of the Family Court law is to establish a Family Court, and to  
605       provide for the administration of law, justice, judicial procedures and practices by the Oneida  
606       Tribe as a sovereign nation by exercising the inherent power to make, execute, apply, and  
607       enforce its own law, and to apply its own customs and traditions in matters affecting the Oneida  
608       people as it pertains to the family and/or to our children.
- 609       ▪ The Children's Code provides that the Court has personal jurisdiction over an Oneida  
610       Child, and over a non-Oneida child in certain circumstances. [7 O.C. 708.5-1].  
611       Additionally, the Children's Code provides that the Court has jurisdiction over a child  
612       alleged to be in need of protection or services if personal jurisdiction has been  
613       established and the child meets certain requirements. [7 O.C. 708.5-2]. Court is defined  
614       in the Children's Code as the Oneida Nation Family Court, which is the branch of the  
615       Oneida Nation Judiciary that has the designated responsibility to oversee family  
616       matters. [7 O.C. 708.3-1(j)].
- 617       ▪ The Family Court law provides that there is a Family Court, which shall  
618       administer the judicial authorities and responsibilities of the Tribe over all  
619       matters pertaining to the family, children, and elders, except for probate  
620       matters. [8 O.C. 806.4-1]. The Family Court shall have subject matter  
621       jurisdiction over cases and controversies arising under the following: Tribal  
622       laws which specifically authorize the Court to exercise jurisdiction, and the  
623       Constitution. [8 O.C. 806.5-2]. The Family Court law then describes when the  
624       Family Court has personal jurisdiction of an individual including Indians and  
625       non-Indians. [8 O.C. 806.5-3].
- 626       ▪ *Oneida Judiciary Rules of Evidence.* The Oneida Judiciary Rules of Evidence establishes rules  
627       of evidence to apply in proceedings held in the Trial court and Family Court of the Oneida  
628       Judiciary administer Court proceedings fairly, eliminate unjustifiable expense and delay, and  
629       promote the development of evidence law, by obtaining the truth and securing a just  
630       determination. [8 O.C. 804.1-1, 804.1-2].

631           ▪ The Children’s Code provides that the Oneida Judiciary Rules of Evidence are not  
632           binding at emergency custody hearings, dispositional hearings, or a hearing about  
633           changes in placement, revision of dispositional orders, extension of dispositional  
634           orders, or termination of guardianship orders. At those hearings, the Court shall admit  
635           all testimony having reasonable probative value, but shall exclude immaterial,  
636           irrelevant, or unduly repetitious testimony. Hearsay evidence may be admitted if it has  
637           demonstrable circumstantial guarantees of trustworthiness. The Court shall give effect  
638           to the rules of privilege recognized by laws of the Nation. The Court shall apply the  
639           basic principles of relevancy, materiality, and probative value to proof of all questions  
640           of fact. [7 O.C. 708.13-2].

641           ▪ *Child Support Law.* The purpose of the Child Support law is to establish the legal responsibility  
642           of parents to provide financially for their children’s general well-being; make support payments  
643           more equitable by ensuring consistent treatment of persons in similar circumstances; make  
644           support payments based on the real earning capability of parents; and improve the efficiency  
645           of child support establishment and enforcement. [7 O.C. 704.1-1].

646           ▪ The Children’s Code provides that at any time, the Court or the Department may refer  
647           the matter to the Nation’s Child Support Agency. [7 O.C. 708.13-4].  
648

## 649   **SECTION 7. OTHER CONSIDERATIONS**

650   A. *Fiscal Impact.* Under the Legislative Procedures Act, a fiscal impact statement is required for all  
651   legislation except emergency legislation [1 O.C. 109.6-1]. Oneida Business Committee resolution BC-  
652   10-28-20-A titled, “*Further Interpretation of ‘Fiscal Impact Statement’ in the Legislative Procedures*  
653   *Act,*” provides further clarification on who the Legislative Operating Committee may direct complete  
654   a fiscal impact statement at various stages of the legislative process, as well as timeframes for  
655   completing the fiscal impact statement.

656           ▪ *Conclusion.* The Legislative Operating Committee has not yet directed that a fiscal impact  
657   statement for the proposed amendments to the Children’s Code be prepared.  
658



TO: Cristina Danforth, Treasurer  
Lawrence E. Barton, Chief Financial Officer  
Ralinda Ninham-Lamberies, Assistant Chief Financial Officer  
FROM: David P. Jordan, Legislative Operating Committee Chairman  
DATE: July 20, 2022  
RE: Children's Code Amendments Fiscal Impact Statement

The Legislative Operating Committee (LOC) is currently developing amendments to the Children's Code. The Legislative Procedures Act requires that a fiscal impact statement be provided for all proposed legislation of the Nation. [1 O.C. 109.6-1]. The fiscal impact statement is an estimate of the total fiscal year financial effects associated with the proposed legislation, and should include:

- startup costs;
- personnel;
- office costs;
- documentation costs; and
- an estimate of the amount of time necessary for an individual or agency to comply with the law after implementation. [1 O.C. 109.3-1(c)].

The fiscal impact statement must be completed and submitted to the LOC prior to the proposed legislation being forwarded to the Oneida Business Committee for consideration. [1 O.C. 109.6-2]. The fiscal impact statement provides the Oneida Business Committee information on what the potential adoption of the proposed legislation will cost the Nation, so that the Oneida Business Committee can determine if adoption of the proposed legislation is in the best interest of the Nation.

The Legislative Procedures Act grants the LOC the authority to direct the Finance Department or any agency who may administer a program if the legislation is enacted or may have financial information concerning the subject matter of the legislation to submit a fiscal impact statement. [1 O.C. 109.6-1].

Oneida Business Committee resolution BC-10-28-20-A titled, "*Further Interpretation of 'Fiscal Impact Statement' in the Legislative Procedures Act*" provides further clarification on the process for directing a fiscal impact statement be completed. This resolution provides that upon final approval of draft legislation by the LOC, the LOC may direct the Finance Department to provide a neutral and unbiased fiscal impact statement to the LOC within ten (10) business days for inclusion in adoption materials.

On July 20, 2022, the Legislative Operating Committee approved the final draft of the proposed amendments to the Children's Code. Therefore, the LOC is directing the Finance Department to

provide a fiscal impact statement on the proposed Children's Code amendments by August 17, 2022.

A copy of the proposed Children's Code amendments, as well as the legislative analysis, have been attached to this memorandum for your convenience.

**Requested Action**

Provide the LOC a fiscal impact statement of the proposed Children's Code amendments law by August 17, 2022.





Legislative Operating Committee  
July 20, 2022

# Oneida Nation Assistance Fund Law

|                                      |                                  |
|--------------------------------------|----------------------------------|
| <b>Submission Date:</b> 6/1/22       | <b>Public Meeting:</b> N/A       |
| <b>LOC Sponsor:</b> Jennifer Webster | <b>Emergency Enacted:</b> 6/8/22 |

**Summary:** *This item was added to the Active Files List on June 1, 2022. On May 25, 2022, the Legislative Reference Office submitted a request for the development of an Oneida Nation Assistance Fund law, the purpose of which is to establish the Oneida Nation Assistance Fund as an approved program of the Nation to govern how the Nation provides financial assistance to its members, pursuant to the Oneida General Welfare law. On April 14, 2021, the Oneida Business Committee adopted resolution BC-04-14-21-D, Oneida Nation Assistance Fund, which created an approved program – the Oneida Nation Assistance Fund – for the purpose of providing for the general welfare of the Nation and its members by offering limited amounts of financial assistance to Tribal members requiring general welfare need assistance, who could attest to such need. The Oneida Nation Assistance Fund, as adopted through resolution BC-04-14-21-D, was specific to a disbursement for an application period of June 1, 2021, and September 1, 2021. This Law was added to the Active Files List to codify the Oneida Nation Assistance Fund. On June 8, 2022, the Oneida Business Committee adopted the Oneida Nation Assistance Fund law on an emergency basis through resolution BC-06-08-22-A. The emergency adoption of this law will expire on December 8, 2022.*

**5/12/22:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, 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 how resolution BC-04-14-21-D, Oneida Nation Assistance Fund, would not work for this year's general welfare assistance payment to members and whether we should bring forward an Oneida Nation Assistance Fund law through emergency adoption to address this year's GWA disbursement.

**5/18/22:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Marie Summers, Daniel Guzman King, Clorissa N. Santiago, Carl Artman, Ralinda Ninham-Lamberies, Rae Skenandore, Keith Doxtator, Jameson Wilson. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to discuss the potential emergency adoption of the Oneida Nation Assistance Fund law – as well as review and discuss a proposed draft of this law.

**6/1/22 LOC:** Motion by Jennifer Webster to add the Oneida Nation Assistance Fund Law to the Active Files List with Jennifer Webster as the sponsor; seconded by Marie Summers. Motion carried unanimously.

Motion by Jennifer Webster to approve the Oneida Nation Assistance Fund law emergency adoption packet and forward to the Oneida Business Committee for consideration; seconded by Kirby Metoxen. Motion carried unanimously.

**6/8/22 OBC:** Motion by Marie Summers to adopt resolution entitled 06-08-22-A Emergency Adoption of the Oneida Nation Assistance Fund Law, seconded by David P. Jordan. Motion carried.



**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.

**7/6/22 LOC:** Motion by Marie Summers to approve the resolution, *Oneida Nation Assistance Fund Application Submission Period and Disbursement Timeframe for 2022*, with noted change and corresponding statement of effect and forward to the Oneida Business Committee for consideration; seconded by Daniel Guzman King. Motion carried unanimously.

**Next Steps:**

- Approve the draft and legislative analysis for the Oneida Nation Assistance Fund law.

**Title 10. General Welfare Exclusion - Chapter 1003**  
**ONEIDA NATION ASSISTANCE FUND**

1003.1. Purpose and Policy  
1003.2. Adoption, Amendment, Repeal  
1003.3. Definitions  
1003.4. Establishment

1003.5. Guidelines and Requirements  
1003.6. Funding

**1003.1. Purpose and Policy**

1003.1-1. *Purpose.* The purpose of this law is to establish the Oneida Nation Assistance Fund to govern how the Nation provides financial assistance to its members, pursuant to the Oneida General Welfare law.

1003.1-2. *Policy.* It is the policy of the Nation to prioritize the general welfare needs of its members. The interests of the Nation are advanced when its members remain confident that their general welfare needs can be met.

**1003.2. Adoption, Amendment, Repeal**

1003.2-1. This law was adopted by the Oneida Business Committee by resolution BC-\_\_-\_\_-\_\_.

1003.2-2. 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.

1003.2-3. 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.

1003.2-4. 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.

1003.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

**1003.3. Definitions**

1003.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Approved program" means any program(s) to provide general welfare assistance that is intended to qualify as a General Welfare Exclusion, administered under specific guidelines, and is adopted by the Oneida Business Committee through resolution or law of the Nation in accordance with the Oneida General Welfare law.

(b) "Assistance" means benefits or payments under an approved program, which are paid to or on behalf of a recipient pursuant to this law. Assistance provided under an approved program shall not be considered income of the recipient.

(c) "Lavish" or "Extravagant" shall have the meaning determined by the Oneida Business Committee in its discretion and based on the circumstances, taking into account needs unique to the Nation as well as the social purpose being served by the particular assistance at hand, except as otherwise may be required for compliance with final guidance issued under 26 U.S.C. §139E following consultation between the Nation and the federal government.

(e) "Member" means an individual who is an enrolled member of the Nation.

(f) "Nation" means the Oneida Nation.

(g) "Recipient" means any member entitled to receive assistance in accordance with approved program requirements.

#### 1003.4. Establishment

1003.4-1. *Establishment.* The Oneida Nation Assistance Fund is hereby established as an approved program of the Nation in accordance with the Oneida General Welfare law. The purpose of the Oneida Nation Assistance Fund is to provide financial assistance to members of the Nation to address the general welfare needs of members.

1003.4-2. *General Welfare Exclusion.* The Oneida Nation Assistance Fund meets the requirements of the General Test as defined in the Oneida General Welfare law; General Criteria as defined in I.R.S. Rev. Proc. 2014-35, section 5; and the requirements of the Tribal General Welfare Exclusion Act of 2014, 26 U.S.C. §139E(b). The assistance provided through the Oneida Nation Assistance Fund is:

- (a) paid on behalf of the Nation;
- (b) pursuant to an approved program of the Nation;
- (c) does not discriminate in favor of members of the governing body of the Nation;
- (d) available to any eligible member of the Nation who meets the guidelines of the approved program;
- (e) provided for the promotion of general welfare;
- (f) not lavish or extravagant;
- (g) not compensation for services; and
- (h) not a per capita payment.

#### 1003.5. Guidelines and Requirements

1003.5-1. *Eligibility.* The Oneida Nation Assistance Fund shall be open to any individual who meets the following criteria:

- (a) is a member of the Nation;
- (b) is age eighteen (18) or older; and
- (c) submits a completed application during the designated submission timeframe.

1003.5-2. *Distribution Period.* The Oneida Business Committee shall set 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.

1003.5-3. *Application for Funds.* Any individual seeking assistance from the Oneida Nation Assistance Fund shall submit an application.

- (a) The Trust Enrollment Department shall make available an Oneida Nation Assistance Fund application form and instructions.

(1) The application shall require, at a minimum, the following information:

- (A) first, middle, and last name;
- (B) date of birth;
- (C) street address, city, state, zip code;
- (D) phone number;
- (E) e-mail address;
- (F) enrollment number;
- (G) bank account information for direct deposit if necessary;
- (H) declaration from the applicant that their need exists, and all information provided therein is accurate and in accordance with the laws of the Nation and federal law; and
- (I) signature of the applicant, electronic or handwritten, affirming the declaration.

(2) On the application the applicant shall designate the means by which they would like to receive their disbursement of funds from the Oneida Nation Assistance Fund, either through direct deposit or check.

(b) Applicants shall complete and return the Oneida Nation Assistance Fund application form to the Trust Enrollment Department by the deadline set through resolution by the Oneida Business Committee in order to be eligible for assistance from the Oneida Nation Assistance Fund.

(1) The information provided in the Oneida Nation Assistance Fund application form may be provided to any department, division, or personnel that processes the applications.

1003.5-4. *Disbursement of Funds.* Assistance provided through the Oneida Nation Assistance Fund shall be disbursed in accordance with the timeframe set through resolution by the Oneida Business Committee. Funds from the Oneida Nation Assistance Fund may be disbursed through direct deposit, or check, depending on the selection made on the application by the recipient.

1003.5-5. *Qualifying Expenditures.* The following types of expenses shall be considered qualifying expenditures for use of assistance from the Oneida Nation Assistance Fund by the recipient:

(a) costs relating to housing needs of principal residences such as:

- (1) mortgage payments, rent payments, and down payments;
- (2) enhancements for habitability of housing;
- (3) basic housing repairs or rehabilitation;
- (4) improvements to adapt housing for special health needs;

(b) costs for paying utility bills and charges, including, but not limited to, the following:

- (1) water;
- (2) electricity;
- (3) gas;
- (4) basic communication services such as:

- (A) phone;
- (B) internet; and
- (C) cable;

(c) costs associated with education including, but not limited to:

- (1) transportation to and from school;
- (2) tutors;
- (3) supplies for use in school activities and extra-curricular activities;
- (4) providing tuition or room and board payments;
- (5) providing for childcare for parents seeking employment or pursuing education;
- (6) job counseling and interviewing expenses.

(d) costs associated with food security;

(e) costs associated with home care assistance;

(f) costs associated with vehicle payments, maintenance, repair, and insurance;

(g) costs associated with medical care and transportation, room, and board costs for seeking medical care;

(h) funeral and burial expenses and expenses for attending wakes, funerals, burials, bereavements, and subsequent honoring events; and

(i) costs related to any other emergency circumstance.

1003.5-6. *Oversight.* The Trust Enrollment Department shall oversee the collection, review, and

permitted distribution of funds from the Oneida Nation Assistance Fund to the qualifying recipients.

1003.5-7. *Records Maintenance*. The Trust Enrollment Department shall be responsible for maintenance of records for the Oneida Nation Assistance Fund. The recipient shall retain receipts for the expenditure of the funds associated with the Oneida Nation Assistance Fund.

#### **1003.6. Funding**

1003.6-1. *Funding Source*. The Oneida Nation Assistance Fund shall be funded through the Nation's annual budget, and by any other funding source deemed necessary by the Oneida Business Committee.

1003.6-2. *Amount of Available Funding*. 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.

*End.*

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Emergency Adopted – BC-06-08-22-A

Adopted – BC-\_\_-\_\_-\_\_-\_\_



## ONEIDA NATION ASSISTANCE FUND LAW LEGISLATIVE ANALYSIS

### SECTION 1. EXECUTIVE SUMMARY

| <i>Analysis by the Legislative Reference Office</i> |  |
|---|--|
| <b>Intent of the Proposed Law</b>                   | <ul style="list-style-type: none"> <li>Establish the Oneida Nation Assistance Fund as an approved program of the Nation in accordance with the Oneida General Welfare law. [10 O.C. 1003.4-1].</li> <li>Provide how this program qualifies for general welfare exclusion. [10 O.C. 1003.4-2].</li> <li>Provide the eligibility requirements for accessing assistance from the Oneida Nation Assistance Fund – which is that a person is a member of the Nation; age eighteen (18) or older; and submits a completed application during the designated submission timeframe. [10 O.C. 1003.5-1].</li> <li>Provide the minimum requirements for the information that must be included on the application. [10 O.C. 1003.5-3].</li> <li>Provide how and when funds from the Oneida Nation Assistance Fund are disbursed [10 O.C. 1003.5-2, 1003.5-4].</li> <li>Provide for the types of expenses that shall be considered qualifying expenditures for use of assistance from Oneida Nation Assistance Fund by the recipient. [10 O.C. 1003.5-5].</li> <li>Provide information on the funding source and who determines that amount of available funding to an eligible participant. [10 O.C. 1003.6-1, 1003.6-2].</li> <li>Provide that the Trust Enrollment Department is the department that has the responsibilities to administer the Oneida Nation Assistance Fund. [10 O.C. 1003.5-6, 1003.5-7].</li> </ul> |
| <b>Purpose</b>                                      | To establish 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].  |
| <b>Affected Entities</b>                            | Oneida Business Committee, Trust Enrollment Department   |
| <b>Public Meeting</b>                               | A public meeting has not yet been held.  |
| <b>Fiscal Impact</b>                                | A fiscal impact statement has not yet been requested.  |
| <b>Expiration of Emergency Legislation</b>          | The Oneida Nation Assistance Fund law was adopted on an emergency basis on June 8, 2022, through resolution BC-06-08-22-A. The emergency adoption of the Oneida Nation Assistance Fund law will expire on December 8, 2022.  |

### SECTION 2. LEGISLATIVE DEVELOPMENT

**A. Background.** The Oneida Nation Assistance Fund law (“the Law”) was adopted by the Nation on an emergency basis on June 8, 2022, through resolution BC-06-08-22-A for the purpose of establishing 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]. The emergency adoption of the Law will expire on December 8, 2022.

- B. The adoption of the Law on a permanent basis is now being sought by the Legislative Operating Committee.

### SECTION 3. CONSULTATION AND OUTREACH

- A. Representatives from the following departments or entities participated in the development of this Law and legislative analysis:
- Oneida Law Office;
  - Government Administration Office;
  - Finance Administration;
  - Trust Enrollments Department; and
  - Intergovernmental Affairs and Communications.

### SECTION 4. PROCESS

- A. The development of this Law has followed the process set forth in the Legislative Procedures Act (LPA).
- On June 1, 2022, the Legislative Operating Committee added the Law to its Active Files List.
  - On June 1, 2022, the Legislative Operating Committee approved the Oneida Nation Assistance Fund law emergency adoption packet and forward to the Oneida Business Committee for consideration.
  - On June 8, 2022, the Oneida Business Committee adopted the Law on an emergency basis through the adoption of resolution BC-06-08-22-A entitled, *Emergency Adoption of the Oneida Nation Assistance Fund Law*. The emergency adoption of the Law will expire on December 8, 2022.
- B. At the time this legislative analysis was developed the following work meetings had been held regarding the development of this Law:
- May 12, 2022: LOC work meeting.
  - May 18, 2022: LOC work meeting with the Oneida Law Office, Finance Administration, Budget Analyst, Trust Enrollment Department, and Government Administration Office.
  - July 1, 2022: LOC work meeting with the Finance Administration, Trust Enrollment Department, Intergovernmental Affairs and Communications, and Government Administration Office.

### SECTION 5. CONTENTS OF THE LEGISLATION

- A. **Purpose and Policy.** The purpose of this law is to establish the Oneida Nation Assistance Fund to govern how the Nation provides financial assistance to 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. [10 O.C. 1003.1-2]. The interests of the Nation are advanced when its members remain confident that their general welfare needs can be met. [10 O.C. 1003.1-2].
- **Effect.** The overall purpose of this Law is to codify the Nation's sovereign right to provide assistance to Tribal members on a non-taxable basis through an approved program.
- B. **Establishment.** This Law establishes the Oneida Nation Assistance Fund as an approved program of the Nation in accordance with the Oneida General Welfare Law. [10 O.C. 1003.4-1]. The Oneida

Nation Assistance Fund meets the requirements of the General Test as defined in the Oneida General Welfare law; General Criteria as defined in I.R.S. Rev. Proc. 2014-35, section 5; and the requirements of the Tribal General Welfare Exclusion Act of 2014 26 U.S.C. §139E(b). [10 O.C. 1003.4-1].

C. **Guidelines and Requirements.** The Law provides guidelines and requirements for the Oneida Nation Assistance Fund. The Oneida Nation Assistance Fund shall be open to any individuals who meet the following criteria: is a member of the Nation; is age eighteen (18) or older; and submits a completed application during the designated submission timeframe [10 O.C. 1003.5-1]. The Oneida Business Committee shall set 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]. Any individual seeking assistance from the Oneida Nation Assistance Fund shall submit an application. [10 O.C. 1003.5-3]. The Trust Enrollment Department shall make available an Oneida Nation Assistance Fund application form and instructions. [10 O.C. 1003.5-3(a)]. The Law provides the minimum information that is required to be provided on the application. [10 O.C. 1003.5-3(a)(1)(A)-(I)]. Assistance provided through the Oneida Nation Assistance Fund shall be disbursed in accordance with the timeframe set through resolution by the Oneida Business Committee. [10 O.C. 1003.5-4]. Funds from the Oneida Nation Assistance Fund may be disbursed through direct deposit, or check, depending on the selection made on the application by the recipient. [10 O.C. 1003.5-4].

D. **Qualifying Expenditures.** The Law provides that the following types of expenses shall be considered qualifying expenditures for use of assistance from the Oneida Nation Assistance Fund by the recipient:

- costs relating to housing needs of principal residences such as:
  - mortgage payments, rent payments, and down payments;
  - enhancements for habitability of housing;
  - basic housing repairs or rehabilitation;
  - improvements to adapt housing for special health needs;
- costs for paying utility bills and charges, including, but not limited to, the following:
  - water;
  - electricity;
  - gas;
  - basic communication services such as:
    - phone
    - internet; and
    - cable;
- costs associated with education, including, but not limited to the following:
  - transportation to and from school;
  - tutors;
  - supplies for use in school activities and extra-curricular activities;
  - providing tuition or room and board payments;
  - providing for childcare for parents seeking employment or pursuing education;
  - job counseling and interviewing expenses;
- 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, 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
  - costs related to any other emergency circumstance [10 O.C. 1003.5-5].
- E. **Oversight and Records Maintenance.** The Trust Enrollment Department shall oversee the collection, review, and permitted distribution of funds from the Oneida Nation Assistance Fund to the qualifying recipients and shall be responsible for maintenance of records for the Oneida Nation Assistance Fund. [10 O.C. 1003.5-6, 1003.5-7]. The recipient shall retain receipts for the expenditure of the funds associated with the Oneida Nation Assistance Program. [10 O.C. 1003.5-7].
- F. **Funding.** The Oneida Nation Assistance Fund shall be funded through the Nation's annual budget, and by any other funding source deemed necessary by the Oneida Business Committee. [10 O.C. 1003.6-1]. 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].

## SECTION 6. EXISTING LEGISLATION

- A. **Related Legislation.** The following laws of the Nation are related to this Law:
- *Oneida General Welfare Law.* The Oneida General Welfare Law governs how the Nation provides assistance to eligible members on a non-taxable basis, pursuant to the principles of the General Welfare Exclusion to Indian Tribal governmental programs that provide benefits to Tribal members. [10 O.C. 1001.1-1].
    - The Oneida Nation Assistance Fund is hereby established as an approved program of the Nation in accordance with the Oneida General Welfare Law. [10 O.C. 1003.4-1]. The Oneida Nation Assistance Fund meets the requirements of the General Test as defined in the Oneida General Welfare Law. [10 O.C. 1003.4-2].

## SECTION 7. OTHER CONSIDERATIONS

- A. **Deadline for Permanent Adoption of Legislation.** The emergency adoption of this Law will expire six (6) months after adoption on December 8, 2022. The emergency legislation may be renewed for an additional six (6) month period.
- *Conclusion:* The Legislative Operating Committee will need to consider the development and adoption of this Law on a permanent basis within the next six (6) to twelve (12) months.
- A. **Fiscal Impact.** Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except emergency legislation. [1 O.C. 109.6-1]. Fiscal Impact statements may be prepared by any agency who may receive funding if the legislation is enacted, any agency who may administer a program if the legislation is enacted, any agency who may have financial information concerning the subject matter of the legislation, or by the Finance Office, upon request of the Legislative Operating Committee. [1 O.C. 109.6-1(a)-(b)]. Oneida Business Committee resolution BC-10-28-20-A entitled, *Further Interpretation of 'Fiscal Impact Statement' in the Legislative Procedures Act*, provides further clarification on who the Legislative Operating Committee may direct complete a fiscal impact statement at various stages of the legislative process, as well as timeframes for completing the fiscal impact statement.
- *Conclusion.* The Legislative Operating Committee has not yet directed that a fiscal impact statement be completed.



**Oneida Nation**  
 Oneida Business Committee  
 Legislative Operating Committee  
 PO Box 365 • Oneida, WI 54155-0365  
[Oneida-nsn.gov](http://Oneida-nsn.gov)



## AGENDA REQUEST FORM

- 1) Request Date: 07/14/2022
- 2) Contact Person(s): Nicole Rommel  
 Dept: EHSLA/Land Management  
 Phone Number: 920-869-4590 Email: nrommel@oneidanation.org
- 3) Agenda Title: Probate Law
- 4) Detailed description of the item and the reason/justification it is being brought before the LOC:  
Adoption of a probate code which will take out the probate provisions in  
the Real Property Law.


List any supporting materials included and submitted with the Agenda Request Form

- |                     |          |
|---------------------|----------|
| 1) <u>Draft Law</u> | 3) _____ |
| 2) _____            | 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:  
Comprehensive Housing, Law Office, Land Commission
- 7) Do you consider this request urgent? ☒ Yes ☐ No  
 If yes, please indicate why:  
Start using our own processes for individual trust land that prevent further fractionation.

I, the undersigned, have reviewed the attached materials, and understand that they are subject to action by the Legislative Operating Committee.

Signature of Requester:  
**Nicole Rommel**

 Digitally signed by Nicole Rommel  
 Date: 2022.07.14 12:59:18 -05'00'

*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 613

### PROBATE

### ONEIDA NAME

#### *English Translation of Oneida Name*

|        |                             |         |                                    |
|--------|-----------------------------|---------|------------------------------------|
| 602.1. | Purpose and Policy          | 602.7.  | Agricultural Leases                |
| 602.2. | Adoption, Amendment, Repeal | 602.8.  | Business Leases                    |
| 602.3. | Definitions                 | 602.9.  | Environmental and Cultural Reviews |
| 602.4. | General Provisions          | 602.10. | Lease Management                   |
| 602.5. | Lease Document Requirements | 602.11. | Enforcement                        |
| 602.6. | Residential Leases          | 602.12. | Leasing Actions                    |

### **613.1. Purpose and Policy**

613.1-1. *Purpose.* The determination of how property is disposed upon a person's passing is an exercise of self-governance crucial to the Oneida Nation's sovereignty and that this Law will simplify the probate process for Tribal members. The purposes of this Law are accordingly:

- (a) To ensure that the property of decedents passes to the rightful heirs or beneficiaries;
- (b) To comply with the decedent's wishes as much as possible;
- (c) To comply with tribal custom and tradition;
- (d) To provide a simple, efficient, and inexpensive method for probating the decedent's property;
- (e) To prevent the transfer of land out of tribal ownership and control; and
- (f) To ensure that the rights of creditors of decedents are protected to the extent possible and fair.

613.1-2. *Policy.* It is the policy of the Nation to set out a probate process that is easy for Tribal members to engage with to the extent terminology and process can be simplified and which ensures that lands owned from Tribal members at the time of their death remain in the control of a Tribal member and/or the Nation to extent permitted by law.

### **613.2. Adoption, Amendment, Repeal**

613.2-1. This law was adopted by the Oneida Business Committee by resolution BC- and becomes effective on the later of:

- (a) The date that is one (1) year after the date on which the Secretary of the United States Department of Interior makes the certification required under section 8(a)(4) of the American Indian Probate Reform Act of 2004; or
- (b) 180 days after the date of approval by the Secretary of the United States Department of Interior.

613.2-2. This law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act. Major, substantive changes to this law may not take effect until they have been approved by the Secretary of United States Department of Interior. Minor, technical amendments may take effect upon adoption by the Oneida Business Committee.

613.2-3. 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.

613.2-4. 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.

- (a) To the extent that this law conflicts with any applicable federal statutes or regulations,

the federal statute or regulation controls.

- (b) To the extent that any probate document, agreement or order to which this law applies conflicts with this law, this law controls.

613.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

### **613.3. Definitions**

613.3-1. 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) “Abatement” means a reduction or decrease.
- (b) “Nation” means the Oneida Nation.
- (c) “Tribal member” means an enrolled member of the Oneida Nation.
- (d) “Beneficiary” means any person nominated in a will to receive an interest in property other than in a fiduciary capacity.
- (e) “Bond” means an obligation to pay a sum of money upon the happening of a stated event.
- (f) “Class gift” means a devise or gift to a body of people, uncertain in number at the time of the gift, to be ascertained at a future time, who are all to take in equal, or other definite proportions, the share of each being dependent for its amount upon the ultimate number of people in the class.
- (g) “Child” includes any natural child and any child formally adopted in accordance with 25 U.S.C. § 372a. An individual is the “child” of his or her natural parents regardless of their marital status. An adopted individual is the “child” of *both* his or her adopting parent or parents *and* of his or her natural parents.
- (h) “Covered permanent improvements” means buildings, other structures, and associated infrastructure attached to trust or restricted land, as well as any interests in such improvements.
- (i) “Decedent” means a person who is deceased.
- (j) “Devise” means a gift of property by will or to give a gift of property by will.
- (k) “Devisee” means a person or entity designated in a will to receive a devise.
- (l) “Escheat” means reversion of property to the Band because no valid heir or person to inherit exists.
- (m) “Domicile”
- (n) “Executor” means a person designated by a testator to carry out the directions and requests in the testator’s will and to dispose of the testator’s property according to the provisions of his or her will.
- (o) “Heir” means any person, including the surviving spouse, who is entitled under the law governing intestate succession to an interest in the property of a decedent.
- (p) “Indian” means
  - (1) Any person who is a member of a federally recognized Indian tribe, is eligible to become a member of any Indian tribe, or is an owner (as of October 27, 2004) of an interest in trust or restricted land;
  - (2) Any person meeting the definition of Indian under 25 U.S.C. § 479 and the regulations promulgated thereunder; and
  - (3) With respect to the inheritance and ownership of trust or restricted land in the State of California under 25 U.S.C. § 2206, any person described in subparagraphs (1) or (2) of this definition or any person who owns a trust or restricted interest in a parcel or land in that state.

- (q) “Intestate” means one who dies without leaving a valid will, or the circumstance of dying without leaving a valid will effectively disposing of all the estate.
- (r) “Intestate succession” means succession to property of a decedent who dies intestate or partially intestate.
- (s) “Issue” means children, grandchildren, lineal descendants of more remote degree, except those who are the lineal descendants of living descendants. The term does include adopted children and non-marital children and their issue.
- (t) “Land” means any real property.
- (u) “Life estate” means an interest in property held for only the duration of a designated person’s life.
- (v) “Personal property” means all property other than real property.
- (w) “Personal representative” means the person appointed by the Judiciary to administer the estate of a decedent according to this Law and may include an executor nominated by the decedent’s will, appointed at the request of an interested party, or appointed by the Judiciary.
- (x) “Probate” means a general term for the entire process of administration of estates of deceased persons, including those without wills.
- (y) “Property” means any interest, legal or equitable, in real or personal property, without distinction as to kind.
- (z) “Reservation” means all the property 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.
- (aa) “Remainder interest” means the interest of an owner who does not have use of the property until the life estate terminates.
- (bb) “Spouse” means a person who was married to the decedent or in a registered domestic, partnership with the decedent under the Marriage Law or under the laws of another jurisdiction.
- (cc) “Testator” means a decedent who dies leaving a valid will.
- (dd) “Judiciary” means the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the Nation.
- (ee) “Trust or restricted land” means land, or an interest therein, title to which is held by the United States in trust for an Indian tribe or individual, or which is held by an Indian tribe or individual subject to a restriction by the United States against alienation.
- (ff) “Will” means a written document executed with the required formalities and intended to facilitate the passage of the testator’s property upon death. The required formalities may be provided by this Law, federal law, or both this Law and federal law.
- (gg) “Without regard to waste” means, with respect to a life estate interest in land, that the holder of such estate is entitled to the receipt of all income, including bonuses and royalties, from such land to the exclusion of the remaindermen.

#### **613.4. Probate of Trust/Restricted Lands and Fee Lands.**

613.4-1. *Applicable Land.* This law applies to all land owned by Tribal members at the time of their death, regardless of the land’s status trust or restricted land or fee land, provided that this law shall apply only to the estate of a decedent who dies on or after the effective date of this Law.

- (a) *Jurisdiction for Probate of Trust/Restricted Land.* Pursuant to Chapter 24 USC §

2205, this Probate law, shall govern descent and distribution of trust or restricted lands that are located within the reservation or otherwise subject to the Nation's jurisdiction, provided that the actual adjudication of any such estates will remain within the exclusive jurisdiction of United States Department of Interior<sup>1</sup>.

- (b) *Jurisdiction for All Other Real and Personal Property.* The Judiciary shall have jurisdiction to administer in probate a Tribal member's estate if the decedent resided on the Reservation or had an interest in real property on the Reservation.

(1) If the decedent was a Tribal member residing on the Reservation, the Judiciary shall have jurisdiction, to the extent that the property is not subject to the exclusive jurisdiction of the United States, over all interests in real property located on the Reservation and over all personal property.

(2) If the decedent was a Tribal member not residing on the Reservation, the Judiciary shall have jurisdiction, to the extent that the property is not subject to the exclusive jurisdiction of the United States, over all interests in real property located on the Reservation.

613.4-4. *Applicable Law.* In addition to this Law, probates adjudicated under this Law are subject to all the Nation's laws, except to the extent those laws are inconsistent with applicable federal law; and applicable federal laws.

### **613.5. Oneida Judiciary Probate Process.**

613.5-1. *Commencement of Probate Proceedings.* At any time after the death of a person subject to the Judiciary's jurisdiction pursuant to this law, an heir of the decedent, a beneficiary of the decedent's will, or a person designated to serve as Personal Representative by the decedent's will may file a Probate Petition with the Judiciary for the probate of the will and the administration of the decedent's intestate estate.

613.5-2. *Probate Petition.* The Probate Petition is subject to the filing fees established by the Judiciary and shall contain:

- (a) The name of the decedent;
- (b) The date of death of the decedent;
- (c) The decedent's enrollment status;
- (d) The basis for the Judiciary's jurisdiction;
- (e) The names, relationship to decedent, and the mailing addresses of persons who are or would be heirs of the decedent upon the death of the decedent intestate, and the ages of any who are minors, so far as such information is known to the petitioner;
- (f) Whether the decedent left a will, and, if so, the names and addresses of the beneficiaries under the will;
- (g) A general description and an estimate of the value of the decedent's estate subject to probate in the Judiciary, and a general description of those portions of the decedent's estate, if any, that are not subject to probate in the Judiciary, including, but not limited to, any interests in trust or restricted property;
- (h) A statement of whether any probate proceedings are pending in any other jurisdiction, and, if so, the name and address of the personal representative appointed in such proceedings;

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<sup>1</sup> Subject to 24 U.S.C. § 2205(d), the Nation may motion for use of proposed findings of fact or conclusions of law, as rendered by the Judiciary in the adjudication of probate proceedings where allowed by regulation of the Secretary of the United States Department of Interior.

- (i) A request for appointment of a personal representative and a statement of the qualifications of the proposed personal representative;
- (j) A request for approval of the decedent's will, or a request that the Judiciary find that the decedent died without a valid will;
- (k) A verification under oath or penalty of perjury signed by the petitioner that the contents of the petition are true and correct; and
- (l) The following documents:
  - (1) A certified copy of the decedent's death certificate or other evidence, pursuant to section 613.5-11, of death; and
  - (2) The original or a true and correct copy of the decedent's will to the extent it exists and has been located.

613.5-3. *Hearing on the Probate Petition.* After receiving the Probate Petition, the Judiciary shall schedule a hearing at which the Judiciary shall determine whether the will shall be admitted to probate, shall appoint a personal representative, and shall determine whether summary probate procedures apply.

- (a) *Notice of Hearing.* The Judiciary shall provide notice by first class mail at least ten (10) days before the hearing to the following persons: the surviving spouse, children, and other heirs of the decedent, the devisees and personal representatives named in any known will, and all persons involved in any other probate proceeding involving the decedent. The notice shall include
  - (1) the date, time, and location of the hearing;
  - (2) the name of the proposed personal representative; and
  - (3) a copy of the will, if any, that has been submitted for probate.
- (b) *Evidence About Admission of the Will to Probate.* If a will is self-proved under section 613.7-5 and no objection is raised, the Judiciary may admit the will to probate without a hearing. If the will is not self-proved, an objection is raised, or the Judiciary determines that further evidence is required, the Judiciary shall obtain testimony to determine whether the will shall be admitted to probate. Based on the evidence presented at the hearing, the Judiciary shall decide, based on a preponderance of the evidence, whether the will is valid and should be admitted to probate.
- (c) *Evidence About Appointment of Personal Representative.* At the initial hearing, the Judiciary shall determine based on a preponderance of the evidence who should be appointed as personal representative of the estate pursuant to section 613.5-4.
- (d) *Evidence About Summary Probate.* At the initial hearing, the Judiciary shall determine based on a preponderance of the evidence whether summary probate procedures should be used pursuant to section 613.5-5.
- (e) *Continuances.* Upon a showing of good cause, the Judiciary may grant a continuance to provide more time to present or obtain evidence.

613.5-4. *Appointment of Personal Representative.* To be appointed as a personal representative, an individual must be of sound mind, must not be a minor, and must be willing and able to properly carry out the duties of the personal representative.

- (a) *Priority of Appointment.* The following persons, if qualified, shall be afforded priority in order of their listing for appointment as personal representative:
  - (1) The person or persons named to serve as personal representative, executor, or administrator in the decedent's will;
  - (2) The surviving spouse or such person as the surviving spouse may request to have appointed;

- (3) Children over 18 years of age in descending order of age;
- (4) Other blood relatives in order of the closeness of their relationship and then in descending order of age;
- (5) Any potential heir or person named in the decedent's will;
- (6) Any adult Tribal member;
- (7) Any adult.

(b) *Oath.* Upon their appointment as personal representative, the person appointed shall take an oath to be prescribed by the Judiciary to the effect that they will faithfully and honestly administer the estate.

(c) *Bond.* The personal representative shall file a bond in an amount to be set by the Judiciary to insure their faithful, honest performance of their duties as personal representative. The Judiciary may determine that no bond is required. Unless otherwise made to appear necessary or desirable, no bond shall be required of a personal representative who is the spouse or child of a decedent.

(d) *Domiciliary Letter.* The Judiciary shall issue a Domiciliary Letter to the personal representative. The Domiciliary Letter shall be in substantially the following form:

Domiciliary Letter

[Insert name of appointed personal representative] whose address is [insert personal representative's address], having been appointed and qualified as Personal Representative of the estate of [insert name of decedent], deceased, who died on or about [insert decedent's date of death], is hereby authorized to act as Personal Representative for and on behalf of the estate and to take possession of the estate's property as authorized by law.

Issued this date: \_\_\_\_\_ (seal)

By: \_\_\_\_\_  
Judiciary Clerk

(f) *Duties of the Personal Representative.* The duties of the of the personal representative shall be to:

- (1) Take constructive or physical possession of all property of the decedent subject to this Ordinance as the Judiciary shall order, taking into consideration the interests of the person or persons who may have occupied the homestead of the decedent at the time of his or her death;
- (2) Within one month of appointment make an inventory and appraisement of such property and file it with the Judiciary;
- (3) Within one month of appointment, determine and file with the Judiciary a list of all known relatives of the decedent, their ages, their relationship to the decedent, and their whereabouts if known;
- (4) Subject to the approval of the Judiciary, ascertain and pay all the debts and legal obligations of the decedent;
- (5) Prosecute and defend actions for or against the estate; and
- (6) Distribute the estate in accordance with the order of the Judiciary and file receipts with the Judiciary showing distribution of the estate.

(g) *Termination.* The appointment of the personal representative shall be terminated upon the occurrence(s) of the ground provided below. If the termination is involuntary, the personal representative shall be entitled to notice and hearing. The Judiciary shall make the removal determination based on a preponderance of the



evidence. If the personal representative's appointment is terminated, the Judiciary shall also issue an order revoking the Letters Testamentary and Letters of Administration. After termination of the appointment, the Judiciary shall appoint a new personal representative.

- (1) The death of the personal representative;
- (2) Voluntary termination by the personal representative;
- (3) Removal would be in the best interests of the estate;
- (4) The personal representative has intentionally misrepresented material facts in the proceedings leading to his or her appointment;
- (5) The personal representative has disregarded an order of the Judiciary;
- (6) The personal representative has become incapable of discharging his or her duties;
- (7) The personal representative has mismanaged the estate; or
- (8) The personal representative has failed to perform any duty pertaining to the office.

613.5-5. *Summary Probate*. If the decedent's entire estate is exempt from claims pursuant to section 613.7-5, the Judiciary shall apply the summary probate procedures in this section.

- (a) In summary probate, the Creditor's Rights procedures in section 613.5-6 shall not be used.
- (b) If summary probate procedures apply and the proper distribution of the estate can be easily determined, the Judiciary may issue a Distribution Order following the initial hearing and the distribution procedures in section 613.5-7 need not be used. Based on the Distribution Order, the Personal Representative shall distribute the estate and the estate shall be closed pursuant to section 613.5-8.
- (c) If summary probate procedures apply and the proper distribution of the estate cannot be easily determined, the Judiciary shall order the personal representative to follow the distribution procedures in section 613.5-7.

613.5-6. *Creditor's Rights*. If the decedent's entire estate is not exempt from claims pursuant to section 613.7-5, the following procedures shall apply.

- (a) *General Notice to Creditors*. The Judiciary shall publish in the tribal newspaper and one (1) other local newspaper a notice to creditors of the decedent. The notice shall provide a deadline at least ninety (90) days after the date when the notice is first published for the submission of claims against the estate. The notice shall:
  - (1) Inform creditors that probate proceedings involving the decedent are pending;
  - (2) Provide the name and address of the Judiciary and of the personal representative;
  - (3) Provide a deadline at least ninety (90) days after the date when the notice is first published for the submission of claims against the estate.
  - (4) Inform creditors that any claims not presented to the Judiciary and the personal representative by the deadline shall be barred; and
  - (5) Be published in at least two consecutive issues of the newspaper.
- (b) *Notice to Known Creditors*. In addition to the notice given in subsection (a), the Judiciary shall provide notice to all known creditors by first class mail. The notice shall:
  - (1) Inform creditors that probate proceedings involving the decedent are pending;
  - (2) Provide the name and address of the Judiciary and of the personal representative; and

- 319 (3) Inform creditors that any claims not presented to the Judiciary and the  
 320 personal representative by the deadline shall be barred.
- 321 (c) *Barred Claims.* Any claim by a creditor not filed by the deadline set in subsection  
 322 (a) shall be barred.
- 323 (d) *Allowance of Claims.* The personal representative shall decide whether to allow or  
 324 disallow any claims. If a claim is disallowed, the personal representative shall  
 325 notify the creditor and the Judiciary. The Judiciary shall schedule a hearing on the  
 326 disallowed claims and shall provide the personal representative and the effected  
 327 creditors with notice of the claim by first class mail at least ten (10) days in  
 328 advance.
- 329 (e) *Hearing on Disallowed Claims.* At the hearing on disallowed claims, the Judiciary  
 330 shall decide based on a preponderance of the evidence whether the disallowed claim  
 331 is valid and should be allowed. The hearing on disallowed claims may, at the  
 332 Judiciary's discretion, be combined with the distribution hearing described in  
 333 section 613.5-7(d).
- 334 (f) *Priority of Claims Against the Estate.* All just claims of creditors allowed by the  
 335 Judiciary shall be paid before distribution of the estate but shall be paid only after  
 336 payment of the family allowance and the distribution of exempt property as  
 337 provided herein.
- 338 (g) *Secured Transactions.* If a creditor's claim is secured by any property of the  
 339 decedent, this chapter does not affect the right of a creditor to realize on the  
 340 creditor's security, whether or not the creditor presented the claim in the manner  
 341 provided in this chapter.
- 342 613.5-7. *Distribution Procedures.* The personal representative shall determine the distribution of  
 343 the estate based on the family protections in section 613.7-5, the allowed claims against the  
 344 estate, the decedent's will, and the rules of intestate succession.
- 345 (a) *Abatement.* The following rules apply to abatement:
- 346 (1) Except as provided in subparagraph (2), below, and except as provided in  
 347 connection with the share of the surviving spouse who elects to take an  
 348 elective share, shares of distributees abate, without any preference or priority  
 349 between real and personal property, in the following order:
- 350 (A) Property not disposed of by the will;
- 351 (B) Residuary devises;
- 352 (C) General devises; and
- 353 (D) Specific devises.
- 354 (2) For purposes of abatement, a general devise charged on any specific property  
 355 or fund is a specific devise to the extent of the value of the property on which  
 356 it is charged, and upon the failure or insufficiency of the property on which it  
 357 is charged, a general devise to the extent of the failure or insufficiency.  
 358 Abatement within each classification is in proportion to the amounts of  
 359 property each of the beneficiaries would have received if full distribution of  
 360 the property had been made in accordance with the terms of the will.
- 361 (3) If the will expresses an order of abatement, or if the testamentary plan or the  
 362 express or implied purpose of the devise would be defeated by the order of  
 363 abatement stated in subparagraph (1), the shares of the distributees abate as  
 364 may be found necessary to give effect to the intention of the testator.

- (4) If the subject of a preferred devise is sold or used incident to administration, abatement shall be achieved by appropriate adjustments in, or contribution from, other interests in the remaining assets.
- (b) *Partition of Property.* When two (2) or more heirs or devisees are entitled to distribution of undivided interests in any real or personal property of the estate, the personal representative or one or more of the heirs or devisees may petition the Judiciary to make partition. After notice to the interested heirs or devisees, the Judiciary shall partition the property in the same manner as provided by the common law for actions of partitions. The Judiciary may direct the personal representative to sell any property which cannot be partitioned without prejudice to the owners and which cannot be conveniently allotted to any one party.
- (c) *Proposed Distribution.* Based on the provisions in paragraphs (a) and (b) of this section, the personal representative shall file with the Judiciary a proposed distribution of the estate. The proposed distribution shall note any family allowances already distributed by the personal representative and any payments already made by the personal representative while carrying out his or her duties. The proposed distribution shall include computation of any attorney's and/or personal representative's fees involved for which approval for payment is sought.
- (d) *Distribution Hearing.* After receiving the proposed distribution of the estate, the Judiciary shall schedule a Distribution Hearing. The Judiciary shall provide notice at least ten (10) days before the hearing by first class mail to the following persons: the personal representative, the surviving spouse, children, and other heirs of the decedent, the devisees and personal representatives named in any known will, all persons involved in any other probate proceeding involving the decedent, all persons who appeared at the initial hearing, and all known creditors. At the Distribution Hearing, the Judiciary shall determine, based on a preponderance of the evidence, whether the proposed distribution is proper under this law or whether a different distribution should be ordered.
- (e) *Distribution Order by the Judiciary.* Following the Distribution Hearing, the Judiciary shall issue a Distribution Order, which shall direct the personal representative to distribute the estate and shall provide the personal representative with instructions for the distribution.
- 613.5-8. *Closing the Estate.* After the estate has been distributed, the personal representative shall file an affidavit with the Judiciary stating that the estate has been distributed and is ready to be closed.
- (a) *Order Closing the Estate.* After receiving the affidavit from the personal representative stating that the estate has been distributed, the Judiciary shall issue an order closing the estate and revoking the letters testamentary and letters of administration. The Judiciary shall release any bond that the personal representative was required to post.
- (b) *Property Discovered After Estate Closed.* An estate may be reopened whenever necessary to dispose of a decedent's property discovered after his or her estate has been closed. The Judiciary shall order distribution of the property to the person or persons entitled thereto after making whatever orders appear necessary to assure a just participation of the after discovered property in the expenses of the estate.
- 613.5-9. *Application of Foreign Law.* The Judiciary may apply foreign law, including laws of other tribes and states, federal law, common law and uniform or model laws, to resolve probate issues when an issue is not covered by this law.

613.5-10. *Effect of Fraud and Evasion.* Whenever fraud has been perpetuated in connection with any proceeding or in any statement filed under this law or if fraud is used to avoid or circumvent the provisions or purposes of this law, any person injured thereby may obtain appropriate relief against the perpetrator of the fraud, including restitution from any person, other than a bona fide purchaser, benefitting from the fraud, whether innocent or not. Any such proceeding must be commenced within two (2) years after the discovery of the fraud, but no proceeding may be brought against anyone later than five (5) years after the time of commission of the fraud. This section has no bearing on remedies relating to fraud practiced on a decedent during their lifetime which affects the succession of the estate.

613.5-11. *Evidence as to Passing or Status.* In proceedings under this law, the following rules relating to determination of death and status are applicable:

- (a) A certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is prima facie proof of the fact, place, date and time of death, and the identity of the decedent;
- (b) A certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that a person is missing, detained, dead, or alive is prima facie evidence of the status and of the dates, circumstances, and places disclosed by the record or report; and
- (c) A person who is absent for a continuous period of seven (7) years, during which they have not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry is presumed to be dead. Their death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.

613.5-12. *Effect of Homicide on Intestate Succession, Wills, Joint Assets, Life Insurance and Beneficiary Designation.*

- (a) A surviving spouse, heir, or beneficiary who criminally and intentionally causes the death of the decedent is not entitled to any benefits passing under this law and the estate of the decedent passes as if the perpetrator had predeceased the decedent. Property appointed by the will of the decedent to or for the benefit of the perpetrator passes as if the perpetrator had predeceased the decedent.
- (b) Any joint tenant who criminally and intentionally causes the death of another joint tenant thereby effects a severance of the interest of the decedent so that the share of the decedent passes as their property and the perpetrator has no rights by survivorship. This provision applies to joint tenancies in real and personal property, joint accounts in banks, savings and loan associations, credit unions and other institutions, and any other form of co-ownership with survivorship incidents.
- (c) A named beneficiary of a bond, life insurance policy, or other contractual arrangement who criminally and intentionally causes the death of the principal obligee or the person upon whose life the policy is issued is not entitled to any benefit under the bond, policy, or other contractual arrangement, and it becomes payable as though the perpetrator had predeceased the decedent.
- (d) Any other acquisition of property or interest by the perpetrator shall be treated in accordance with the principles of this section.
- (e) A final judgment of conviction of an offense containing the elements of criminal and intentional death is conclusive for purposes of this section. In the absence of a conviction of criminal and intentional death, the Judiciary may determine by a

preponderance of evidence whether the death was criminal and intentional for purposes of this section.

613.5-13. *Simultaneous Death.*

- (a) Where the title to property covered under this law or the devolution thereof depends upon priority of death and there is no sufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if they had survived except where provided otherwise in this law.
- (b) Where two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed.
- (c) Where there is not sufficient evidence that two joint tenants or tenants by the entirety have died otherwise than simultaneously, the property so held shall be distributed one-half as if one had survived and one-half as if the other had survived. If there are more than two joint tenants and all of them have so died the property thus distributed shall be in the proportion that one bears to the whole number of joint tenants.
- (d) Where the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died otherwise than simultaneously, the proceeds of the policy shall be distributed as if the insured had survived the beneficiary.
- (e) These provisions on simultaneous death shall not apply in cases where the decedent has made provision for a different distribution in a will, trust, deed, contract, or insurance policy.

613.5-14. *Family Heirlooms, Indian Finery, and Indian Artifacts.* Notwithstanding the provisions of this law relating to descent and distribution, the surviving spouse or other surviving next of kin may distribute any family heirlooms, Indian artifacts, and Indian finery belonging to the decedent in accordance with the customs and traditions of the Nation prior to the initiation of the administration of the estate. The distribution shall be in accordance with directions left by the decedent, if any. The distribution shall be exempt from all creditors.

**613.6. Oneida Judiciary Probate of Intestate Succession.**

613.6-1. *Defining the Intestate Estate.* The intestate estate of the decedent consists of any part of the decedent's estate not disposed of by will and not allowed to the decedent's spouse or descendants under section 613.7-5. The intestate estate passes by intestate succession to the decedent's heirs as prescribed in section 613.9 and this section, except as modified by the decedent's will. A decedent, by will, may expressly exclude or limit the right of an individual or class to succeed to property of the decedent passing by intestate succession. If that individual or a member of that class survives the decedent, the share of the decedent's intestate estate to which that individual or class would have succeeded passes as if that individual or each member of that class had disclaimed an intestate share.

613.6-2. *Share of Surviving Spouse.* If there is a surviving spouse of the decedent, the intestate share of the surviving spouse is, subject to the provisions in section 613.9 and section 613.9, as follows:

- (a) The entire estate if:
  - (1) No descendant of the decedent survives the decedent; or

(2) All of the decedent's surviving descendants are also descendant's of the surviving spouse and there is no other descendant of the surviving spouse who survives the decedent.

- (b) The first \$150,000 plus one half of any balance of the intestate estate, if all of the decedent's surviving descendant's are also descendants of the surviving spouse and the surviving spouse has one or more surviving descendants who are not descendants of the decedent, or if one or more of the decedent's surviving descendants are not descendants of the surviving spouse.

613.6-3. *Share of Heirs Other than Surviving Spouse.* Any part of the intestate estate not passing to the surviving spouse under section 613.6-2, or the entire estate if there is no surviving spouse, shall pass, subject to the provisions in sections 613.9 and 613.8, as follows:

- (a) To the decedent's descendants by representation;
- (b) If there is no surviving descendant, to the decedent's parents equally if both survive, or to the surviving parent.
- (c) If there is no surviving descendant or parent, to the descendants of the decedent's parents or either of them by representation;
- (d) If there is no surviving descendant parent, or descendant of a parent, but the decedent is survived by one or more grandparents or descendants of grandparents, half of the estate passes to the decedent's paternal grandparents equally if both survive, or to the surviving paternal grandparent, or to the descendants of the decedent's paternal grandparents or either of them if both are deceased, the descendants taking by representation; and the other half passes to the decedent's maternal relatives in the same manner' but if there is no surviving grandparent or descendant of a grandparent on either the paternal or maternal side, the entire estate passes to the decedent's relatives on the other side in the same manner as the half.

613.6-4. *Requirement That Heir Survive Decedent for 120 Hours.* An individual who fails to survive the decedent by 120 hours is deemed to have predeceased the decedent for purposes of homestead, exempt property, and intestate succession, and the decedent's heirs are determined accordingly. If it is not established that an individual who would otherwise be an heir survived the decedent by 120 hours, it is deemed that the individual failed to survive for the required period.

613.6-5. *No Taker.* If there is no taker under the provisions of this law, the intestate estate passes to the Nation.

613.6-6. *Representation.* If representation is called for by this law, the following applies:

- (a) *Decedent's Descendants.* In the case of descendants of the decedent, the estate is divided into as many shares as there are surviving children of the decedent and deceased children who left descendants who survive the decedent, each surviving child receiving one share and the share of each deceased child being divided among its descendants in the same manner.
- (b) *Descendants of Parents or Grandparents.* If a decedent's intestate estate or a part thereof passes by "representation" to the descendants of the decedent's deceased parents or either of them or to the descendants of the decedent's deceased paternal or maternal grandparents or either of them, the estate or part thereof is divided in the following manner:
  - (1) In the case of the descendants of the decedent's deceased parents or either of them, the estate or part thereof is divided into as many equal shares as there are (A) surviving descendants in the generation nearest the deceased parents or either of them, and (B) deceased descendants in the same generation who

left surviving descendants, if any. Each surviving descendant in the nearest generation is allocated one share, and the surviving descendants of each deceased descendant in the same generation are allocated one share to be divided in the same manner as specified in subsection (a).

- (2) In the case of descendants of the decedent's deceased paternal or maternal grandparents or either of them, the estate or part thereof is divided into as many equal shares as there are surviving descendants in the generation nearest the deceased grandparents or either of them that contains one or more surviving descendants. Each surviving descendant in the nearest generation is allocated one share.

613.6-6. *Kindred Without Both Parents in Common.* Relatives who have the same father or the same mother, but not both parents in common (i.e., a person who shares one parent in common with another person) inherit the same share they would inherit if they had both parents in common. But stepchildren and foster children do not inherit, unless adopted.

613.6-7. *After-Born Heirs.* An individual in gestation at a particular time is treated as living at that time if the individual lives 120 hours or more after birth.

613.6-8. *Advancement.* If an individual dies intestate as to all or a portion of his or her estate, property the decedent gave during the decedent's lifetime to an individual who, at the decedent's death, is an heir is treated as an advancement against the heir's intestate share only if (1) the decedent declared in a contemporaneous writing or the heir acknowledged in writing that the gift is an advancement or (2) the decedent's contemporaneous writing or the heir's written acknowledgment otherwise indicates that the gift is to be taken into account in computing the division and distribution of the decedent's intestate estate.

- (a) For purposes of this section, property advanced is valued as of the time the heir came into possession or enjoyment of the property or as of the time of the decedent's death, whichever first occurs.
- (b) If the recipient of the property fails to survive the decedent, the property is not taken into account in computing the division and distribution of the decedent's intestate estate, unless the decedent's contemporaneous writing provides otherwise.

613.6-9. *Debts to Decedent.* A debt owed to a decedent is not charged against the intestate share of any individual except the debtor. If the debtor fails to survive the decedent, the debt is not taken into account in computing the intestate share of the debtor's descendants.

613.6-10. *Individuals Related to Decedent Through Two Lines.* An individual who is related to the decedent through two (2) lines of relationship is entitled to only a single share based on the relationship that would entitle the individual to the larger share.

### **613.7. Oneida Judiciary Probate of Estate's Subject to Wills**

613.7-1. *Scope of this Section.* In determining the validity of a devise of property other than trust or restricted land, the rules contained in this section shall apply which govern the creation, execution, and revocation of wills. In determining the validity of a devise of trust or restricted land, the federal law governing the creation, execution, and revocation of wills shall apply. The failure to follow the rules in this subchapter shall not invalidate a devise of trust or restricted

land. The failure to follow federal law governing the creation, execution, and revocation of wills shall not invalidate a devise of property other than trust or restricted land.<sup>2</sup>

613.7-2. *Who May Make a Will.* Any person eighteen (18) or more years of age who is of sound mind and of testamentary capacity may make a will.

613.7-3. *Execution.* A will must be:

- (a) in writing;
- (b) signed and dated by the testator; and
- (c) attested to and signed by two disinterested adult witnesses.

613.7-4. *Harmless Error.* Although a document or writing added upon a document was not executed in compliance with the requirements of section 613.7-3, the document or writing is treated as if it had been executed in compliance with that section if the proponent of the document or writing establishes by clear and convincing evidence that the decedent intended the document or writing to constitute:

- (a) The decedent's will;
- (b) A partial or complete revocation of the will;
- (c) An addition to or an alteration of the will; and/or
- (d) A partial or complete revival of his or her formerly revoked will or of a formerly revoked portion of the will.

613.7-5. *Self-Proved Will.* An attested will may be made self-proved by attaching affidavits, signed by the testator and the witnesses before a notary public, under official seal, certifying that they complied with the requirements for execution of the will.

- (a) To create proved will, the testator's affidavit must contain substantially the following content:

[Insert Local Municipality]     )  
 State of [Insert State]         ) ss.  
 County of [Insert County]     )

I, \_\_\_\_\_, swear or affirm under penalty of perjury that on the \_\_ day of \_\_\_\_\_, 20\_\_, I requested \_\_\_\_\_ and \_\_\_\_\_ to act as witnesses to my will; that I declared to them that the document was my last will; that I signed the will in the presence of both witnesses; that they signed the will as witnesses in my presence and in the presence of each other; that the will was read and explained to me (or read by me), after being prepared and before I signed it, and it clearly and accurately expresses my wishes; and that I willingly made and executed the will as my free and voluntary act for the purposes expressed in the will.

\_\_\_\_\_  
 Testator

<sup>2</sup> It is often desirable to create a single will that devises the testator's entire estate, including trust or restricted land and non-trust property. In order for all of the devises in a will devising both trust or restricted land and non-trust property to be valid, it would be necessary to comply with the rules contained in this subchapter and the federal law governing the creation, execution, and revocation of wills. The federal law governing the creation, execution, and revocation of wills may be significantly different than the rules contained in this Section. At the time when this law was enacted, the federal rules governing the creation, execution, and revocation of wills were contained in 25 C.F.R. part 15.



- (b) To create a self-proved will, the attesting witnesses' affidavit must contain substantially the following content.

[Insert Local Municipality]     )  
 State of [Insert State]     ) ss.  
 County of [Insert County]     )

We, \_\_\_\_\_ and \_\_\_\_\_, swear or affirm under penalty or perjury that on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, \_\_\_\_\_ of the State of \_\_\_\_\_ published and declared the attached document to his/her last will, signed the will in the presence of both of us, and requested both of us to sign the will as witnesses; that we, in compliance with his/her request, signed the will as witnesses in his/her presence and in the presence of each other; and that the testator was not acting under duress, menace, fraud, or undue influence of any person, so far as we could determine, and in our opinion was mentally capable of distributing/disposing all of his/her estate by will.

\_\_\_\_\_  
 Witness

\_\_\_\_\_  
 Witness

Subscribed and sworn to or affirmed before  
 me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
 by \_\_\_\_\_ testator, and by  
 \_\_\_\_\_, attesting witnesses. (seal)

\_\_\_\_\_  
 Notary Public

My commission expires \_\_\_\_\_.

613.7-6. *Revocation by Writing or Act.* A will or any part thereof is revoked by either of the following:

- (a) By a subsequent valid will, codicil, or other instrument which revokes the prior will in whole or in part, expressly or by inconsistency; or
- (b) By being burned, torn, cancelled, obliterated, or destroyed with the intent and for the purpose of revoking it by the testator or by another person in the testator's presence and at the testator's direction.

613.7-7. *Revocation by Divorce; No Revocation by Other Changes of Circumstances.* If, after executing a will, the testator is divorced or the testator's marriage annulled, the divorce or annulment revokes any disposition or appointment of property made by the will to the former spouse, any provision conferring a general or special power of appointment on the former spouse and any nomination of the former spouse as personal representative, executor, trustee, conservator, or guardian, unless the will expressly provides otherwise.

- (a) Property prevented from passing to a former spouse because of revocation by divorce or annulment passes as if the former spouse failed to survive the decedent. If provisions are revoked solely by this section, they are revived by testator's

remarriage to the former spouse, a decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this section.

- (b) No change of circumstances other than as described in this section revokes a will.

613.7-8. *Revival of Revoked Will.*

- (a) If a subsequent will that partly revoked a previous will is itself revoked by a revocatory act under section 613.7-6, the revoked part of the previous will is revived. This section does not apply if it is evident from the circumstances of the revocation of the subsequent will or from the testator's contemporary or subsequent declarations that the testator did not intend the revoked part of the previous will to take effect as executed.
- (b) If a subsequent will that wholly revoked a previous will is itself revoked by a revocatory act under section 613.7-6, the previous will remains revoked unless it is revived. The previous will is revived if it is evident from the circumstances of the revocation of the subsequent will or from the testator's contemporary or subsequent declaration that the testator intended the previous will to take effect as executed.
- (c) If a subsequent will that wholly or partly revoked a previous will is itself revoked by another will, the previous will or its revoked part remains revoked, unless it or its revoked part is revived. The previous will or its revoked part is revived to the extent that it appears from the terms of the later will, or from the testator's contemporary or subsequent declarations, that the testator intended the previous will to take effect.

613.7-9. *Incorporation by Reference.* Any writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification.

613.7-10. *Events of Independent Significance.* A will may dispose of property by reference to acts and events which have significance apart from their effect upon the disposition made by the will, whether they occur before or after the execution of the will or before or after the testator's death. The execution or revocation of a will of another person is such an event.

613.7-11. *Rules of Construction and Intention.* The intention of a testator, as expressed in the testator's will, controls the legal effect of the testator's dispositions.

- (a) The following rules of construction apply unless a contrary intent is clear in the will:

- (1) *After-Acquired Property.* A will is construed to pass all property which the testator owns at his or her death including property acquired after the execution of the testator's will.
- (2) *Anti-Lapse.* If a devisee fails to survive the testator or is treated as if the devisee predeceased the testator, the issue of the deceased devisee who survive the testator by 120 hours take in place of the deceased devisee. If they are all of the same degree of kinship to the devisee, they take equally. If they are of unequal degree, those of more remote degree take by representation. A person who would have been a devisee under a class gift if the person had survived the testator is treated as a devisee for purposes of this section, whether the death occurred before or after the execution of the will. Words of survivorship, such as, in a devise to an individual, "if he or she survives me," or, in a class gift, to "my surviving children," are a sufficient indication of an intent contrary to the application of this rule of construction.
- (3) *Failure of Testamentary Provision.* If a devise other than a residuary devise fails for any reason, it becomes part of the residue. If the residue is devised to

two or more persons and the share of one of the residuary beneficiaries fails for any reason, their share passes to the other residuary beneficiaries, or to other residuary beneficiaries in proportion to their interest in the residue.

- (4) *Non-ademption of Specific Devises*. A specific devisee has a right to the specifically devised property in the testator's estate at death and the following:
- (A) Any balance of the purchase price, together with any security agreement, owing from a purchaser to the testator at death by reason of sale of the property;
  - (B) Any amount of a condemnation award for the taking of the property unpaid at death;
  - (C) Any proceeds unpaid at death on fire or casualty insurance on or other recovery for injury to the property; and
  - (D) Property owned by the testator at death and acquired as a result of foreclosure, or obtained in lieu of foreclosure, of the security interest for a specifically devised obligation.
- (5) *Non-exoneration*. A specific devise passes subject to any mortgage or security interest existing at the date of death, without right of exoneration, regardless of a general directive in the will to pay debts.
- (6) *Exercise of Power of Appointment*. A general residuary clause in a will, or a will making general disposition of all the testator's property, does not exercise a power of appointment unless specific reference is made to that power.
- (7) *Ademption by Satisfaction*. Property which a testator gave in their lifetime to a person is treated as a satisfaction of a devise to that person in whole or in part, only if the will provides for deduction of the lifetime gift, or the testator declares in a contemporaneous writing that the gift is to be deducted from the devise or is in satisfaction. For the purpose of partial satisfaction, property given during the lifetime is valued as of the time the beneficiary came into possession or enjoyment of the property or as of the time of death of the testator, whichever occurs first.

### **613.8. Family Rights and Protections for Probates Administered by the Judiciary.**

613.8-1. *Omitted Spouse*. If a testator fails to provide by will for their surviving spouse who married the testator after the execution of the will, the omitted spouse shall receive the same share of the estate they would have received if the decedent left no will unless it appears from the will that the omission was intentional or the testator provided for the spouse by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or other evidence. In satisfying a share provided in this section, the devises made by the will abate as provided in section 613.5-7 of this law, which concerns "abatement."

613.8-2. *Pretermitted Children*.

- (a) If a testator fails to provide in his or her will for any of their children living or born or adopted after the execution of the will, the omitted child receives a share in the estate equal in value to that which they would have received if the testator had died intestate unless:
  - (1) It appears from the will that the omission was intentional;
  - (2) When the will was executed the testator had one or more children and devised substantially all their estate to the other parent of the omitted child; or

(3) The testator provided for the child by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or other evidence.

(b) If at the time of execution of the will, the testator fails to provide in their will for a living child solely because they believe the child to be dead, the child receives a share in the estate equal in value to that which they would have received if the testator had died intestate.

(c) In satisfying a share provided by this section, the devises made by the will abate as provided in section 613.5-7 of this law, which concerns “abatement.”

#### 613.8-3. *Descent of Homestead.*

(a) If there is a surviving spouse, the homestead, including a manufactured home which is the family residence, descends free from any testamentary or other disposition of it to which the spouse has not consented in writing as follows:

(1) If there is no surviving descendant of decedent, to the spouse; or

(2) If there are surviving descendants of decedent, then to the spouse for the term of the spouse’s natural life and the remainder inequal shares to the decedent’s descendants by representation.

(b) If there is no surviving spouse and the homestead has not been disposed of by will, it descends as other real estate.

(c) If the homestead passes by descent or will to the spouse or decedent’s descendants, it is exempt from all debts which were not valid charges on it at the time of decedent’s death. If the homestead passes to a person other than a spouse or decedent’s descendants, it is not exempt from expenses and claims by creditors.

#### 613.8-4. *Exempt Property.*

(a) In addition to the homestead exemption provided in section 613.8-3, the surviving spouse of a decedent who was domiciled on the Reservation is entitled from the estate to value not exceeding \$10,000 therein in household furniture, automobiles, furnishings, appliances, and personal effects. The \$10,000 in value of the aforementioned items shall be over and above any security interest in said items. If there is no surviving spouse, children of the decedent are entitled jointly to the same value. If encumbered chattels are selected and if the value in excess of security interests, plus that of other exempt property, is less than \$10,000, or if there is not \$10,000 worth of exempt property in the estate, the spouse or children are entitled to other assets of the estate, if any, to the extent necessary to make up the \$10,000 value.

(b) One automobile, if any, shall be exempt property, regardless of its value.

(c) Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate, except that the right to any assets to make up a deficiency of exempt property shall abate as necessary to permit prior payment of family allowance. These rights are in addition to any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise provided or by intestate succession.

#### 613.8-5. *Family Allowance.*

(a) In addition to the right to the homestead exemption and exempt property, if the decedent was domiciled on the Reservation, the surviving spouse and minor children whom the decedent was obligated to support and children who were in fact being supported by the decedent are entitled to a reasonable allowance in money out of the estate for their maintenance during the period of administration, which

allowance may not continue for longer than one year if the estate is inadequate to discharge allowed claims. The allowance may be paid as a lump sum or in periodic installments.

- (b) The family allowance is payable to the surviving spouse, if living, for the use of the surviving spouse and minor and dependent children; otherwise to the children, or persons having their care and custody; but in case of any minor child or dependent child that is not living with the surviving spouse, the allowance may be made partially to the child or their guardian or other person having their care and custody, and partially to the spouse, as their needs may appear. The family allowance is exempt from and has priority over all claims but not over the homestead exemption.
- (c) The family allowance is not chargeable against any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise provided, by intestate succession, or by way of elective share. The death of any person entitled to family allowance terminates their right to allowances not yet paid.

**613.8-6. Source, Determination, and Documentation.**

- (a) If the estate is otherwise sufficient, property specifically devised is not used to satisfy rights to homestead and exempt property. Subject to this restriction, the surviving spouse, the guardians of the minor children, or children who are adults may select property of the estate as the homestead and exempt property. The personal representative may make these selections if the surviving spouse, the children, or the guardians of the minor children are unable or fail to do so within a reasonable time or if there are no guardians of the minor children.
- (b) The personal representative may determine the family allowance in a lump sum not exceeding \$6,000 or periodic installments not exceeding \$500 per month for one year, and may disburse funds of the estate in payment of the family allowance and any part of the homestead allowance payable in cash. The personal representative or any interested person aggrieved by any selection, determination, payment, proposed payment, or failure to act under this section may petition the Judiciary for appropriate relief, which relief may provide a family allowance larger or smaller than that which the personal representative determined or could have determined.

**613.9. Probate of Individual Trust or Restricted Land.**

613.9-1. *Applicability.* The provisions in this Section shall apply to the probate of individually owned trust or restricted land on the Reservation.

613.9-2. *Devise of Trust or Restricted Land.* Notwithstanding the provisions in section 613.6 and 613.7, the following provisions shall apply to a devise of trust or restricted land located on the Reservation:

- (a) *Creation, Execution, and Revocation of Wills Involving Trust or Restricted Land.* For purposes of a devise of trust or restricted land, the creation, execution, and revocation of the will is governed by federal law.
- (b) *Presumption of Joint Tenancy.* If a testator devises trust or restricted interests in the same parcel of land to more than one (1) person, in the absence of clear and express language in the devise stating that the interest is to pass to the devisees as tenants in common, the devise shall be presumed to create a joint tenancy with the right of survivorship in the interests involved.
- (c) *Permitted Devise of Trust or Restricted Land.* The owner of trust or restricted land on the Reservation may only devise such trust or restricted land to a Tribal member, a person eligible for enrollment in the Nation, or the Nation.

- 875 (d) *Devise Not Permitted.* If a devise of trust or restricted land on the Reservation is made  
 876 that is not permitted by subsection (c), the following rules shall apply:  
 877 (1) The devisee has the right to renounce his or her devise to an eligible devisee;  
 878 (2) A devisee who is the spouse or lineal descendant of the testator has the right  
 879 to reserve a life estate without regard to waste; and  
 880 (3) A devisee who is not a Tribal member, a person eligible for enrollment in the  
 881 Nation, or the Nation, and who does not renounce his or her devise shall be  
 882 entitled to just compensation in the form of payment of an amount equal to the  
 883 fair market value of the interest in the land as determined by the Secretary of  
 884 the Interior. If the Nation pays compensation through the Secretary of the  
 885 Interior, the land shall be taken into trust, on a uniform basis, for the benefit of  
 886 the Nation.
- 887 (e) *Notice.* In order for the Nation to exercise its option to prevent a transfer of trust or  
 888 restricted land through a devise not permitted by subsection (c), the Nation must file a  
 889 written notice of purchase with the Superintendent of the Great Lakes Agency,  
 890 together with certification by the Nation that copies of the notice of purchase have  
 891 been mailed on the same date to the Administrative Law Judge presiding over the  
 892 probate and the affected devisee(s). The notice of purchase may be filed in the  
 893 probate hearing or within forty-five (45) days after the date of the probate decision or  
 894 within fifteen (15) days from the date of the decision on rehearing or hearing, unless  
 895 and until the filing deadlines set forth herein are superseded by applicable federal  
 896 regulation or an order issued by a court of competent jurisdiction
- 897 613.9-3. *Intestate Succession of Trust or Restricted Land.* Notwithstanding the provisions in  
 898 613.9-3(d) the following provisions shall apply to the intestate succession of trust or restricted  
 899 land within the Reservation:
- 900 (a) *Permitted Intestate Succession.* Only a Tribal member or a person eligible for  
 901 enrollment in the Nation may receive trust or restricted land on the Reservation  
 902 through intestate succession. Any person who is not a Tribal member or a person  
 903 eligible for enrollment in the Nation may not receive trust or restricted land on the  
 904 Reservation through intestate succession.
- 905 (b) *Intestate Succession Not Permitted.* If intestate succession is not permitted under  
 906 subsection (a), but the individual would otherwise receive land pursuant to  
 907 subsections (e) and (g) if he or she were a Tribal member or person eligible for  
 908 membership in the Nation, the following rules shall apply:  
 909 (1) The individual has the right to renounce his or her ability to take the land  
 910 through intestate succession to a Tribal member or person eligible for  
 911 enrollment in the Nation;  
 912 (2) If the individual is a spouse or lineal descendant of the decedent, the  
 913 individual has the right to reserve a life estate without regard to waste; and  
 914 (3) If the individual does not renounce his or her ability to take the land through  
 915 intestate succession, the individual shall be entitled to just compensation in the  
 916 form of payment of an amount equal to the fair market value of the interest in  
 917 the land as determined by the Secretary of the Interior. If the Nation pays  
 918 compensation through the Secretary of the Interior, the land shall be taken into  
 919 trust, on a uniform basis, for the benefit of the Nation.
- 920 (c) *Notice.* In order for the Nation to exercise its option to prevent a transfer of trust or  
 921 restricted land through intestate succession not permitted by subsection (a), the  
 922 Nation must file a written notice of purchase with the Superintendent of the Great

Lakes Agency, together with certification by the Nation that copies of the notice of purchase have been mailed on the same date to the Administrative Law Judge presiding over the probate and the affected devisee(s). The notice of purchase may be filed in the probate hearing or within forty-five (45) days after the date of the probate decision or within fifteen (15) days from the date of the decision on rehearing or hearing, unless and until the filing deadlines set forth herein are superseded by applicable federal regulation or an order issued by a court of competent jurisdiction.

- (d) *Share of Surviving Spouse.* If there is a surviving spouse of the decedent, the spouse shall receive a life estate without regard to waste in the trust or restricted land of the decedent. The remainder of the estate shall pass as set forth in subsections (e), (f), and (g) of this section.
- (e) *Share of Heirs Other Than Surviving Spouse.* Where there is no surviving spouse of the decedent, or there is a remainder interest pursuant to subsection (d) of this section, the trust or restricted land shall pass as follows:
  - (1) To those of the decedent's children who are Tribal members or persons eligible for enrollment in the Nation, as a joint tenancy with the right of survivorship.
  - (2) If the property does not pass under subsection (1) above, to those of the decedent's surviving grandchildren who are Tribal members or persons eligible for enrollment in the Nation, as a joint tenancy with the right of survivorship.
  - (3) If the property does not pass under subsections (1) and (2) above, to those of the decedent's surviving great-grandchildren who are Tribal members or persons eligible for enrollment in the Nation, as a joint tenancy with the right of survivorship.
  - (4) If the property does not pass under subsections (1) to (3) above, to decedent's surviving parent who is a Tribal member or person eligible for enrollment in the Nation, and if both parents survive the decedent and are both Tribal members or persons eligible for enrollment in the Nation, to both parents as a joint tenancy with the right of survivorship.
  - (5) If the property does not pass under subsections (1) to (4) above, to those of the decedent's surviving siblings who are Tribal members or persons eligible for enrollment in the Nation, as a joint tenancy with the right of survivorship.
- (f) *No taker.* If the trust or restricted land does not pass under subsections (a) to (e) of this section, then the trust or restricted land shall pass to the Nation. Except that notwithstanding this paragraph, an Indian co-owner (including the Nation) of a parcel of trust or restricted land may acquire an interest that would otherwise descend under this paragraph by paying into the estate of the decedent, before the closing of the probate estate, the fair market value of the interest in the land; if more than one Indian co-owner offers to pay for such interest, the highest bidder shall acquire the interest.
- (g) *Intestate Descent of Small Fractional Interests in Land.* Notwithstanding the provisions relating to intestacy and testamentary disposition, and subject to any applicable federal law, any trust or restricted interest in land in the decedent's estate

that is not disposed of by a valid will and represents less than five percent (5%) of the entire undivided ownership of the parcel of land of which such interest is a part, as evidenced by the decedent's estate inventory at the time of the heirship determination, shall descend as follows:

- (1) *Surviving spouse*. If there is a surviving spouse, and such spouse was residing on a parcel of trust or restricted land representing less than five percent (5%) of the entire undivided ownership of the parcel of land of which such interest is apart at the time of the decedent's death, the spouse shall receive a life estate without regard to waste in the decedent's trust or restricted interest in only such parcel, and the remainder interest in that parcel shall pass in accordance with the single heir rule.
- (2) *Single heir rule*. Where there is no life estate created for a surviving spouse or there is a remainder interest under subsection (1), the trust or restricted interest or remainder interest that is subject to this subparagraph shall descend, in trust or restricted status, to:
  - (A) The decedent's surviving child, but only if such child is a Tribal member or person eligible for enrollment in the Nation; and if two (2) or more surviving children are Tribal members or person eligible for enrollment in the Nation, then to the oldest of such children;
  - (B) If the interest does not pass under subsection (A), the decedent's surviving grandchild, but only if such grandchild is a Tribal member or person eligible for enrollment in the Nation; and if two (2) or more surviving grandchildren are Tribal members or person eligible for enrollment in the Nation, then to the oldest of such grandchildren;
  - (C) If the interest does not pass under subsections (A) or (B), the decedent's surviving great grandchild, but only if such great grandchild is a Tribal member or person eligible for enrollment in the Nation; and if two (2) or more surviving great grandchildren are Tribal members or person eligible for enrollment in the Nation, then to the oldest of such great grandchildren;
  - (D) If the interest does not pass under subsections (A), (B), or (C), then to the Nation.

613.9-4. *Probate of Covered Permanent Improvements*. The descent of covered permanent improvements shall be subject to the Judiciary's jurisdiction and shall be determined in accordance with the provisions in sections 613.6 and 613.7.

*End.*

---


Adopted-BC-XX-XX-XX-X, pending BIA approval



## July 7, 2022 Legislative Operating Committee E-Poll

### Adoption of an Emergency Amendment to the Election Law

E-POLL REQUEST: Adoption of an Emergency Amendment to the Election Law



**LOC**

↩ Reply
↩ Reply All
➔ Forward
⋮

To David P. Jordan; Ethel M. Summers; Kirby W. Metoxen; Daniel P. Guzman; Jennifer A. Webster

Cc Clorissa N. Santiago; Kristal E. Hill; Rhiannon R. Metoxen

Vote by clicking Vote in the Respond group above.  
This message was sent with High importance.


 Adoption of an Emergency Amendment to the Election Law Materials.pdf  
 974 KB

**Good Morning Legislative Operating Committee,**

This e-mail serves as the e-poll for the approval of the Election law emergency amendments adoption materials.

#### EXECUTIVE SUMMARY

An emergency amendment to the Election law is being sought. The 2022 Special Election is currently scheduled for July 16, 2022. The Oneida Election Board has requested an emergency amendment to the Election law to address the number of Oneida Election Board members required to sign the election totals of machine counted ballots. Section 102.10-2 of the Election law requires that at least six (6) Oneida Election Board members sign the election totals of machine counted ballots, which shall include the tape signed by the members of the Nation before the polls were opened per section 102.9-3(a). The Oneida Election Board has provided that they do not have enough Oneida Election Board members to meet the requirement of section 102.10-2 of the Law.

The proposed emergency amendment to the Election law will reduce the number of Oneida Election Board members required to sign the election totals of machine counted ballots from six (6) to three (3) members. [1 O.C. 102.10-2].

The Oneida Business Committee can temporarily enact legislation when legislation is necessary for the immediate preservation of the public health, safety, or general welfare of the Reservation population, and the amendment of the legislation is required sooner than would be possible under the Legislative Procedures Act. [1 O.C. 109.9-5]. A fiscal impact statement and public meeting are not required for emergency legislation. [1 O.C. 109.9-5(a)].

The emergency amendment to the Election law is necessary for the preservation of the general welfare of the Reservation population to ensure that the July 2022 Special Election can occur without interruption and be held in accordance with the Election law.

Additionally, observance of the requirements under the Legislative Procedures Act for the adoption of the amendment to the Election law would be contrary to public interest since the 2022 Special Election is scheduled for July 16, 2022, and the process and requirements of the Legislative Procedures Act cannot be completed in time to ensure that the Special Election could still occur on July 16, 2022, without violating the Election law.

The adoption of the emergency amendment to the Election law will take effect immediately upon adoption by the Oneida Business Committee. The emergency amendment to the Election law will remain

effective for six (6) months. The Legislative Procedures Act provides the possibility to extend the emergency amendment for an additional six (6) months, or until the emergency amendment expires or is permanently adopted. [1 O.C. 109.9-5(b)].

Attached to this e-poll please find the following materials:

- Emergency Adoption Memo;
- Resolution, *Adoption of an Emergency Amendment to the Election Law*;
- Statement of effect;
- Legislative Analysis;
- Draft (Redline); and
- Draft (Clean).

The LOC is now being asked to approve by e-poll the Election law emergency amendment adoption packet and forward to the Oneida Business Committee for consideration.

An e-poll is necessary for this matter because the 2022 Special Election is scheduled for July 16, 2022, and the Legislative Operating Committee needs to approve these materials – and not wait until the next scheduled Legislative Operating Committee meeting on July 20, 2022 – so these materials can be included on the agenda for the July 13, 2022, Oneida Business Committee meeting.

#### REQUESTED ACTION

- Approve the Election law emergency amendments adoption packet and forward to the Oneida Business Committee for consideration.

#### DEADLINE FOR RESPONSE

**July 7, 2022 at 4:00 p.m.**

All supporting documentation has been attached to this email for your convenience.



A good mind. A good heart. A strong fire.

#### E-POLL RESULTS:

The e-poll was approved by Marie Summers, Kirby Metoxen, Daniel Guzman King, David P. Jordan, and Jennifer Webster.

RE: E-POLL REQUEST: Adoption of an Emergency Amendment to the Election Law



Ethel M. Summers

To: ○ LOC; ● David P. Jordan; ● Kirby W. Metoxen; ● Daniel P. Guzman; ○ Jennifer A. Webster  
Cc: ● Clorissa N. Santiago; ● Kristal E. Hill; ● Rhiannon R. Metoxen

↩ Reply

↩ Reply All

➡ Forward

...

Thu 7/7/2022 10:14 AM

Approve.

## RE: E-POLL REQUEST: Adoption of an Emergency Amendment to the Election Law



Kirby W. Metoxen

To LOC; David P. Jordan; Ethel M. Summers; Daniel P. Guzman; Jennifer A. Webster  
Cc Clorissa N. Santiago; Kristal E. Hill; Rhiannon R. Metoxen

Reply

Reply All

Forward



Thu 7/7/2022 10:18 AM

Approve

## RE: E-POLL REQUEST: Adoption of an Emergency Amendment to the Election Law



Daniel P. Guzman

To LOC; David P. Jordan; Ethel M. Summers; Kirby W. Metoxen; Jennifer A. Webster  
Cc Clorissa N. Santiago; Kristal E. Hill; Rhiannon R. Metoxen

Reply

Reply All

Forward



Thu 7/7/2022 11:34 AM

Support

## Re: E-POLL REQUEST: Adoption of an Emergency Amendment to the Election Law



David P. Jordan

To Daniel P. Guzman; LOC; Ethel M. Summers; Kirby W. Metoxen; Jennifer A. Webster  
Cc Clorissa N. Santiago; Kristal E. Hill; Rhiannon R. Metoxen

Reply

Reply All

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Thu 7/7/2022 11:46 AM

If there are problems with how this message is displayed, click here to view it in a web browser.

Support

## RE: E-POLL REQUEST: Adoption of an Emergency Amendment to the Election Law



Jennifer A. Webster

To LOC; David P. Jordan; Ethel M. Summers; Kirby W. Metoxen; Daniel P. Guzman  
Cc Clorissa N. Santiago; Kristal E. Hill; Rhiannon R. Metoxen

Reply

Reply All

Forward



Thu 7/7/2022 12:55 PM

Support,  
Jenny



TO: Oneida Business Committee  
FROM: Kirby Metoxen, LOC Vice-Chairperson *KM*  
DATE: July 13, 2022  
RE: Adoption of an Emergency Amendment to the Election Law

---

Please find the following attached backup documentation for your consideration of an emergency amendment to the Election law:

1. Resolution: Adoption of an Emergency Amendment to the Election law
2. Statement of Effect: Adoption of an Emergency Amendment to the Election law
3. Election law Emergency Amendment Legislative Analysis
4. Election law Emergency Amendment Draft (Redline)
5. Election law Emergency Amendment (Clean)

### *Overview*

An emergency amendment to the Election law is being sought. The Election law governs the procedures for the conduct of orderly elections of the Nation, including pre-election activities such as caucuses and nominations. [1 O.C. 102.1-1]. The emergency amendment to the Election law will reduce the number of Oneida Election Board members required to sign the election totals of machine counted ballots from six (6) to three (3) members. [1 O.C. 102.10-2].

The 2022 Special Election is currently scheduled for July 16, 2022. The Oneida Election Board has requested emergency amendments to the Election law to address the number of Oneida Election Board members required to sign the election totals of machine counted ballots. Section 102.10-2 of the Election law requires that at least six (6) Oneida Election Board members sign the election totals of machine counted ballots, which shall include the tape signed by the members of the Nation before the polls were opened per section 102.9-3(a). The Oneida Election Board has provided that they do not have enough Oneida Election Board members to meet the requirement of section 102.10-2 of the Law.

The Oneida Business Committee can temporarily enact legislation when legislation is necessary for the immediate preservation of the public health, safety, or general welfare of the Reservation population, and the amendment of the legislation is required sooner than would be possible under the Legislative Procedures Act. [1 O.C. 109.9-5]. A fiscal impact statement and public meeting are not required for emergency legislation. [1 O.C. 109.9-5(a)].

The emergency amendment to the Election law is necessary for the preservation of the general welfare of the Reservation population to ensure that the July 2022 Special Election can occur without interruption and be held in accordance with the Election law.

Additionally, observance of the requirements under the Legislative Procedures Act for the adoption of the amendment to the Election law would be contrary to public interest since the 2022 Special Election is scheduled for July 16, 2022, and the process and requirements of the Legislative Procedures Act cannot be completed in time to ensure that the Special Election could still occur on July 16, 2022, without violating the Election law.

The adoption of the emergency amendment to the Election law will take effect immediately upon adoption by the Oneida Business Committee. The emergency amendment to the Election law will remain effective for six (6) months. The Legislative Procedures Act provides the possibility to extend the emergency amendment for an additional six (6) months, or until the emergency amendment expires or is permanently adopted. *[1 O.C. 109.9-5(b)]*.

**Requested Action**

Approve the Resolution: Adoption of an Emergency Amendment to the Election Law

# Oneida Nation

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

## BC Resolution # Adoption of an Emergency Amendment to the Election Law

- 1   **WHEREAS,**   the Oneida Nation is a federally recognized Indian government and a treaty tribe
- 2                   recognized by the laws of the United States of America; and
- 3
- 4   **WHEREAS,**   the Oneida General Tribal Council is the governing body of the Oneida Nation; and
- 5
- 6   **WHEREAS,**   the Oneida Business Committee has been delegated the authority of Article IV, Section 1,
- 7                   of the Oneida Tribal Constitution by the Oneida General Tribal Council; and
- 8
- 9   **WHEREAS,**   the Election law ("the Law") was adopted by the General Tribal Council on June 19, 1993
- 10                  for the purpose of governing the procedures for the conduct of orderly elections of the
- 11                  Nation, and was most recently amended by the General Tribal Council through resolution
- 12                  GTC-04-23-17-A; and
- 13
- 14   **WHEREAS,**   the 2022 Special Election has been scheduled for July 16, 2022; and
- 15
- 16   **WHEREAS,**   the Oneida Election Board has requested emergency amendments to the Election law to
- 17                  address the number of Oneida Election Board members required to sign the election totals
- 18                  of machine counted ballots; and
- 19
- 20   **WHEREAS,**   section 102.10-2 of the Law requires that at least six (6) Oneida Election Board members
- 21                  sign the election totals of machine counted ballots, which shall include the tape signed by
- 22                  the members of the Nation before the polls were opened per section 102.9-3(a); and
- 23
- 24   **WHEREAS,**   the Oneida Election Board has provided that they do not have enough Oneida Election
- 25                  Board members to meet the requirement of section 102.10-2 of the Law; and
- 26
- 27   **WHEREAS,**   the proposed emergency amendment to the Law lowers the number of Oneida Election
- 28                  Board members that are required sign the election totals for machine counted ballots from
- 29                  six (6) to three (3) members; and
- 30
- 31   **WHEREAS,**   the Legislative Procedures Act authorizes the Oneida Business Committee to enact
- 32                  legislation on an emergency basis, to be in effect for a period of six (6) months, renewable
- 33                  for an additional six (6) months; and
- 34
- 35   **WHEREAS,**   emergency adoption of legislation is allowed when legislation is necessary for the
- 36                  immediate preservation of the public health, safety, or general welfare of the Reservation
- 37                  population, and the amendment of the legislation is required sooner than would be possible
- 38                  under the Legislative Procedures Act; and
- 39
- 40   **WHEREAS,**   the emergency adoption of the amendments to the Law are necessary for the preservation
- 41                  of the general welfare of the Reservation population to ensure that the July 2022 Special
- 42                  Election can occur without interruption and be held in accordance with the Law; and
- 43

44 **WHEREAS,** observance of the requirements under the Legislative Procedures Act for adoption of these  
45 amendments would be contrary to public interest since the 2022 Special Election is  
46 scheduled for July 16, 2022, and the process and requirements of the Legislative  
47 Procedures Act cannot be completed in time to ensure that the Special Election could still  
48 occur on July 16, 2022, without violating the Law; and  
49

50 **WHEREAS,** the Legislative Procedures Act does not require a public meeting or fiscal impact statement  
51 when considering emergency legislation; and  
52

53 **NOW THEREFORE BE IT RESOLVED,** the Oneida Business Committee hereby adopts the emergency  
54 amendment to the Election Law effective immediately.



## **Statement of Effect**

### *Adoption of an Emergency Amendment to the Election law*

#### **Summary**

This resolution adopts an emergency amendment to the Election law to reduce the number of Oneida Election Board members required to sign the election totals of machine counted ballots from six (6) to three (3) members. [1 O.C. 102.10-2]

*Submitted by: Clorissa N. Santiago, Senior Staff Attorney, Legislative Reference Office*

*Date: July 7, 2022*

#### **Analysis by the Legislative Reference Office**

This resolution adopts an emergency amendment to the Election law. The Election law governs the procedures for the conduct of orderly elections of the Nation, including pre-election activities such as caucuses and nominations. [1 O.C. 102.1-1]. The emergency amendment to the Election law will reduce the number of Oneida Election Board members required to sign the election totals of machine counted ballots from six (6) to three (3) members. [1 O.C. 102.10-2]

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 LPA allows the Oneida Business Committee to take emergency action where it is necessary for the immediate preservation of the public health, safety, or general welfare of the Reservation population and when enactment or amendment of legislation is required sooner than would be possible under the LPA. [1 O.C. 109.9-5]. A public meeting and fiscal impact statement are not required for emergency legislation. [1 O.C. 109.8-1(b) and 109.9-5(a)].

The 2022 Special Election is currently scheduled for July 16, 2022. The Oneida Election Board has requested emergency amendments to the Election law to address the number of Oneida Election Board members required to sign the election totals of machine counted ballots. Section 102.10-2 of the Election law requires that at least six (6) Oneida Election Board members sign the election totals of machine counted ballots, which shall include the tape signed by the members of the Nation before the polls were opened per section 102.9-3(a). The Oneida Election Board has provided that they do not have enough Oneida Election Board members to meet the requirement of section 102.10-2 of the Law.

The resolution provides that the emergency amendment to the Election law is necessary for the preservation of the general welfare of the Reservation population to ensure that the July 2022 Special Election can occur without interruption and be held in accordance with the Election law.

Additionally, observance of the requirements under the LPA for the adoption of the amendment to the Election law would be contrary to public interest since the 2022 Special Election is scheduled for July 16, 2022, and the process and requirements of the LPA cannot be completed in time to



ensure that the Special Election could still occur on July 16, 2022, without violating the Election law.

The adoption of the emergency amendment to the Election law will take effect immediately upon adoption by the Oneida Business Committee. The emergency amendment to the Election law will remain effective for six (6) months. The LPA provides the possibility to extend the emergency amendment for an additional six (6) months, or until the emergency amendment expires or is permanently adopted. *[1 O.C. 109.9-5(b)]*.

### ***Conclusion***

Adoption of this resolution would not conflict with any of the Nation's laws.



## ELECTION LAW EMERGENCY AMENDMENTS LEGISLATIVE ANALYSIS

### SECTION 1. EXECUTIVE SUMMARY

| <i>Analysis by the Legislative Reference Office</i> |   |
|---|---|
| Intent of the Proposed Amendments                   | Reduce the number of Election Board members required to sign the election totals of machine counted ballots from six (6) to three (3) members. [1 O.C. 102.10-2]  |
| Purpose   | To govern the procedures for the conduct of orderly elections of the Nation, including pre-election activities such as caucuses and nominations. [1 O.C. 102.1-1] |
| Affected Entities                                   | Oneida Nation Election Board  |
| Public Meeting                                      | A public meeting is not required for emergency legislation [1 O.C. 109.8-1(b) and 109.9-5(a)].  |
| Fiscal Impact                                       | A fiscal impact statement is not required for emergency legislation [1 O.C. 109.9-5(a)].  |
| Expiration of Emergency Legislation                 | Emergency legislation expires six (6) months after adoption and may be renewed for an additional six (6) month period.  |

### SECTION 2. LEGISLATIVE DEVELOPMENT

- A. Background.** The Election law was first adopted on June 19, 1993, and most recently amended by the General Tribal Council on April 23, 2017. The Law governs the procedures for the conduct of orderly elections of the Nation. [1 O.C. 102.1-1].
- B. Request for Emergency Amendments.** On July 5, 2022, the Legislative Operating Committee received a request from the Oneida Election Board for the consideration of emergency amendments to the Election law. The Nation's 2022 Special Election will be held on July 16, 2022. Section 102.10-2 of the Election Law requires that at least six (6) Election Board members sign the election totals on machine counted ballots. The Oneida Election Board provided that they only received three (3) applications for the Alternate position, and there is one (1) Board member that has recused themselves, and there is one (1) Board member that has resigned, so they do not have enough Oneida Election Board members to meet the requirement of section 102.10-2. The Oneida Election Board therefore made the request to amend the Election law on an emergency basis to 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). The Legislative Operating Committee determined these amendments should be pursued on an emergency basis for the immediate preservation of the general welfare of the Reservation population.

### SECTION 3. CONSULTATION AND OUTREACH

- Representatives from the following departments or entities participated in the development of this Law and legislative analysis:
  - Oneida Election Board.
- The Legislative Operating Committee has held the following work meetings specific to the proposed emergency amendments to this Law:

- 7/6/22 – LOC work meeting.

## SECTION 4. PROCESS

- A. These amendments are being considered on an emergency basis. The Oneida Business Committee may temporarily enact an emergency legislation where legislation is necessary for the immediate preservation of public health, safety, or general welfare of the Reservation population and enactment or amendment of legislation is required sooner than would be possible under this law. [1 O.C. 109.9-5].
- The emergency adoption of amendments to this Law are necessary for the preservation of the general welfare of the Reservation population in order to ensure that the 2022 Special Election can occur in accordance with the requirements of the Election law.
  - Observance of the requirements under the Legislative Procedures Act for adoption of the emergency amendments to this Law would be contrary to public interest and the process and requirements of the Legislative Procedures Act cannot be completed in time to allow the Nation to hold the 2022 Special Election on July 16, 2022.
- B. The emergency amendments will expire six (6) months after adoption, with one (1) opportunity for a six (6) month extension of the emergency amendments. [1 O.C. 109.9-5(b)].
- C. The Legislative Procedures Act does not require a public meeting or fiscal impact statement when considering emergency legislation. [1 O.C. 109.9-5(a)]. However, a public meeting and fiscal impact statement will eventually be required when considering permanent adoption of this Law.
- D. The Legislative Operating Committee added these emergency amendments to the Active Files List on July 6, 2022.

## SECTION 5. CONTENTS OF THE LEGISLATION

- D. *Election Board Members Signature on Machine Counted Ballots.* The proposed amendments lower the number of Oneida Election Board members that are required sign the election totals for machine counted ballots, which includes the tape signed by the members of the Nation before the polls were opened, from six (6) to three (3). [1 O.C. 102.10-2].

## SECTION 6. EXISTING LEGISLATION

- A. *Related Legislation.* The following laws of the Nation are related to the emergency amendments to this Law:
- *Legislative Procedures Act.* The Legislative Procedures Act was adopted by the General Tribal Council on January 7, 2013, for the purpose of providing a standard process for the adoption of laws of the Nation which includes taking into account comments from members of the Nation and input from agencies of the Nation. [1 O.C. 109.1-1, 109.1-2].
  - The Legislative Procedures Act provides a process for the adoption of emergency legislation when the legislation is necessary for the immediate preservation of the public health, safety, or general welfare of the Reservation population and the enactment or amendment of legislation is required sooner than would be possible under this law. [1 O.C. 109.9-5].

- The Legislative Operating Committee is responsible for first reviewing the emergency legislation and for forwarding the legislation to the Oneida Business Committee for consideration. [1 O.C. 109.9-5(a)].
- The proposed emergency legislation is required to have a legislative analysis completed and attached prior to being sent to the Oneida Business Committee for consideration. [1 O.C. 109.9-5(a)].
  - a. A legislative analysis is a plain language analysis describing the important features of the legislation being considered and factual information to enable the Legislative Operating Committee to make informed decisions regarding legislation. A legislative analysis includes a statement of the legislation's terms and substance; intent of the legislation; a description of the subject(s) involved, including any conflicts with Oneida or other law, key issues, potential impacts of the legislation and policy considerations. [1 O.C. 109.3-1(g)].
- Emergency legislation does not require a fiscal impact statement to be completed or a public comment period to be held. [1 O.C. 109.9-5(a)].
- Upon the determination that an emergency exists the Oneida Business Committee can adopt emergency legislation. The emergency legislation becomes effective immediately upon its approval by the Oneida Business Committee. [1 O.C. 109.9-5(b)].
- Emergency legislation remains in effect for a period of up to six (6) months, with an opportunity for a one-time emergency law extension of up to six (6) months. [1 O.C. 109.9-5(b)].
- Adoption of these proposed emergency amendments would conform with the requirements of the Legislative Procedures Act.

## SECTION 7. OTHER CONSIDERATIONS

**A. *Deadline for Permanent Adoption of Legislation.*** The adoption of emergency amendments to the Law expire six (6) months after adoption. The emergency legislation may be renewed for an additional six (6) month period.

- *Conclusion:* The Legislative Operating Committee will need to determine if the adoption of these amendments is necessary on a permanent basis, and if so, develop the permanent amendments to this Law within the next six (6) to twelve (12) months.

**B. *Fiscal Impact.*** A fiscal impact statement is not required for emergency legislation.

- Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except emergency legislation [1 O.C. 109.6-1].

## Title 1. Government and Finances - Chapter 102

### ELECTION

#### Onayote'a'ká· Tho Ni· Yót Tsi? Ayethiyataláko Tsi? Kayanl'hsila

*People of the Standing Stone how it is we will appoint them the kind of laws we have*

|                                    |  |
|------------------------------------|--|
| 102.1. Purpose and Policy          | 102.8. Registration of Voters                            |
| 102.2. Adoption, Amendment, Repeal | 102.9. Election Process                                  |
| 102.3. Definitions                 | 102.10. Tabulating and Securing Ballots                  |
| 102.4. Election Board              | 102.11. Election Outcome and Ties                        |
| 102.5. Candidate Eligibility       | 102.12. Elections  |
| 102.6. Selection of Candidates     | 102.13. Oneida Nation Constitution and By-law Amendments |
| 102.7. Notice of Polling Places    |  |

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#### **102.1. Purpose and Policy**

102.1-1. It is the policy of the Nation that this law shall govern the procedures for the conduct of orderly elections of the Nation, including pre-election activities such as caucuses and nominations. Because of the desire for orderly and easily understood elections, there has not been an allowance made for write-in candidates on ballots.

102.1-2. This law defines the duties and responsibilities of the Election Board members and other persons employed by the Oneida Nation in the conduct of elections. It is intended to govern all procedures used in the election process.

#### **102.2. Adoption, Amendment, Repeal**

102.2-1. This law was adopted by the Oneida General Tribal Council by resolution GTC 07-06-98-A ~~and~~, amended by resolutions GTC-01-04-10-A, BC-02-25-15-C and GTC-04-23-17-A, ~~and~~ emergency amended by resolution BC- - - -.

102.2-2. This law may be amended or repealed by the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act. Actions of the Election Board regarding amendments to this law and policies adopted regarding implementation of this law are to be presented to the Business Committee who shall then adopt or forward action(s) to the General Tribal Council for adoption.

102.2-3. 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.

102.2-4. 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.

102.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

#### **102.3. Definitions**

102.3-1. 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.

102.3-2. "Alternate" shall mean an individual appointed by the Business Committee to serve on the Election Board during an election and until election results have been certified.

102.3-3. "Applicant" shall mean a potential candidate who has not yet been officially approved for acceptance on a ballot.

102.3-4. "Business day" shall mean Monday through Friday, 8:00 a.m. – 4:30 p.m., excluding holidays of the Nation.

102.3-5. "Campaigning" shall mean all efforts designed to influence members of the Nation to support or reject a particular candidate of the Nation including, without limitation, advertising, rallying, public speaking, or other communications with members of the Nation.

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102.3-6. "Candidate" shall mean a petitioner or nominee for an elected position whose name is placed on the ballot by the Election Board after successful application.

102.3-7. "Clerk" shall mean the election official who identifies proper registration for the purpose of determining voter eligibility.

102.3-8. "Close of business" shall mean 4:30 p.m. Monday through Friday.

102.3-9. "Conflict of Interest" shall mean any interest, whether it be personal, financial, political or otherwise, in which a Nation elected official, employee, consultant, appointed or elected, member of any board, committee or commission, or their immediate relatives, friends or associates, or any other person with whom they have contact, that conflicts with any right of the Nation to property, information, or any other right to own and operate its enterprises, free from undisclosed competition or other violation of such rights of the Oneida Nation, or as defined in any law or policy of the Nation.

102.3-10. "Election" shall mean every primary and election.

102.3-11. "General election" shall mean the election held every three (3) years in July to elect the Chairperson, Vice-Chairperson, Secretary, Treasurer, and the five Council Members of the Business Committee and may include contests for elected boards, committees and commissions positions.

102.3-12. "Judge" shall mean the election official who informs and advises the Chairperson of discrepancies, complaints and controversy regarding voter eligibility.

102.3-13. "Judiciary" means the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the Nation.

102.3-14. "Lot drawing" shall mean the equal chance method used to select a candidate as the winner of an elected position, in the case of a tie between two (2) or more candidates.

102.3-15. "Nation" means the Oneida Nation.

102.3-16. "Nation's newspaper" shall mean the Kalihwisaks, or any other newspaper operated by the Nation for the benefit of transmitting news to members of the Nation, which is designated by the Election Board as a source for election related news.

102.3-17. "Oneida Police Officer" shall mean an enrolled member of the Oneida Nation who is a police officer on any police force.

102.3-18. "Private property" shall mean any lot of land not owned by the Nation, a residential dwelling or a privately owned business within the boundaries of the Reservation.

102.3-19. "Prominent locations" shall mean the polling places, main doors of the Norbert Hill Center, main doors of the Oneida Community Library, Tsyunhehkwa Retail Store, the Oneida Community Health Center, the SEOTS building and all One-Stop locations.

102.3-20. "Qualified voter" shall mean an enrolled member of the Nation who is eighteen (18) years of age or older.

102.3-21. "Rejected Ballots" shall mean those ballots which are rejected by the vote tabulating machine.

102.3-22. "Spoiled Ballot" shall mean a ballot which contains a voter error or is otherwise marred and is not tabulated.

102.3-23. "Teller" shall mean the election official in charge of collecting and storing of all ballots.

## 102.4. Election Board

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*Section A. Establishment, Composition and Election*

102.4-1. An Election Board is hereby created for the purpose of carrying out the provisions of this law and Article III, Sections 2 and 3 of the Oneida Nation Constitution.

102.4-2. The Election Board shall consist of nine (9) elected members. All members shall be elected to terms of three (3) years, not to exceed two (2) consecutive terms.

102.4-3. *Recusal.* An Election Board member shall recuse himself/herself from participating as an Election Board member in any pre-election, election day, or post-election activities while he or she is a petitioner, applicant or candidate in any election or there is otherwise a conflict of interest.

102.4-4. *Removal.* Removal of members shall be pursuant to the Oneida Removal Law. A member who is removed from the Election Board shall be ineligible to serve on the Board for three (3) years from the time he or she is removed from the Election Board.

102.4-5. *Vacancies.* Any vacancy in an unexpired term shall be filled by appointment by the Business Committee for the balance of the unexpired term. The filling of a vacancy may be timed to correspond with the pre-election activities and the needs of the Election Board.

102.4-6. The Election Board shall identify tellers, judges and clerks in advance of an election.

102.4-7 The Business Committee may appoint or reappoint a sufficient number of alternates to the Election Board, as recommended by the Election Board, to assist with election day and pre-election activities.

102.4-8. The Election Board shall choose a Chairperson from amongst themselves as set out in the By-laws of the Election Board, to preside over the meetings. This selection shall be carried out at the first meeting of the Election Board following an election. The Chairperson shall then ask the Election Board to select a Vice-Chairperson and Secretary.

*Section B. Duties of the Election Board*

102.4-9. The Election Board shall have the following duties, along with other responsibilities listed throughout this law.

- (a) The Election Board shall be in charge of all registration and election procedures; and
- (b) Upon completion of an election, the Election Board shall make a final report on the election results as set out in this law.

*Section C. Specific Duties of Officers and Election Board Members*

102.4-10. Specific duties of the Chairperson and other Election Board members, in addition to being present at all Election Board meetings and assisting the handicapped through the voting process, are as set out herein:

- (a) Chairperson: Shall preside over meetings of the Election Board; shall select the hearing body for applicants found to be ineligible in accordance with 102.5-6 in the event of an appeal; shall oversee the conduct of the election; shall dismiss the alternates and Trust Enrollment Department personnel when their election day duties are complete; and shall post and report election results.
- (b) Vice-Chairperson: Shall preside over all meetings in the absence of the Chairperson.
- (c) Secretary: Shall keep a record of the meetings and make them available to the Nation's Secretary, other Election Board members and the public as required in the Open Records and Open Meetings Law.
- (d) Clerks: Shall implement the requirements of identifying and registering all voters and determining voter eligibility. Clerks shall work in conjunction with the Trust Enrollment

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Department personnel in the registration process, and assist the Chairperson as directed in conducting the election. Clerks cannot be currently employed by the Trust Enrollment Department.

(e) Tellers: Shall collect and keep safe all ballots, until the election is complete, as determined by this law. Shall assist the Chairperson in conducting the election.

(f) Judges: Shall inform and advise the Chairperson of all aspects of the election conducted under this law. In case of disputes among Election Board members, or between members of the Nation and Election Board members, or any controversy regarding voter eligibility, the Judge(s) shall assist the Chairperson in making a determination. The Judge(s) shall also ensure that all ballots of voters whose eligibility may be in question, remain confidential.

#### *Section D. Compensation Rates*

102.4-11. Election Board members are to be compensated at an hourly rate when conducting elections as provided for in the Election Board's bylaws as approved by the Business Committee. The Election Board shall have a budget, approved through the Nation's budgeting process.

102.4-12. The Trust Enrollment Department personnel and Oneida Police Officer(s) shall be compensated at their regular rate of pay out of their respective budgets.

### **102.5. Candidate Eligibility**

#### *Section A. Requirements*

102.5-1. In addition to any specific requirements and/or exceptions set out in duly adopted by-laws or other documents, all applicants shall meet the minimum requirements set out in this section in order to become a candidate.

102.5-2. Minimum Requirements. In order to be eligible to be a candidate, applicants shall:

- (a) be an enrolled member of the Nation, as verified by membership rolls of the Nation.
- (b) be a qualified voter on the day of the election.
- (c) provide proof of physical residency as required for the position for which they have been nominated or for which they have petitioned. Proof of residency may be through one (1) or more of the following:
  - (1) a valid Wisconsin driver's license;
  - (2) a bill or pay check stub showing name and physical address of the candidate from the prior or current month;
  - (3) another form of proof that identifies the candidate and that the candidate has physically resided at the address and identifies that address as the primary residence.

102.5-3. No applicant may have a conflict of interest with the position for which they are being considered, provided that any conflict of interest which may be eliminated within thirty (30) calendar days of being elected shall not be considered as a bar to nomination or election.

102.5-4. Applications and petitions where the applicant was not nominated during caucus shall be filed by presenting the information to the Nation's Secretary, or designated agent, during normal business hours, 8:00 to 4:30 Monday through Friday, within five (5) business days after the caucus. No mailed, internal Nation mail delivery, faxed or other delivery method shall be accepted.

102.5-5. The names of the candidates and the positions sought shall be a public record and made available to the public upon the determination of eligibility by the Election Board or the Board's



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designated agent.

*Section B. Eligibility Review*

102.5-6. Applicants found to be ineligible shall have two (2) business days to request an appeal. At least four (4) Election Board members shall constitute a hearing body. The Chairperson shall select the hearing body. The hearing shall be held within two (2) business days of receipt of the appeal. The applicant shall be notified by phone of time and place of the hearing. The decision of the hearing body shall be sent via certified mail or hand delivery within two (2) business days of the hearing. Any appeal from a decision of the Election Board hearing body shall be to the Judiciary on an accelerated schedule.

102.5-7. The Election Board shall be responsible for reviewing the qualifications of applicants to verify eligibility. Any applicant found to be ineligible for a nominated or petitioned for position shall be notified by certified mail return receipt requested. The notice shall provide the following information:

- (a) Position for which they were considered
- (b) Qualification of the position and citation of the source. (Copies of source may be attached.)
- (c) A brief summary explaining why the applicant was found to be ineligible.
- (d) That the applicant has two (2) business days from notification to make an appeal. Appeals must be filed at the location designated on the notice by hand delivery. The location designated shall be on the Reservation. No mailed, internal Nation mail, faxed or other delivery method will be accepted.

*Section C. Campaign Financing*

102.5-8. Contributions:

- (a) Solicitation of Contributions by Candidates.
  - (1) Candidates shall only accept contributions from individuals who are members of the Nation or individuals related by blood or marriage to the candidate. Candidates may not accept contributions from any business, whether sole proprietorship, partnership, corporation, or other business entity.
  - (2) Candidates shall not solicit or accept contributions in any office or business/facility of the Nation.
- (b) Fines. Violation of the contribution restrictions shall result in a fine imposed by the Election Board in an amount specified in a resolution adopted by the Business Committee.

102.5-9. Campaign Signs and Campaigning:

- (a) Placement of campaign signs:
  - (1) Campaign signs shall not be posted or erected on any property of the Nation except for private property with the owner/tenant's permission.
  - (2) No campaign sign shall exceed sixteen (16) square feet in area. A maximum of seven (7) such signs may be placed on a building or on a lot.
  - (3) No campaign sign shall project beyond the property line into the public right of way.
- (b) Removal of campaign signs. All campaign signs shall be removed within five (5) business days after an election.

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(c) Employees of the Nation shall not engage in campaigning for offices of the Nation during work hours. The Nation's employees shall be subject to disciplinary action under the personnel policies and procedures for political campaigning during work hours.

(d) Enforcement. The Zoning Administrator shall cause to be removed any campaign signs that are not in compliance with this law, in accordance with the Zoning and Shoreland Protection Law.

(e) Fines. Violation of the campaign sign restrictions shall result in a fine imposed by the Election Board in an amount specified in a resolution adopted by the Business Committee.

#### *Section D. Candidate Withdrawal*

102.5-10 Any candidate may withdraw his or her name from a ballot if submitted in writing by the candidate prior to submission of the ballot for printing to any Election Board member, excluding alternates.

102.5-11 After printing of the ballot, any candidate may withdraw his or her name from the election by submitting in writing a statement indicating they are withdrawing from the election prior to the opening of the polls to any Election Board member, excluding alternates. This statement shall be posted alongside any sample ballot printed prior to the election in the newspaper or any posting at the polling places.

102.5-12. Candidates withdrawing after opening of the polls shall request, in writing to the Election Board members in charge of the polling place, to be removed from the ballot. The written statement shall be posted next to any posted sample ballot.

102.5-13. Candidates withdrawing by any method listed herein shall be denied any position from which they have withdrawn regardless of the number of votes cast for that candidate. A written statement shall be considered the only necessary evidence of withdrawal and acceptance of denial of any position withdrawn from.

#### *102.5-14. Candidate Withdrawal After Winning an Election.*

(a) In the event a candidate declines an office after winning an election, the Election Board shall declare the next highest vote recipient the winner. This procedure shall be repeated as necessary until a winner is declared.

(b) If all vote recipients decline or are otherwise unable to be declared the winner, then a Special Election shall be held.

## **2.6. Selection of Candidates**

### *Section A. Setting of Caucus*

102.6-1. The Election Board shall be responsible for calling a caucus before any election is held. The caucus for the general election shall be held at least ninety (90) calendar days prior to the election date. Caucuses for other elections shall be held at least forty-five (45) calendar days prior to the election date. In a general election year, caucuses shall be combined so that candidates for the Business Committee and elected boards, committees and commissions are nominated at the same caucus.

102.6-2. The procedures for the caucus shall be as follows:

(a) Candidates shall be nominated from the floor.

(b) Candidates present at the caucus will accept/decline their nomination at the caucus. Candidates nominated at the caucus, but not present to accept the nomination, shall be required to follow the petition process.

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(c) Nominations shall consist of the following positions: Chairperson, Vice-Chairperson, Treasurer, Secretary, Council Member and other elected positions as required by by-laws or creating documents of a board, committee, or commission.

*Section B. Petition*

102.6-3. Any eligible member of the Nation may petition to be placed on a ballot according to the following procedures:

(a) Each petitioner, not nominated at caucus, shall file a petition containing endorsee's original signatures; photocopies shall not be accepted.

(b) Petitioners shall use an official petition form as designated by this law which may be obtained in the Office of the Nation's Secretary or from the mailing for that caucus.

(c) The petition form shall consist of each endorsee's:

(1) printed name and address;

(2) date of birth;

(3) Oneida Nation Enrollment Number; and

(4) signature.

(d) Petitioners shall obtain not less than ten (10) signatures of qualified voters as defined under this law.

(e) Petitions shall be presented to the Nation's Secretary, or designated agent, during normal business hours, 8:00 to 4:30 Monday through Friday, but no later than prior to close of business five (5) business days after the caucus. The location to drop-off petitions shall be identified in the mailing identifying the caucus date.

(f) The Nation's Secretary shall forward all petitions to the Election Board Chairperson the next business day following the close of petition submissions.

(g) The Election Board shall have the Trust Enrollment Department verify all signatures contained on the petition.

102.6-4. A person who runs for a position on the Oneida Business Committee, or a position on a judicial court or commission, shall not run for more than one (1) elective office or seat per election.

**102.7. Notice of Polling Places**

102.7-1. The Election Board shall post a notice in the prominent locations, stating the location of the polling places and the time the polls will be open. This notice shall also be posted in an easily visible position, close to the entrance of the Nation's businesses/facilities.

102.7-2. Polling information shall be posted no less than ten (10) calendar days prior to the election, and shall remain posted until the poll closes on the day of the election.

102.7-3. Except for a Special Election, notice for the election shall be mailed to all Nation members, stating the time and place of the election and a sample of the ballot, no less than ten (10) calendar days prior to the election, through a mass mailing. The Trust Enrollment Department shall be notified, by the Election Board Chairperson, no less than twenty (20) calendar days prior to the requested mailing.

102.7-4. Notice of the election shall be placed in the Nation's newspaper.

**102.8. Registration of Voters***Section A. Requirements*

102.8-1. *Registration of Voters.* All enrolled members of the Nation, who are eighteen (18) years

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of age or over, are qualified voters of such election(s) as defined in Article III, Section 2 of the Oneida Nation Constitution.

*Section B. Identification of Voters*

102.8-2. All voters must present one of the following picture identifications in order to be able to vote:

- (a) Oneida Nation I.D.
- (b) Drivers License.
- (c) Other I.D. with name and photo.

*Section C. Registration Procedures*

102.8-3. Voters shall physically register, on the day of the election, at the polls.

102.8-4. Trust Enrollment Department personnel shall be responsible for verifying enrollment with the Nation. Conduct of Trust Enrollment Department personnel is governed by the Election Officials during the voting period.

102.8-5. Every person who intends to vote must sign his/her name on an official Voter Registration Form containing the voter's following information:

- (a) name and maiden name (if any);
- (b) current address;
- (c) date of birth; and
- (d) enrollment number.

*Section D. Qualification/Verification of Voter Eligibility*

102.8-6. Should a question or dispute arise as to the eligibility of a voter being qualified to vote, the Judges of the Election Officials appointed by the Election Board Chairperson shall meet with the Trust Enrollment Department personnel who are registering voters, to decide the voting member's eligibility currently being questioned and shall make such decisions from the facts available, whether the applicant is, in fact, qualified/verifiable under the Oneida Nation Constitution, Article III Section 2, to vote in the Nation's elections.

102.8-7. Any voter denied eligibility shall be allowed to vote, provided that the ballot shall be placed in an envelope, initialed by two (2) Election Officials, sealed and numbered. The name of the voter shall be written next to a numbered list which corresponds to the numbered and sealed envelope. The voter shall be required to mail a written appeal to the Election Board at P.O. Box 413, Oneida, Wisconsin, 54155, postmarked within two (2) business days of the election if they desire to challenge the decision made by the Election Officials. The Election Board shall make a final decision, within five (5) business days of receiving the appeal and shall report this decision in the final report sent to the Oneida Business Committee.

**102.9. Election Process***Section A. Polling Places and Times*

102.9-1. In accordance with Article III, Section 5 of the Oneida Nation Constitution, elections shall be held in the month of July on a date set by the General Tribal Council. The General Tribal Council shall set the election date at the January annual meeting, or at the first GTC meeting held during a given year. Special Elections shall be set in accordance with 102.12-6.

102.9-2. Elections shall be held in an Oneida Nation facility(s) as determined by the Election

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Board.

102.9-3. Voting for elections shall begin at 7:00 a.m. and shall end at 7:00 p.m. All voters in line to vote at 7:00 p.m. shall be allowed to vote.

(a) If a ballot counting machine is used, the ballot counting machine shall be prepared prior to 7:00 a.m. on the day of the election. The Judges shall open the polls only after four

(4) members of the Nation verify, through signature on the tape, the ballot box is empty and the ballot counting machine printer tape has a zero (0) total count.

102.9-4. At least one (1) Oneida Police Officer shall be present during the time the polls are open, and until the counting of ballots is completed, and tentative results posted.

102.9-5. The Election Board shall provide a voting area sufficiently isolated for each voter such that there is an area with at least two sides and a back enclosure.

102.9-6. No campaigning of any type shall be conducted within two hundred eighty (280) feet of the voting area, excluding private property.

102.9-7. No one causing a disturbance shall be allowed in the voting area.

102.9-8. Election Board members may restrict the voting area to qualified voters only. This restriction is in the interest of maintaining security of the ballots and voting process.

#### *Section B. Ballot Box*

102.9-9. All ballots being votes, shall be placed in a receptacle clearly marked "Ballot Box" and shall be locked until counting at the close of polls. Provided that, with electronic ballot counting, the ballots may be placed within the ballot counting machine as they are received.

#### *Section C. Spoiled Ballots*

102.9-10. If a voter spoils his/her ballot, he/she shall be given a new ballot.

102.9-11. The spoiled ballot shall be marked "VOID" and initialed by two (2) Election Officials and placed in an envelope marked as "Spoiled Ballots."

102.9-12. The Spoiled Ballot envelopes shall be retained and secured for no less than fifteen (15) calendar days following finalization of any challenge of the election, at the Records Management Department.

#### *Section D. Rejected Ballots*

102.9-13. Rejected Ballots are to be placed in a specially marked container and sealed.

(a) Computer rejected ballots shall be reviewed by the Election Officials to verify the authenticity of the ballot. Ballots rejected because of mutilation shall be added to the final computer total, provided that, a new ballot was not received as set out in sections 102.9-10 through 102.9-12.

(b) Ballots rejected, either during the computer process or during a manual counting, shall be reviewed by the Election Officials to verify that they are authentic. If the Election Officials determine that the ballot is not an official ballot, or that it is an illegal ballot, the ballot shall be designated 'void,' and placed in a sealed container marked "Void Ballots."

### **102.10. Tabulating and Securing Ballots**

#### *Section A. Machine Counted Ballots*

102.10-1. When ballots are counted by machine, at the close of polls the Judges shall generate from the ballot counting machine copies of the election totals from the votes cast.

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102.10-2. At least ~~six (6)~~three (3) 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(a).

*Section B. Manually Counted Ballots*

102.10-3. When ballots are manually counted, at the close of polls the Judges shall unlock the ballot box and remove the ballots.

102.10-4. If the ballots need to be counted at a location other than the polling site, the ballots shall be secured in a sealed container for transportation to the ballot counting location. The sealed ballots shall be transported by an Oneida Police Officer with at least three (3) of the Election Officials for counting/tallying of ballots.

102.10-5. The sealed ballots shall be opened at the time of counting by the Election Officials and witnessed/monitored by an Oneida Police Officer.

102.10-6. Ballots must be counted by two different Election Officials until two final tallies are equal in back to back counting. Final tallies shall be verified by the Election Judges.

*Section C. Securing Ballots*

102.10-7. The Judges shall place together all ballots counted and secure them together so that they cannot be untied or tampered with without breaking the seal. The secured ballots, and the election totals with the signed tape, if applicable, shall then be secured by the Judges in a sealed container in such a manner that the container cannot be opened without breaking the seals or locks, or destroying the container. The Oneida Police Officer shall then deliver, on the day of the election, the sealed container to the Records Management Department for retaining.

**102.11. Election Outcome and Ties**

*Section A. Election Results Announcement*

102.11-1. The tentative results of an election shall be announced and posted by the Election Board within twenty-four (24) hours after the closing of the polls. Notices of election results shall contain the following statement:

*"The election results posted here are tentative results. Final election results are forwarded by the Oneida Election Board to the Oneida Business Committee via a Final Report after time has lapsed for recount requests, or challenges or after all recounts or challenges have been completed, whichever is longer"*

102.11-2. The Election Board shall post, in the prominent locations, and publish in the Nation's newspaper, the tentative results of an election.

*Section B. Tie*

102.11-3. In the event of a tie for any office, and where the breaking of a tie is necessary to determine the outcome of an election, the Election Board shall conduct an automatic recount of the votes for each candidate receiving the same number of votes. Any recount conducted shall be the only recount allowed for the tied candidates.

102.11-4. For Business Committee positions, a run-off election between the candidates with the same number of votes shall be held if there remains a tie after the recount. Said run-off election shall be held within twenty one (21) calendar days after the recount. For all other positions, if there remains a tie after the recount, the Election Board shall decide the winner of the tied positions

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at least two (2) business days after, but no more than five (5) business days after the recount through a lot drawing, which shall be open to the public.

(a) The Election Board shall notify each of the tied candidates and the public of the date, time, and place of the drawing at least one (1) business day before the drawing. Notice to the tied candidates shall be in writing. Notice to the public shall be posted by the Election Board in the prominent locations.

(b) On the date and at the time and place the drawing was noticed, the Election Board Chairperson shall clearly write the name of each tied candidate on separate pieces of paper in front of any witnesses present. The pieces of paper shall be the same, or approximately the same, color, size, and type. The papers shall be folded in half and placed in a container selected by the Election Board Chairperson.

(c) The Election Board Chairperson shall designate an uninterested party to draw a name from the container. The candidate whose name is drawn from the container first shall be declared the winner. An Election Board member other than the Chairperson shall remove the remaining pieces of paper from the container and show them to the witnesses present.

### *Section C. Recount Procedures*

102.11-5. A candidate may request the Election Board to complete a recount, provided the margin between the requesting candidate's vote total and vote total for the unofficial winner was within two percent (2%) of the total votes for the office being sought or twenty (20) votes, whichever is greater. A candidate requests a recount by hand delivering a written request to the office of the Nation's Secretary, or noticed designated agent, within five (5) business days after the election. Requests shall be limited to one (1) request per candidate. The Nation's Secretary shall contact the Election Board Chairperson by the next business day after the request for recounts.

102.11-6. The Election Board shall respond by the close of business on the fifth (5<sup>th</sup>) day after the request regarding the results of the recount. Provided that, no recount request need be honored where there have been two (2) recounts completed as a result of a request either as a recount of the whole election results, or of that sub-section.

102.11-7. All recounts shall be conducted manually with, if possible, the original Election Officials and Oneida Police Officer present, regardless of the original type of counting process. Manual recounts may, at the discretion of the Election Officials, be of the total election results, or of the challenged sub-section of the election results.

102.11-8. The Oneida Police Officer shall be responsible for picking up the locked, sealed container with the ballots from the Records Management Department and transporting it to the ballot recounting location.

102.11-9. A recount shall be conducted by a quorum of the Election Board, including at least three (3) of the original Election Officials. The locked, sealed ballots shall be opened by the Election Board Chairperson and an Oneida Police Officer shall witness the recount.

102.11-10. Recounting of ballots may be performed manually or by computer. All ballots shall be counted until two (2) final tallies are equal in back to back counting and the total count of ballots reconciles with the total count from the ballot counting machine. Sub-sections of candidates may be recounted in lieu of a full recount.

(a) Manually counted ballots shall be recounted by the Election Board. Ballots shall be counted twice by different persons and certified by the Judges.

(b) Computer counted ballots shall be recounted twice and certified by the Judges. Prior

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to using an electronic ballot counting device, it shall be certified as correct either by the maker, lessor of the machine, or Election Board.

*Section D. Challenges and Declaration of Results*

102.11-11. *Challenges.* Any qualified voter may challenge the results of an election by filing a complaint with the Judiciary within ten (10) calendar days after the election. The Judiciary shall hear and decide a challenge to any election within two (2) business days after the challenge is filed. Any appeal to the appellate body of the Judiciary shall be filed within one (1) business day after the issuance of the lower body's decision and decided within two (2) business days after the appeal is filed.

(a) The person challenging the election results shall prove by clear and convincing evidence that the Election Law was violated or an unfair election was conducted, and that the outcome of the election would have been different but for the violation.

(b) If the Judiciary invalidates the election results, a Special Election shall be ordered by the Judiciary for the office(s) affected to be held on a date set by the Judiciary for as soon as the Election Law allows for a Special Election.

102.11-12. *The Final Report.* The Election Board shall forward a Final Report to the Nation's Secretary after time has lapsed for recount requests, or challenges or after all recounts or challenges have been completed, whichever is longer. The Final Report shall consist of the following information:

(a) Total number of persons voting.

(b) Total votes cast for each candidate by subsection of the ballot.

(c) List of any ties and final results of those ties, including the method of resolution.

(d) List of candidates elected and position elected to.

(e) Number of spoiled ballots.

(f) Cost of the election, including the compensation paid to each Election Board member.

102.11-13. *Declaration of Results.* The Business Committee shall declare the official results of the election and send notices regarding when the swearing in of newly elected officials shall take place within ten (10) business days after receipt of the Final Report.

102.11-14. Candidates elected to the Business Committee shall resign from any salaried position effective prior to taking a Business Committee oath of office

102.11-15. Except in the event of an emergency, as determined by the Business Committee, newly elected officials shall be sworn into office no later than thirty (30) calendar days after the official results of an election are declared by the Business Committee.

(a) If a newly elected official is not sworn in within thirty (30) calendar days, the seat shall be considered vacant and the Election Board shall declare the next highest vote recipient the winner. This procedure shall be repeated as necessary until a winner is declared.

(b) If all vote recipients decline or are otherwise unable to be declared the winner, then a Special Election shall be held.

102.11-16. The Election Board shall send notice to the Records Management Department to destroy the ballots thirty (30) calendar days after the election or after the final declaration of official election results occurs, whichever is longer.

**102.12. Elections**

*Section A. Primary Elections; Business Committee*



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102.12-1. When a primary is required under 102.12-2, it shall be held on a Saturday at least sixty (60) calendar days prior to the election.

102.12-2. There shall be a primary election for Business Committee positions whenever there are three (3) or more candidates for any officer positions or sixteen (16) or more candidates for the at-large council member positions.

(a) The two (2) candidates receiving the highest number of votes cast for each officer position shall be placed on the ballot.

(b) The fifteen (15) candidates receiving the highest number of votes cast for the at-large council member positions shall be placed on the ballot.

(c) Any position where a tie exists to determine the candidates to be placed on the ballot shall include all candidates where the tie exists.

102.12-3. The Election Board shall cancel the primary election if the Business Committee positions did not draw the requisite number of candidates for a primary by the petitioning deadline set for the primary.

102.12-4. In the event a candidate withdraws or is unable to run for office after being declared a winner in the primary, the Election Board shall declare the next highest primary vote recipient the primary winner. This procedure shall be repeated as necessary until the ballot is full or until there are no available candidates. If the ballot has already been printed, the procedures for notifying the Oneida public in section 102.5-11 and 102.5-12 shall be followed, including the requirement to print a notice in the Nation's newspaper if time lines allow.

### *Section B. Special Elections*

102.12-5. Matters subject to a Special Election, i.e., referendum, vacancies, petitions, etc., as defined in this law, may be placed on the same ballot as the subject matter of an election.

102.12-6. Dates of all Special Elections shall be set, as provided for in this law, by the Business Committee as recommended by the Election Board or as ordered by the Judiciary in connection with an election challenge.

102.12-7. Notice of said Special Election shall be posted by the Election Board in the prominent locations, and placed in the Nation's newspaper not less than ten (10) calendar days prior to the Special Election.

102.12-8. In the event of an emergency, the Election Board may reschedule the election, provided that no less than twenty-four (24) hours notice of the rescheduled election date is given to the voters, by posting notices in the prominent locations.

### *Section C. Referendums*

102.12-9. Registered voters may indicate opinions on any development, law or resolution, proposed, enacted, or directed by the Business Committee, or General Tribal Council, in a special referendum election.

(a) Referendum elections in which a majority of the qualified voters who cast votes shall be binding on the Business Committee to present the issue for action/decision at General Tribal Council.

(b) Referendum requests may appear on the next called for election.

(c) Referendum questions are to be presented to the Nation's Secretary, in writing, at the caucus prior to election, regarding issues directly affecting the Nation or general membership.

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*Section D. Initiation of Special Elections*

102.12-10. Special Elections may be initiated by a request or directive of the General Tribal Council or the Oneida Business Committee.

102.12-11. Special Election may be requested by a member of the Nation to the Business Committee or General Tribal Council.

102.12-12. All Special Elections shall follow rules established for all other elections. This includes positions for all Boards, Committees and Commissions.

**102.13. Oneida Nation Constitution and By-law Amendments**

102.13-1. Pursuant to Article VI of the Oneida Nation Constitution, amendments to the Oneida Nation Constitution and By-laws may be initiated by the Oneida Business Committee or a petition of qualified voters. The requirements for the Oneida Business Committee's initiation of Constitutional amendments are as provided in the Constitution and as further detailed in the supporting standard operating procedures which the Oneida Business Committee shall adopt. Qualified voters may petition to amend the Oneida Nation Constitution and By-laws by submitting a petition to the Office of the Nation's Secretary which includes the full text of the proposed amendments and signatures that are equal in number to at least ten percent (10%) of all members qualified to vote.

(a) Qualified voters may request a petition form from the Office of the Nation's Secretary.

(b) When a petition form is requested, the Nation's Secretary, or his or her designee, shall direct the Trust Enrollment Department to calculate the number of signatures currently required for a petition submittal, which shall be ten percent (10%) of all members qualified to vote on the date the petition form is requested from the Office of the Nation's Secretary. When the Nation's Secretary receives the calculation from the Trust Enrollment Department, the Nation's Secretary shall provide the requester with the petition form and the number of signatures that are currently required.

(c) Such petitions shall be circulated with all supporting materials and submitted a minimum of ninety (90) days prior to the election at which the proposed amendment is to be voted upon. If a petition includes supporting materials in addition to the petition form, each qualified voter signing the petition shall also acknowledge that the supporting materials were available for review at the time he or she signed the petition by initialing where required on the petition form.

(d) The Nation's Secretary shall forward submitted petitions to the Trust Enrollment Department for verification of signatures and to the Election Board to provide notice that the petition may need to be placed on an upcoming ballot.

(e) If the petition is verified by the Trust Enrollment Department to contain signatures from at least ten percent (10%) of all qualified voters, the Election Board shall make an official announcement of the proposed amendments to the Oneida Nation Constitution at least sixty (60) days prior to the election at which the proposed amendments are to be voted on.

102.13-2. The Election Board shall place any proposed amendments to the Oneida Nation Constitution that meet the requirements contained in 102.13-1 on the ballot at the next general election. Provided that, the Oneida Business Committee or General Tribal Council may order a special election be held to consider the proposed amendments. In such circumstances, the Election Board shall place any proposed amendments to the Oneida Nation Constitution on the ballot at the

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next special election.

102.13-3. The Election Board shall publish any proposed amendments by publishing a sample ballot no less than ten (10) calendar days prior to the election, through a mass mailing. The Trust Enrollment Department shall be notified, by the Election Board Chairperson, no less than twenty (20) calendar days prior to the requested mailing. Copies of such publications shall be prominently posted in each polling place and at administrative offices of the Nation and shall also be published in official Oneida media outlets, which the Oneida Business Committee shall identify by resolution. For the purposes of this section, Oneida administrative offices means the location where the Oneida Business Committee conducts business.

102.13-4. The Election Board shall ensure that the ballot contains a statement of the purpose of the proposed amendments prepared by the Oneida Law Office. The Oneida Law Office shall ensure that the statement of purpose is one hundred (100) words or less exclusive of caption, is a true and impartial statement and is written in such a manner that does not create prejudice for or against the proposed amendment.

102.13-5. Pursuant to Article VI, Section 3 of the Oneida Nation Constitution, proposed amendments that are approved by sixty-five percent (65%) of the qualified voters that vote on that amendment shall become part of the Constitution and By-laws, and shall abrogate or amend existing provisions of the Constitution and By-laws at the end of thirty (30) days after submission of the final election report.

102.13-6. If two (2) or more amendments approved by the voters at the same election conflict, the amendment receiving the highest affirmation vote prevails.

*End.*

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Adopted - June 19, 1993

Amended - June 28, 1995 (Adopted by BC on Behalf of GTC, Completion of Agenda)

Presented for Adoption of 1997 Revisions - GTC-7-6-98-A

Amended- October 11, 2008 (General Tribal Council Meeting)

Amended-GTC-01-04-10-A

Amended – BC-02-25-15-C

Amended – GTC-04-23-17-A

Emergency Amended – BC-03-17-20-B

Emergency Amended – BC-05-13-20-H

Emergency Amended – BC-06-24-20-B (Expired at Conclusion of 2020 General Election)

Emergency Amended – BC-04-28-21-B (Expired)

Emergency Amended – BC- - - -

## Title 1. Government and Finances - Chapter 102

### ELECTION

**Onayote'a·ká· Tho Ni· Yót Tsi' Ayethiyataláko Tsi' KayanlÁhsla**

*People of the Standing Stone how it is we will appoint them the kind of laws we have*

|                                    |  |
|------------------------------------|--|
| 102.1. Purpose and Policy          | 102.8. Registration of Voters                            |
| 102.2. Adoption, Amendment, Repeal | 102.9. Election Process                                  |
| 102.3. Definitions                 | 102.10. Tabulating and Securing Ballots                  |
| 102.4. Election Board              | 102.11. Election Outcome and Ties                        |
| 102.5. Candidate Eligibility       | 102.12. Elections  |
| 102.6. Selection of Candidates     | 102.13. Oneida Nation Constitution and By-law Amendments |
| 102.7. Notice of Polling Places    |  |

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#### **102.1. Purpose and Policy**

102.1-1. It is the policy of the Nation that this law shall govern the procedures for the conduct of orderly elections of the Nation, including pre-election activities such as caucuses and nominations. Because of the desire for orderly and easily understood elections, there has not been an allowance made for write-in candidates on ballots.

102.1-2. This law defines the duties and responsibilities of the Election Board members and other persons employed by the Oneida Nation in the conduct of elections. It is intended to govern all procedures used in the election process.

#### **102.2. Adoption, Amendment, Repeal**

102.2-1. This law was adopted by the Oneida General Tribal Council by resolution GTC 07-06-98-A, amended by resolutions GTC-01-04-10-A, BC-02-25-15-C and GTC-04-23-17-A, and emergency amended by resolution BC-\_\_-\_\_-\_\_.

102.2-2. This law may be amended or repealed by the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act. Actions of the Election Board regarding amendments to this law and policies adopted regarding implementation of this law are to be presented to the Business Committee who shall then adopt or forward action(s) to the General Tribal Council for adoption.

102.2-3. 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.

102.2-4. 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.

102.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

#### **102.3. Definitions**

102.3-1. 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.

102.3-2. "Alternate" shall mean an individual appointed by the Business Committee to serve on the Election Board during an election and until election results have been certified.

102.3-3. "Applicant" shall mean a potential candidate who has not yet been officially approved for acceptance on a ballot.

102.3-4. "Business day" shall mean Monday through Friday, 8:00 a.m. – 4:30 p.m., excluding holidays of the Nation.

102.3-5. "Campaigning" shall mean all efforts designed to influence members of the Nation to support or reject a particular candidate of the Nation including, without limitation, advertising, rallying, public speaking, or other communications with members of the Nation.

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102.3-6. "Candidate" shall mean a petitioner or nominee for an elected position whose name is placed on the ballot by the Election Board after successful application.

102.3-7. "Clerk" shall mean the election official who identifies proper registration for the purpose of determining voter eligibility.

102.3-8. "Close of business" shall mean 4:30 p.m. Monday through Friday.

102.3-9. "Conflict of Interest" shall mean any interest, whether it be personal, financial, political or otherwise, in which a Nation elected official, employee, consultant, appointed or elected, member of any board, committee or commission, or their immediate relatives, friends or associates, or any other person with whom they have contact, that conflicts with any right of the Nation to property, information, or any other right to own and operate its enterprises, free from undisclosed competition or other violation of such rights of the Oneida Nation, or as defined in any law or policy of the Nation.

102.3-10. "Election" shall mean every primary and election.

102.3-11. "General election" shall mean the election held every three (3) years in July to elect the Chairperson, Vice-Chairperson, Secretary, Treasurer, and the five Council Members of the Business Committee and may include contests for elected boards, committees and commissions positions.

102.3-12. "Judge" shall mean the election official who informs and advises the Chairperson of discrepancies, complaints and controversy regarding voter eligibility.

102.3-13. "Judiciary" means the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the Nation.

102.3-14. "Lot drawing" shall mean the equal chance method used to select a candidate as the winner of an elected position, in the case of a tie between two (2) or more candidates.

102.3-15. "Nation" means the Oneida Nation.

102.3-16. "Nation's newspaper" shall mean the Kalihwisaks, or any other newspaper operated by the Nation for the benefit of transmitting news to members of the Nation, which is designated by the Election Board as a source for election related news.

102.3-17. "Oneida Police Officer" shall mean an enrolled member of the Oneida Nation who is a police officer on any police force.

102.3-18. "Private property" shall mean any lot of land not owned by the Nation, a residential dwelling or a privately owned business within the boundaries of the Reservation.

102.3-19. "Prominent locations" shall mean the polling places, main doors of the Norbert Hill Center, main doors of the Oneida Community Library, Tsyunhehkwa Retail Store, the Oneida Community Health Center, the SEOTS building and all One-Stop locations.

102.3-20. "Qualified voter" shall mean an enrolled member of the Nation who is eighteen (18) years of age or older.

102.3-21. "Rejected Ballots" shall mean those ballots which are rejected by the vote tabulating machine.

102.3-22. "Spoiled Ballot" shall mean a ballot which contains a voter error or is otherwise marred and is not tabulated.

102.3-23. "Teller" shall mean the election official in charge of collecting and storing of all ballots.

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**102.4. Election Board**

*Section A. Establishment, Composition and Election*

102.4-1. An Election Board is hereby created for the purpose of carrying out the provisions of this law and Article III, Sections 2 and 3 of the Oneida Nation Constitution.

102.4-2. The Election Board shall consist of nine (9) elected members. All members shall be elected to terms of three (3) years, not to exceed two (2) consecutive terms.

102.4-3. *Recusal.* An Election Board member shall recuse himself/herself from participating as an Election Board member in any pre-election, election day, or post-election activities while he or she is a petitioner, applicant or candidate in any election or there is otherwise a conflict of interest.

102.4-4. *Removal.* Removal of members shall be pursuant to the Oneida Removal Law. A member who is removed from the Election Board shall be ineligible to serve on the Board for three (3) years from the time he or she is removed from the Election Board.

102.4-5. *Vacancies.* Any vacancy in an unexpired term shall be filled by appointment by the Business Committee for the balance of the unexpired term. The filling of a vacancy may be timed to correspond with the pre-election activities and the needs of the Election Board.

102.4-6. The Election Board shall identify tellers, judges and clerks in advance of an election.

102.4-7 The Business Committee may appoint or reappoint a sufficient number of alternates to the Election Board, as recommended by the Election Board, to assist with election day and pre-election activities.

102.4-8. The Election Board shall choose a Chairperson from amongst themselves as set out in the By-laws of the Election Board, to preside over the meetings. This selection shall be carried out at the first meeting of the Election Board following an election. The Chairperson shall then ask the Election Board to select a Vice-Chairperson and Secretary.

*Section B. Duties of the Election Board*

102.4-9. The Election Board shall have the following duties, along with other responsibilities listed throughout this law.

- (a) The Election Board shall be in charge of all registration and election procedures; and
- (b) Upon completion of an election, the Election Board shall make a final report on the election results as set out in this law.

*Section C. Specific Duties of Officers and Election Board Members*

102.4-10. Specific duties of the Chairperson and other Election Board members, in addition to being present at all Election Board meetings and assisting the handicapped through the voting process, are as set out herein:

(a) Chairperson: Shall preside over meetings of the Election Board; shall select the hearing body for applicants found to be ineligible in accordance with 102.5-6 in the event of an appeal; shall oversee the conduct of the election; shall dismiss the alternates and Trust Enrollment Department personnel when their election day duties are complete; and shall post and report election results.

(b) Vice-Chairperson: Shall preside over all meetings in the absence of the Chairperson.

(c) Secretary: Shall keep a record of the meetings and make them available to the Nation's Secretary, other Election Board members and the public as required in the Open Records and Open Meetings Law.

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(d) Clerks: Shall implement the requirements of identifying and registering all voters and determining voter eligibility. Clerks shall work in conjunction with the Trust Enrollment Department personnel in the registration process, and assist the Chairperson as directed in conducting the election. Clerks cannot be currently employed by the Trust Enrollment Department.

(e) Tellers: Shall collect and keep safe all ballots, until the election is complete, as determined by this law. Shall assist the Chairperson in conducting the election.

(f) Judges: Shall inform and advise the Chairperson of all aspects of the election conducted under this law. In case of disputes among Election Board members, or between members of the Nation and Election Board members, or any controversy regarding voter eligibility, the Judge(s) shall assist the Chairperson in making a determination. The Judge(s) shall also ensure that all ballots of voters whose eligibility may be in question, remain confidential.

*Section D. Compensation Rates*

102.4-11. Election Board members are to be compensated at an hourly rate when conducting elections as provided for in the Election Board's bylaws as approved by the Business Committee. The Election Board shall have a budget, approved through the Nation's budgeting process.

102.4-12. The Trust Enrollment Department personnel and Oneida Police Officer(s) shall be compensated at their regular rate of pay out of their respective budgets.

**102.5. Candidate Eligibility**

*Section A. Requirements*

102.5-1. In addition to any specific requirements and/or exceptions set out in duly adopted by-laws or other documents, all applicants shall meet the minimum requirements set out in this section in order to become a candidate.

102.5-2. Minimum Requirements. In order to be eligible to be a candidate, applicants shall:

- (a) be an enrolled member of the Nation, as verified by membership rolls of the Nation.
- (b) be a qualified voter on the day of the election.
- (c) provide proof of physical residency as required for the position for which they have been nominated or for which they have petitioned. Proof of residency may be through one (1) or more of the following:

- (1) a valid Wisconsin driver's license;

- (2) a bill or pay check stub showing name and physical address of the candidate from the prior or current month;

- (3) another form of proof that identifies the candidate and that the candidate has physically resided at the address and identifies that address as the primary residence.

102.5-3. No applicant may have a conflict of interest with the position for which they are being considered, provided that any conflict of interest which may be eliminated within thirty (30) calendar days of being elected shall not be considered as a bar to nomination or election.

102.5-4. Applications and petitions where the applicant was not nominated during caucus shall be filed by presenting the information to the Nation's Secretary, or designated agent, during normal business hours, 8:00 to 4:30 Monday through Friday, within five (5) business days after the caucus.

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No mailed, internal Nation mail delivery, faxed or other delivery method shall be accepted.

102.5-5. The names of the candidates and the positions sought shall be a public record and made available to the public upon the determination of eligibility by the Election Board or the Board's designated agent.

*Section B. Eligibility Review*

102.5-6. Applicants found to be ineligible shall have two (2) business days to request an appeal. At least four (4) Election Board members shall constitute a hearing body. The Chairperson shall select the hearing body. The hearing shall be held within two (2) business days of receipt of the appeal. The applicant shall be notified by phone of time and place of the hearing. The decision of the hearing body shall be sent via certified mail or hand delivery within two (2) business days of the hearing. Any appeal from a decision of the Election Board hearing body shall be to the Judiciary on an accelerated schedule.

102.5-7. The Election Board shall be responsible for reviewing the qualifications of applicants to verify eligibility. Any applicant found to be ineligible for a nominated or petitioned for position shall be notified by certified mail return receipt requested. The notice shall provide the following information:

- (a) Position for which they were considered
- (b) Qualification of the position and citation of the source. (Copies of source may be attached.)
- (c) A brief summary explaining why the applicant was found to be ineligible.
- (d) That the applicant has two (2) business days from notification to make an appeal. Appeals must be filed at the location designated on the notice by hand delivery. The location designated shall be on the Reservation. No mailed, internal Nation mail, faxed or other delivery method will be accepted.

*Section C. Campaign Financing*

102.5-8. Contributions:

- (a) Solicitation of Contributions by Candidates.
  - (1) Candidates shall only accept contributions from individuals who are members of the Nation or individuals related by blood or marriage to the candidate. Candidates may not accept contributions from any business, whether sole proprietorship, partnership, corporation, or other business entity.
  - (2) Candidates shall not solicit or accept contributions in any office or business/facility of the Nation.
- (b) Fines. Violation of the contribution restrictions shall result in a fine imposed by the Election Board in an amount specified in a resolution adopted by the Business Committee.

102.5-9. Campaign Signs and Campaigning:

- (a) Placement of campaign signs:
  - (1) Campaign signs shall not be posted or erected on any property of the Nation except for private property with the owner/tenant's permission.
  - (2) No campaign sign shall exceed sixteen (16) square feet in area. A maximum of seven (7) such signs may be placed on a building or on a lot.
  - (3) No campaign sign shall project beyond the property line into the public right



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of way.

(b) Removal of campaign signs. All campaign signs shall be removed within five (5) business days after an election.

(c) Employees of the Nation shall not engage in campaigning for offices of the Nation during work hours. The Nation's employees shall be subject to disciplinary action under the personnel policies and procedures for political campaigning during work hours.

(d) Enforcement. The Zoning Administrator shall cause to be removed any campaign signs that are not in compliance with this law, in accordance with the Zoning and Shoreland Protection Law.

(e) Fines. Violation of the campaign sign restrictions shall result in a fine imposed by the Election Board in an amount specified in a resolution adopted by the Business Committee.

#### *Section D. Candidate Withdrawal*

102.5-10 Any candidate may withdraw his or her name from a ballot if submitted in writing by the candidate prior to submission of the ballot for printing to any Election Board member, excluding alternates.

102.5-11 After printing of the ballot, any candidate may withdraw his or her name from the election by submitting in writing a statement indicating they are withdrawing from the election prior to the opening of the polls to any Election Board member, excluding alternates. This statement shall be posted alongside any sample ballot printed prior to the election in the newspaper or any posting at the polling places.

102.5-12. Candidates withdrawing after opening of the polls shall request, in writing to the Election Board members in charge of the polling place, to be removed from the ballot. The written statement shall be posted next to any posted sample ballot.

102.5-13. Candidates withdrawing by any method listed herein shall be denied any position from which they have withdrawn regardless of the number of votes cast for that candidate. A written statement shall be considered the only necessary evidence of withdrawal and acceptance of denial of any position withdrawn from.

#### *102.5-14. Candidate Withdrawal After Winning an Election.*

(a) In the event a candidate declines an office after winning an election, the Election Board shall declare the next highest vote recipient the winner. This procedure shall be repeated as necessary until a winner is declared.

(b) If all vote recipients decline or are otherwise unable to be declared the winner, then a Special Election shall be held.

## **2.6. Selection of Candidates**

### *Section A. Setting of Caucus*

102.6-1. The Election Board shall be responsible for calling a caucus before any election is held. The caucus for the general election shall be held at least ninety (90) calendar days prior to the election date. Caucuses for other elections shall be held at least forty-five (45) calendar days prior to the election date. In a general election year, caucuses shall be combined so that candidates for the Business Committee and elected boards, committees and commissions are nominated at the same caucus.

102.6-2. The procedures for the caucus shall be as follows:

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- (a) Candidates shall be nominated from the floor.
- (b) Candidates present at the caucus will accept/decline their nomination at the caucus. Candidates nominated at the caucus, but not present to accept the nomination, shall be required to follow the petition process.
- (c) Nominations shall consist of the following positions: Chairperson, Vice-Chairperson, Treasurer, Secretary, Council Member and other elected positions as required by by-laws or creating documents of a board, committee, or commission.

*Section B. Petition*

102.6-3. Any eligible member of the Nation may petition to be placed on a ballot according to the following procedures:

- (a) Each petitioner, not nominated at caucus, shall file a petition containing endorsee's original signatures; photocopies shall not be accepted.
- (b) Petitioners shall use an official petition form as designated by this law which may be obtained in the Office of the Nation's Secretary or from the mailing for that caucus.
- (c) The petition form shall consist of each endorsee's:
  - (1) printed name and address;
  - (2) date of birth;
  - (3) Oneida Nation Enrollment Number; and
  - (4) signature.
- (d) Petitioners shall obtain not less than ten (10) signatures of qualified voters as defined under this law.
- (e) Petitions shall be presented to the Nation's Secretary, or designated agent, during normal business hours, 8:00 to 4:30 Monday through Friday, but no later than prior to close of business five (5) business days after the caucus. The location to drop-off petitions shall be identified in the mailing identifying the caucus date.
- (f) The Nation's Secretary shall forward all petitions to the Election Board Chairperson the next business day following the close of petition submissions.
- (g) The Election Board shall have the Trust Enrollment Department verify all signatures contained on the petition.

102.6-4. A person who runs for a position on the Oneida Business Committee, or a position on a judicial court or commission, shall not run for more than one (1) elective office or seat per election.

**102.7. Notice of Polling Places**

102.7-1. The Election Board shall post a notice in the prominent locations, stating the location of the polling places and the time the polls will be open. This notice shall also be posted in an easily visible position, close to the entrance of the Nation's businesses/facilities.

102.7-2. Polling information shall be posted no less than ten (10) calendar days prior to the election, and shall remain posted until the poll closes on the day of the election.

102.7-3. Except for a Special Election, notice for the election shall be mailed to all Nation members, stating the time and place of the election and a sample of the ballot, no less than ten (10) calendar days prior to the election, through a mass mailing. The Trust Enrollment Department shall be notified, by the Election Board Chairperson, no less than twenty (20) calendar days prior to the requested mailing.

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102.7-4. Notice of the election shall be placed in the Nation's newspaper.

**102.8. Registration of Voters**

*Section A. Requirements*

102.8-1. *Registration of Voters.* All enrolled members of the Nation, who are eighteen (18) years of age or over, are qualified voters of such election(s) as defined in Article III, Section 2 of the Oneida Nation Constitution.

*Section B. Identification of Voters*

102.8-2. All voters must present one of the following picture identifications in order to be able to vote:

- (a) Oneida Nation I.D.
- (b) Drivers License.
- (c) Other I.D. with name and photo.

*Section C. Registration Procedures*

102.8-3. Voters shall physically register, on the day of the election, at the polls.

102.8-4. Trust Enrollment Department personnel shall be responsible for verifying enrollment with the Nation. Conduct of Trust Enrollment Department personnel is governed by the Election Officials during the voting period.

102.8-5. Every person who intends to vote must sign his/her name on an official Voter Registration Form containing the voter's following information:

- (a) name and maiden name (if any);
- (b) current address;
- (c) date of birth; and
- (d) enrollment number.

*Section D. Qualification/Verification of Voter Eligibility*

102.8-6. Should a question or dispute arise as to the eligibility of a voter being qualified to vote, the Judges of the Election Officials appointed by the Election Board Chairperson shall meet with the Trust Enrollment Department personnel who are registering voters, to decide the voting member's eligibility currently being questioned and shall make such decisions from the facts available, whether the applicant is, in fact, qualified/verifiable under the Oneida Nation Constitution, Article III Section 2, to vote in the Nation's elections.

102.8-7. Any voter denied eligibility shall be allowed to vote, provided that the ballot shall be placed in an envelope, initialed by two (2) Election Officials, sealed and numbered. The name of the voter shall be written next to a numbered list which corresponds to the numbered and sealed envelope. The voter shall be required to mail a written appeal to the Election Board at P.O. Box 413, Oneida, Wisconsin, 54155, postmarked within two (2) business days of the election if they desire to challenge the decision made by the Election Officials. The Election Board shall make a final decision, within five (5) business days of receiving the appeal and shall report this decision in the final report sent to the Oneida Business Committee.

**102.9. Election Process**

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*Section A. Polling Places and Times*

102.9-1. In accordance with Article III, Section 5 of the Oneida Nation Constitution, elections shall be held in the month of July on a date set by the General Tribal Council. The General Tribal Council shall set the election date at the January annual meeting, or at the first GTC meeting held during a given year. Special Elections shall be set in accordance with 102.12-6.

102.9-2. Elections shall be held in an Oneida Nation facility(s) as determined by the Election Board.

102.9-3. Voting for elections shall begin at 7:00 a.m. and shall end at 7:00 p.m. All voters in line to vote at 7:00 p.m. shall be allowed to vote.

(a) If a ballot counting machine is used, the ballot counting machine shall be prepared prior to 7:00 a.m. on the day of the election. The Judges shall open the polls only after four

(4) members of the Nation verify, through signature on the tape, the ballot box is empty and the ballot counting machine printer tape has a zero (0) total count.

102.9-4. At least one (1) Oneida Police Officer shall be present during the time the polls are open, and until the counting of ballots is completed, and tentative results posted.

102.9-5. The Election Board shall provide a voting area sufficiently isolated for each voter such that there is an area with at least two sides and a back enclosure.

102.9-6. No campaigning of any type shall be conducted within two hundred eighty (280) feet of the voting area, excluding private property.

102.9-7. No one causing a disturbance shall be allowed in the voting area.

102.9-8. Election Board members may restrict the voting area to qualified voters only. This restriction is in the interest of maintaining security of the ballots and voting process.

*Section B. Ballot Box*

102.9-9. All ballots being votes, shall be placed in a receptacle clearly marked "Ballot Box" and shall be locked until counting at the close of polls. Provided that, with electronic ballot counting, the ballots may be placed within the ballot counting machine as they are received.

*Section C. Spoiled Ballots*

102.9-10. If a voter spoils his/her ballot, he/she shall be given a new ballot.

102.9-11. The spoiled ballot shall be marked "VOID" and initialed by two (2) Election Officials and placed in an envelope marked as "Spoiled Ballots."

102.9-12. The Spoiled Ballot envelopes shall be retained and secured for no less than fifteen (15) calendar days following finalization of any challenge of the election, at the Records Management Department.

*Section D. Rejected Ballots*

102.9-13. Rejected Ballots are to be placed in a specially marked container and sealed.

(a) Computer rejected ballots shall be reviewed by the Election Officials to verify the authenticity of the ballot. Ballots rejected because of mutilation shall be added to the final computer total, provided that, a new ballot was not received as set out in sections 102.9-10 through 102.9-12.

(b) Ballots rejected, either during the computer process or during a manual counting, shall be reviewed by the Election Officials to verify that they are authentic. If the Election

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Officials determine that the ballot is not an official ballot, or that it is an illegal ballot, the ballot shall be designated ‘void,’ and placed in a sealed container marked “Void Ballots.”

## **102.10. Tabulating and Securing Ballots**

### *Section A. Machine Counted Ballots*

102.10-1. When ballots are counted by machine, at the close of polls the Judges shall generate from the ballot counting machine copies of the election totals from the votes cast.

102.10-2. At least three (3) 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(a).

### *Section B. Manually Counted Ballots*

102.10-3. When ballots are manually counted, at the close of polls the Judges shall unlock the ballot box and remove the ballots.

102.10-4. If the ballots need to be counted at a location other than the polling site, the ballots shall be secured in a sealed container for transportation to the ballot counting location. The sealed ballots shall be transported by an Oneida Police Officer with at least three (3) of the Election Officials for counting/tallying of ballots.

102.10-5. The sealed ballots shall be opened at the time of counting by the Election Officials and witnessed/monitored by an Oneida Police Officer.

102.10-6. Ballots must be counted by two different Election Officials until two final tallies are equal in back to back counting. Final tallies shall be verified by the Election Judges.

### *Section C. Securing Ballots*

102.10-7. The Judges shall place together all ballots counted and secure them together so that they cannot be untied or tampered with without breaking the seal. The secured ballots, and the election totals with the signed tape, if applicable, shall then be secured by the Judges in a sealed container in such a manner that the container cannot be opened without breaking the seals or locks, or destroying the container. The Oneida Police Officer shall then deliver, on the day of the election, the sealed container to the Records Management Department for retaining.

## **102.11. Election Outcome and Ties**

### *Section A. Election Results Announcement*

102.11-1. The tentative results of an election shall be announced and posted by the Election Board within twenty-four (24) hours after the closing of the polls. Notices of election results shall contain the following statement:

*"The election results posted here are tentative results. Final election results are forwarded by the Oneida Election Board to the Oneida Business Committee via a Final Report after time has lapsed for recount requests, or challenges or after all recounts or challenges have been completed, whichever is longer"*

102.11-2. The Election Board shall post, in the prominent locations, and publish in the Nation’s newspaper, the tentative results of an election.

### *Section B. Tie*

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102.11-3. In the event of a tie for any office, and where the breaking of a tie is necessary to determine the outcome of an election, the Election Board shall conduct an automatic recount of the votes for each candidate receiving the same number of votes. Any recount conducted shall be the only recount allowed for the tied candidates.

102.11-4. For Business Committee positions, a run-off election between the candidates with the same number of votes shall be held if there remains a tie after the recount. Said run-off election shall be held within twenty one (21) calendar days after the recount. For all other positions, if there remains a tie after the recount, the Election Board shall decide the winner of the tied positions at least two (2) business days after, but no more than five (5) business days after the recount through a lot drawing, which shall be open to the public.

(a) The Election Board shall notify each of the tied candidates and the public of the date, time, and place of the drawing at least one (1) business day before the drawing. Notice to the tied candidates shall be in writing. Notice to the public shall be posted by the Election Board in the prominent locations.

(b) On the date and at the time and place the drawing was noticed, the Election Board Chairperson shall clearly write the name of each tied candidate on separate pieces of paper in front of any witnesses present. The pieces of paper shall be the same, or approximately the same, color, size, and type. The papers shall be folded in half and placed in a container selected by the Election Board Chairperson.

(c) The Election Board Chairperson shall designate an uninterested party to draw a name from the container. The candidate whose name is drawn from the container first shall be declared the winner. An Election Board member other than the Chairperson shall remove the remaining pieces of paper from the container and show them to the witnesses present.

*Section C. Recount Procedures*

102.11-5. A candidate may request the Election Board to complete a recount, provided the margin between the requesting candidate's vote total and vote total for the unofficial winner was within two percent (2%) of the total votes for the office being sought or twenty (20) votes, whichever is greater. A candidate requests a recount by hand delivering a written request to the office of the Nation's Secretary, or noticed designated agent, within five (5) business days after the election. Requests shall be limited to one (1) request per candidate. The Nation's Secretary shall contact the Election Board Chairperson by the next business day after the request for recounts.

102.11-6. The Election Board shall respond by the close of business on the fifth (5<sup>th</sup>) day after the request regarding the results of the recount. Provided that, no recount request need be honored where there have been two (2) recounts completed as a result of a request either as a recount of the whole election results, or of that sub-section.

102.11-7. All recounts shall be conducted manually with, if possible, the original Election Officials and Oneida Police Officer present, regardless of the original type of counting process. Manual recounts may, at the discretion of the Election Officials, be of the total election results, or of the challenged sub-section of the election results.

102.11-8. The Oneida Police Officer shall be responsible for picking up the locked, sealed container with the ballots from the Records Management Department and transporting it to the ballot recounting location.

102.11-9. A recount shall be conducted by a quorum of the Election Board, including at least three

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(3) of the original Election Officials. The locked, sealed ballots shall be opened by the Election Board Chairperson and an Oneida Police Officer shall witness the recount.

102.11-10. Recounting of ballots may be performed manually or by computer. All ballots shall be counted until two (2) final tallies are equal in back to back counting and the total count of ballots reconciles with the total count from the ballot counting machine. Sub-sections of candidates may be recounted in lieu of a full recount.

(a) Manually counted ballots shall be recounted by the Election Board. Ballots shall be counted twice by different persons and certified by the Judges.

(b) Computer counted ballots shall be recounted twice and certified by the Judges. Prior to using an electronic ballot counting device, it shall be certified as correct either by the maker, lessor of the machine, or Election Board.

*Section D. Challenges and Declaration of Results*

102.11-11. *Challenges.* Any qualified voter may challenge the results of an election by filing a complaint with the Judiciary within ten (10) calendar days after the election. The Judiciary shall hear and decide a challenge to any election within two (2) business days after the challenge is filed. Any appeal to the appellate body of the Judiciary shall be filed within one (1) business day after the issuance of the lower body's decision and decided within two (2) business days after the appeal is filed.

(a) The person challenging the election results shall prove by clear and convincing evidence that the Election Law was violated or an unfair election was conducted, and that the outcome of the election would have been different but for the violation.

(b) If the Judiciary invalidates the election results, a Special Election shall be ordered by the Judiciary for the office(s) affected to be held on a date set by the Judiciary for as soon as the Election Law allows for a Special Election.

102.11-12. *The Final Report.* The Election Board shall forward a Final Report to the Nation's Secretary after time has lapsed for recount requests, or challenges or after all recounts or challenges have been completed, whichever is longer. The Final Report shall consist of the following information:

(a) Total number of persons voting.

(b) Total votes cast for each candidate by subsection of the ballot.

(c) List of any ties and final results of those ties, including the method of resolution.

(d) List of candidates elected and position elected to.

(e) Number of spoiled ballots.

(f) Cost of the election, including the compensation paid to each Election Board member.

102.11-13. *Declaration of Results.* The Business Committee shall declare the official results of the election and send notices regarding when the swearing in of newly elected officials shall take place within ten (10) business days after receipt of the Final Report.

102.11-14. Candidates elected to the Business Committee shall resign from any salaried position effective prior to taking a Business Committee oath of office

102.11-15. Except in the event of an emergency, as determined by the Business Committee, newly elected officials shall be sworn into office no later than thirty (30) calendar days after the official results of an election are declared by the Business Committee.

(a) If a newly elected official is not sworn in within thirty (30) calendar days, the seat shall

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be considered vacant and the Election Board shall declare the next highest vote recipient the winner. This procedure shall be repeated as necessary until a winner is declared.

(b) If all vote recipients decline or are otherwise unable to be declared the winner, then a Special Election shall be held.

102.11-16. The Election Board shall send notice to the Records Management Department to destroy the ballots thirty (30) calendar days after the election or after the final declaration of official election results occurs, whichever is longer.

## **102.12. Elections**

### *Section A. Primary Elections; Business Committee*

102.12-1. When a primary is required under 102.12-2, it shall be held on a Saturday at least sixty (60) calendar days prior to the election.

102.12-2. There shall be a primary election for Business Committee positions whenever there are three (3) or more candidates for any officer positions or sixteen (16) or more candidates for the at-large council member positions.

(a) The two (2) candidates receiving the highest number of votes cast for each officer position shall be placed on the ballot.

(b) The fifteen (15) candidates receiving the highest number of votes cast for the at-large council member positions shall be placed on the ballot.

(c) Any position where a tie exists to determine the candidates to be placed on the ballot shall include all candidates where the tie exists.

102.12-3. The Election Board shall cancel the primary election if the Business Committee positions did not draw the requisite number of candidates for a primary by the petitioning deadline set for the primary.

102.12-4. In the event a candidate withdraws or is unable to run for office after being declared a winner in the primary, the Election Board shall declare the next highest primary vote recipient the primary winner. This procedure shall be repeated as necessary until the ballot is full or until there are no available candidates. If the ballot has already been printed, the procedures for notifying the Oneida public in section 102.5-11 and 102.5-12 shall be followed, including the requirement to print a notice in the Nation's newspaper if time lines allow.

### *Section B. Special Elections*

102.12-5. Matters subject to a Special Election, i.e., referendum, vacancies, petitions, etc., as defined in this law, may be placed on the same ballot as the subject matter of an election.

102.12-6. Dates of all Special Elections shall be set, as provided for in this law, by the Business Committee as recommended by the Election Board or as ordered by the Judiciary in connection with an election challenge.

102.12-7. Notice of said Special Election shall be posted by the Election Board in the prominent locations, and placed in the Nation's newspaper not less than ten (10) calendar days prior to the Special Election.

102.12-8. In the event of an emergency, the Election Board may reschedule the election, provided that no less than twenty-four (24) hours notice of the rescheduled election date is given to the voters, by posting notices in the prominent locations.



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*Section C. Referendums*

102.12-9. Registered voters may indicate opinions on any development, law or resolution, proposed, enacted, or directed by the Business Committee, or General Tribal Council, in a special referendum election.

(a) Referendum elections in which a majority of the qualified voters who cast votes shall be binding on the Business Committee to present the issue for action/decision at General Tribal Council.

(b) Referendum requests may appear on the next called for election.

(c) Referendum questions are to be presented to the Nation's Secretary, in writing, at the caucus prior to election, regarding issues directly affecting the Nation or general membership.

*Section D. Initiation of Special Elections*

102.12-10. Special Elections may be initiated by a request or directive of the General Tribal Council or the Oneida Business Committee.

102.12-11. Special Election may be requested by a member of the Nation to the Business Committee or General Tribal Council.

102.12-12. All Special Elections shall follow rules established for all other elections. This includes positions for all Boards, Committees and Commissions.

**102.13. Oneida Nation Constitution and By-law Amendments**

102.13-1. Pursuant to Article VI of the Oneida Nation Constitution, amendments to the Oneida Nation Constitution and By-laws may be initiated by the Oneida Business Committee or a petition of qualified voters. The requirements for the Oneida Business Committee's initiation of Constitutional amendments are as provided in the Constitution and as further detailed in the supporting standard operating procedures which the Oneida Business Committee shall adopt. Qualified voters may petition to amend the Oneida Nation Constitution and By-laws by submitting a petition to the Office of the Nation's Secretary which includes the full text of the proposed amendments and signatures that are equal in number to at least ten percent (10%) of all members qualified to vote.

(a) Qualified voters may request a petition form from the Office of the Nation's Secretary.

(b) When a petition form is requested, the Nation's Secretary, or his or her designee, shall direct the Trust Enrollment Department to calculate the number of signatures currently required for a petition submittal, which shall be ten percent (10%) of all members qualified to vote on the date the petition form is requested from the Office of the Nation's Secretary. When the Nation's Secretary receives the calculation from the Trust Enrollment Department, the Nation's Secretary shall provide the requester with the petition form and the number of signatures that are currently required.

(c) Such petitions shall be circulated with all supporting materials and submitted a minimum of ninety (90) days prior to the election at which the proposed amendment is to be voted upon. If a petition includes supporting materials in addition to the petition form, each qualified voter signing the petition shall also acknowledge that the supporting materials were available for review at the time he or she signed the petition by initialing where required on the petition form.

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(d) The Nation's Secretary shall forward submitted petitions to the Trust Enrollment Department for verification of signatures and to the Election Board to provide notice that the petition may need to be placed on an upcoming ballot.

(e) If the petition is verified by the Trust Enrollment Department to contain signatures from at least ten percent (10%) of all qualified voters, the Election Board shall make an official announcement of the proposed amendments to the Oneida Nation Constitution at least sixty

(60) days prior to the election at which the proposed amendments are to be voted on.

102.13-2. The Election Board shall place any proposed amendments to the Oneida Nation Constitution that meet the requirements contained in 102.13-1 on the ballot at the next general election. Provided that, the Oneida Business Committee or General Tribal Council may order a special election be held to consider the proposed amendments. In such circumstances, the Election Board shall place any proposed amendments to the Oneida Nation Constitution on the ballot at the next special election.

102.13-3. The Election Board shall publish any proposed amendments by publishing a sample ballot no less than ten (10) calendar days prior to the election, through a mass mailing. The Trust Enrollment Department shall be notified, by the Election Board Chairperson, no less than twenty (20) calendar days prior to the requested mailing. Copies of such publications shall be prominently posted in each polling place and at administrative offices of the Nation and shall also be published in official Oneida media outlets, which the Oneida Business Committee shall identify by resolution. For the purposes of this section, Oneida administrative offices means the location where the Oneida Business Committee conducts business.

102.13-4. The Election Board shall ensure that the ballot contains a statement of the purpose of the proposed amendments prepared by the Oneida Law Office. The Oneida Law Office shall ensure that the statement of purpose is one hundred (100) words or less exclusive of caption, is a true and impartial statement and is written in such a manner that does not create prejudice for or against the proposed amendment.

102.13-5. Pursuant to Article VI, Section 3 of the Oneida Nation Constitution, proposed amendments that are approved by sixty-five percent (65%) of the qualified voters that vote on that amendment shall become part of the Constitution and By-laws, and shall abrogate or amend existing provisions of the Constitution and By-laws at the end of thirty (30) days after submission of the final election report.

102.13-6. If two (2) or more amendments approved by the voters at the same election conflict, the amendment receiving the highest affirmation vote prevails.

*End.*

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Adopted - June 19, 1993

Amended - June 28, 1995 (Adopted by BC on Behalf of GTC, Completion of Agenda)

Presented for Adoption of 1997 Revisions - GTC-7-6-98-A

Amended- October 11, 2008 (General Tribal Council Meeting)

Amended-GTC-01-04-10-A

Amended – BC-02-25-15-C

Amended – GTC-04-23-17-A

Emergency Amended – BC-03-17-20-B

Emergency Amended – BC-05-13-20-H

Emergency Amended – BC-06-24-20-B (Expired at Conclusion of 2020 General Election)

Draft 1 for Emergency OBC Consideration (Redline to Current)  
2022 07 13

657 Emergency Amended – BC-04-28-21-B (Expired)  
658 Emergency Amended – BC-\_\_-\_\_-\_\_-\_\_

# 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 |
| 10        | 11 | 12 | 13 | 14 | 15 | 16 | 14          | 15 | 16 | 17 | 18 | 19 | 20 |
| 17        | 18 | 19 | 20 | 21 | 22 | 23 | 21          | 22 | 23 | 24 | 25 | 26 | 27 |
| 24        | 25 | 26 | 27 | 28 | 29 | 30 | 28          | 29 | 30 | 31 |    |    |    |
| 31        |    |    |    |    |    |    |             |    |    |    |    |    |    |

| SUNDAY | MONDAY   | TUESDAY  | WEDNESDAY  | THURSDAY  | FRIDAY  | SATURDAY |
|--------|--|--|--|---|---|----------|
| Jun 26 | 27   | 28   | 29   | 30  | Jul 1<br>9:00am Elder Assistance Program Law & Oneida Nation Assistance Fund Law    | 2        |
| 3      | 4<br>8:00am Holiday - Independence Day   | 5  | 6<br>8:30am LOC Prep (BC_Conf_Room) - Clorissa<br>9:00am LOC Meeting<br>1:30pm Oneida Nation Law | 7   | 8   | 9        |
| 10     | 11   | 12<br>9:00am LRO Staff Meeting (Legislative Reference Office) - Clorissa N. Santiago | 13   | 14<br>10:00am LOC Work Session (Microsoft Teams Meeting) - Clorissa N. Santiago | 15<br>10:00am Real Property & Eviction Law Work Meeting (Microsoft Teams Meeting) - | 16       |
| 17     | 18<br>9:00am LRO Staff Meeting (Legislative Reference Office) - Clorissa N. Santiago | 19   | 20<br>8:30am LOC Prep (BC_Conf_Room) - Clorissa N. Santiago<br>9:00am LOC Meeting (BC_Conf_Roo   | 21  | 22  | 23       |
| 24     | 25<br>9:00am LRO Staff Meeting (Legislative Reference Office) - Clorissa N. Santiago | 26   | 27   | 28<br>9:30am LOC Work Session (Microsoft Teams Meeting) - Clorissa N. Santiago  | 29  | 30       |
| 31     | Aug 1  | 2  | 3  | 4   | 5   | 6        |