



LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA
Business Committee Conference Room - 2nd Floor Norbert Hill Center
September 7, 2022
9:00 a.m.

In accordance with the Norbert Hill Center's policy for administrative offices, and Brown County's current HIGH COVID-19 Community Levels, the September 7, 2022, Legislative Operating Committee meeting will be held virtually on Microsoft Teams.

I. Call to Order and Approval of the Agenda

II. Minutes to be Approved

1. August 3, 2022 LOC Meeting Minutes (pg. 2)

III. Current Business

1. Children's Code Amendments (pg. 4)
2. Emergency Management Law Emergency Amendments (pg. 128)

IV. New Submissions

1. Oneida Life Insurance Plan Plus (OLIPP) Law (pg. 162)
2. Trust Scholarship Fund Policy Amendments (pg. 168)
3. Drug and Alcohol Free Workplace Law Amendments (pg. 174)

V. Additions

VI. Administrative Updates

1. Travel Report: State Bar of Wisconsin Indian Law Conference – Carolyn Salutz (pg. 188)
2. Travel Report: State Bar of Wisconsin Indian Law Conference – Grace Elliott (pg. 192)

VII. Executive Session

VIII. Recess/Adjourn



LEGISLATIVE OPERATING COMMITTEE MEETING MINUTES
Oneida Business Committee Conference Room-2nd Floor Norbert Hill Center
August 3, 2022
9:00 a.m.

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

Excused: Jennifer Webster

Others Present: Clorissa N. Santiago, Grace Elliot, Carolyn Salutz, Brooke Doxtator, Lawrence Barton, Justin Nishimoto (Microsoft Teams), Joy Salzwedel (Microsoft Teams), Rhiannon Metoxen (Microsoft Teams), Rae Skenandore (Microsoft Teams), Kaylynn Gresham (Microsoft Teams), Barbara Webster (Microsoft Teams), Michelle Myers (Microsoft Teams), Kristal Hill (Microsoft Teams),

I. Call to Order and Approval of the Agenda

David P. Jordan called the August 3, 2022, Legislative Operating Committee meeting to order at 9:00 a.m.

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

II. Minutes to be Approved

1. July 20, 2022 LOC Meeting Minutes

Motion by Marie Summers to approve the July 20, 2022, LOC meeting minutes and forward to the Business Committee for consideration; seconded by Kirby Metoxen. Motion carried unanimously.

III. Current Business

1. Oneida Nation Assistance Fund Law

Motion by Marie Summers to approve the public meeting packet, with updated public meeting notice, and forward the Oneida Nation Assistance Fund law to a public meeting to be held on September 2, 2022; seconded by Kirby Metoxen. Motion carried unanimously.

IV. New Submissions

V. Additions



VI. Administrative Items

1. Legislative Operating Committee LOC FY22 Third Quarter Report

Motion by Marie Summers to approve the LOC FY22 Third Quarter Report and forward to the Oneida Business Committee; seconded by Kirby Metoxen. Motion carried unanimously.

2. E-Poll Results: Emergency Amendments to the Oneida General Tribal Council Ten Day Notice Policy

Motion by Marie Summers to Enter into the record the results of the July 25, 2022, failed e-poll entitled, Emergency Amendments to the Oneida General Tribal Council Ten Day Notice Policy; seconded by Kirby Metoxen. Motion carried unanimously.

VII. Executive Session

VIII. Adjourn

Motion by Marie Summers to adjourn at 9:11 a.m.; seconded by Kirby Metoxen. Motion carried unanimously.



Legislative Operating Committee September 7, 2022

Children’s Code Amendments

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

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

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

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

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

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

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

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

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

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.

7/20/22 LOC: Motion by Daniel Guzman King to approve the updated public comment review memorandum, draft, and legislative analysis; seconded by Kirby Metoxen. Motioner withdrew his motion, seconder agreed.

Motion by Kirby Metoxen to approve the updated public comment review memorandum, draft, and legislative analysis, and direct the Indian Child Welfare Department to pursue amendments to their MOU with the Trust Enrollments Department; seconded by Daniel Guzman King. Motion carried unanimously.

Motion by Daniel Guzman King to approve the fiscal impact statement request memorandum and forward to the Finance Department directing that a fiscal impact statement be prepared and submitted to the LOC by August 17, 2022; seconded by Kirby Metoxen. Motion carried unanimously.

7/28/22: *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Daniel Guzman King, Marie Summers, Kirby Metoxen, Clorissa N. Santiago, Lydia Witte, Peggy Van Gheem, Jennifer Berg-Hargrove, Hon. Robert Collins II, Hon. Rodney Dequaine, Grace Elliott, Carolyn Salutz. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to review the ICW Department's concern with the inclusion of section 708.14-2 in the Children's Code. The Legislative Operating Committee determined that law should move forward as proposed.

Next Steps:

- Approve the Children's Code amendments adoption packet and forward to the Oneida Business Committee for consideration.



TO: Oneida Business Committee
FROM: David P. Jordan, LOC Chairperson
DATE: September 14, 2022
RE: Adoption of the Children's Code Amendments

Please find the following attached backup documentation for your consideration of the adoption of the Children's Code Amendments:

1. Resolution: Amendments to the Children's Code
2. Statement of Effect: Amendments to the Children's Code
3. Children's Code Amendments Legislative Analysis
4. Children's Code Amendments Draft (Redline)
5. Children's Code Amendments Draft (Clean)
6. Children's Code Amendments Fiscal Impact Statement

Overview

The Children's Code provides 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]. The proposed amendments to the Children's Code will:

- 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];
- Provide that the Department may enter into a protective plan with a family [7 O.C. 708.7-1(f)];
- 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];
- 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];
- 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];

- 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];
- Allow the Department to make an ex parte request to the Court to conduct an in-camera review to determine what information should and should not be released to the parties and their counsel [7 O.C. 708.14-6];
- 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)];
- 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)];
- 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];
- Allow for the suspension of parental rights in addition to the termination of parental rights [7 O.C. 708.32];
- 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)];
- 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)];
- 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];
- 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
- Make other minor drafting revisions throughout the Children’s Code.

The Legislative Operating Committee developed the Children’s Code amendments through collaboration with representatives from the Oneida Law Office, Indian Child Welfare Department, Oneida Family Court. The Legislative Operating Committee held ten (10) work meetings on the development of the Children’s Code.

In accordance with the Legislative Procedures Act, a public meeting on the proposed Children’s Code was held on June 15, 2022. No individuals provided oral comments during the public meeting. The public comment period was then held open until June 22, 2022. The Legislative Operating Committee received one (1) submission of written comments during the public comment period. All public comments received were accepted, reviewed, and considered by the Legislative Operating Committee on July 6, 2022, and July 14, 2022. Any changes made based on those comments have been incorporated into this draft.

Requested Action

Adopt the Resolution: Amendments to the Children’s Code

Oneida Nation

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

BC Resolution # _____ Amendments to the Children's Code

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

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

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

WHEREAS, the Children's Code was adopted by the Oneida Business Committee through resolution BC-07-26-17-J; and

WHEREAS, the purpose of the Children's Code is to provide for the welfare, care, and protection of Oneida children through the preservation of the family unit, while recognizing that in some circumstances it may be in the child's best interest to not be reunited with his or her family; and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, the amendments to the Children's Code 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; and

WHEREAS, the amendments to the Children's Code provide that the Department may enter into a protective plan with a family; and

WHEREAS, the amendments to the Children's Code 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; and

- 42 **WHEREAS,** the amendments to the Children's Code allow the Department to withhold the placement
43 provider's identifying information from the child's parent, guardian, or legal custodian if
44 there are reasonable grounds to believe that disclosure would result in imminent danger to
45 the child or anyone else, but that a parent, guardian, or legal custodian may request judicial
46 review of the decision to withhold the identifying information; and
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- 48 **WHEREAS,** the amendments to the Children's Code provide clarification on how a matter is referred to
49 the Oneida Nation Child Support Agency for initiating a paternity action, and allow the
50 Department may sign documents required by the Oneida Nation Child Support Agency on
51 behalf of the family for the limited purpose of initiating a paternity action; and
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- 53 **WHEREAS,** the amendments to the Children's Code provide that the Department shall make available
54 for inspection or disclosure the contents of any record kept, regardless of the originating
55 source, to a guardian ad litem appointed in a Children's Code or family law case when that
56 access is granted by order of the Court; and
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- 58 **WHEREAS,** the amendments to the Children's Code allow the Department to make an ex parte request
59 to the Court to conduct an in-camera review to determine what information should and
60 should not be released to the parties and their counsel; and
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- 62 **WHEREAS,** the amendments to the Children's Code allow a child to be held in custody in a hospital or
63 other medical or mental health facility; and
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- 65 **WHEREAS,** the amendments to the Children's Code provide information that may be, but is not required
66 to be, included in the Court's order to hold a child in custody; and
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- 68 **WHEREAS,** the amendments to the Children's Code allow the Department to request the placement of
69 the child outside of the child's home at the plea hearing; and
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- 71 **WHEREAS,** the amendments to the Children's Code allow for the suspension of parental rights in
72 addition to the termination of parental rights; and
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- 74 **WHEREAS,** the amendments to the Children's Code update the continuing need of protection or
75 services ground for involuntary suspension or termination of parental rights to be consistent
76 with recent revisions to State statute; and
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- 78 **WHEREAS,** the amendments to the Children's Code provide information that may be, but is not required
79 to be, included in the Court's order of disposition for the suspension or termination of
80 parental rights; and
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- 82 **WHEREAS,** the amendments to the Children's Code clarify that an adoption under this law shall take
83 the form of customary adoption when the Court has granted a petition to suspend parental
84 rights, and take the form of a closed adoption when the Court has granted a petition to
85 terminate parental rights; and
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- 87 **WHEREAS,** the amendments to the Children's Code allow the Department to contract with a third-party
88 agency to conduct an adoption investigation that may have been ordered by the Court; and
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- 90 **WHEREAS,** the amendments to the Children's Code make other minor drafting revisions throughout
91 the Children's Code; and
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94 **WHEREAS,** in accordance with the Legislative Procedures Act a legislative analysis and fiscal impact
95 statement were developed for this Law; and
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97 **WHEREAS,** a public meeting on this proposed Law was held on June 15, 2022, and the public comment
98 period was held open until June 22, 2022; and
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100 **WHEREAS,** the Legislative Operating Committee accepted, reviewed, and considered all public
101 comments received on July 6, 2022 and July 14, 2022; and
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103 **NOW THEREFORE BE IT RESOLVED,** that the amendments to the Children's Code are hereby adopted
104 and shall be effective on September 28, 2022.



Statement of Effect
Amendments to the Children's Code

Summary

This resolution adopts amendments to the Children's Code.

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

Date: August 29, 2022

Analysis by the Legislative Reference Office

This resolution adopts amendments to the Children's Code. The Children's Code provides 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]. This resolution adopts the amendments to the Children's Code which will:

- 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];
- Provide that the Department may enter into a protective plan with a family [7 O.C. 708.7-1(f)];
- 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];
- 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];
- 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];
- 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];

- Allow the Department to make an ex parte request to the Court to conduct an in-camera review to determine what information should and should not be released to the parties and their counsel [7 O.C. 708.14-6];
- 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)];
- 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)];
- 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];
- Allow for the suspension of parental rights in addition to the termination of parental rights [7 O.C. 708.32];
- 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)];
- 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)];
- 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];
- 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
- Make other minor drafting revisions throughout the Children’s Code.

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 Children’s Code amendments complied with all processes and procedures required by the LPA, including the development of a legislative analysis, a fiscal analysis, and the opportunity for public review during a public meeting and public comment period. [1 O.C. 109.6, 109.7, 109.8].

A public meeting on the proposed Children’s Code was held on June 15, 2022. No individuals provided oral comments during the public meeting. The public comment period was then held open until June 22, 2022. The Legislative Operating Committee received one (1) submission of written comments during the public comment period. All public comments received were accepted, reviewed, and considered by the Legislative Operating Committee on July 6, 2022 and July 14, 2022. Any changes made based on those comments have been incorporated into this draft.

The Children’s Code amendments will become effective on September 28, 2022, in accordance with the LPA. [1 O.C. 109.9-3].

Conclusion

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



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"> ▪ 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]; ▪ Provide that the Department may enter into a protective plan with a family [7 O.C. 708.7-1(f)]; ▪ 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]; ▪ 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]; ▪ 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]; ▪ 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]. ▪ 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]; ▪ 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)]; ▪ 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)]; ▪ 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]; ▪ Allow for the suspension of parental rights in addition to the termination of parental rights [7 O.C. 708.32]; ▪ 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)];

	<ul style="list-style-type: none"> ▪ 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)]; ▪ 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]; ▪ 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 ▪ Make other minor drafting revisions throughout the Children’s Code.
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. [7 O.C. 708.1-1].
Affected Entities	Indian Child Welfare Department (“the Department”), Oneida Family Court (“the Court”), Oneida Law Office
Related Legislation	Oneida Judiciary Rules of Civil Procedure, Oneida Judiciary Rules of Evidence, Family Court law, Paternity law, Child Support law
Public Meeting	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.
Fiscal Impact	A fiscal impact statement was provided by the Finance Department on August 12, 2022.

SECTION 2. LEGISLATIVE DEVELOPMENT

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- 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

19 amendments provided by the Legislative Procedures Act, but that the LOC would add this item to the
20 AFL for amendments to be made via the normal legislative process. The Legislative Operating
21 Committee added the Children’s Code amendments to its Active Files List on October 7, 2020.

22 C. The Legislative Operating Committee is now seeking amendments to the Children’s Code.

23

24 **SECTION 3. CONSULTATION AND OUTREACH**

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

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

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

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

36

37 **SECTION 4. PROCESS**

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

- 40 ▪ On October 7, 2020, the Legislative Operating Committee added the Law to its Active Files
41 List.
- 42 ▪ On April 20, 2022, the Legislative Operating Committee approved the draft of the proposed
43 amendments to the Children’s Code and directed that a legislative analysis be developed.
- 44 ▪ On May 4, 2022, the Legislative Operating Committee approved the updated draft and the
45 legislative analysis for Children’s Code amendments.
- 46 ▪ On May 18, 2022, the Legislative Operating Committee approved the public meeting packet
47 and forwarded the Children’s Code amendments to a public meeting to be held on June 15,
48 2022.
- 49 ▪ The public meeting was held on June 15, 2022, in person in the Business Committee
50 Conference Room in the Norbert Hill Center as well as on Microsoft Teams. No individuals
51 provided public comment during the public meeting.
- 52 ▪ The public comment period was then held open until June 22, 2022. One (1) submission of
53 written comments was received during the public comment period.
- 54 ▪ On July 6, 2022, the Legislative Operating Committee accepted the public comments and the
55 public comment review memorandum and deferred these items to a work meeting for further
56 consideration.
- 57 ▪ On July 14, 2022, the Legislative Operating Committee reviewed and considered the public
58 comment that was received.
- 59 ▪ On July 20, 2022, the Legislative Operating Committee approved the updated public comment
60 review memorandum, draft, and legislative analysis; approved the updated public comment
61 review memorandum, draft, and legislative analysis, and directed the Indian Child Welfare

62 Department to pursue amendments to their MOU with the Trust Enrollments Department; and
63 approved the fiscal impact statement request memorandum and forwarded these items to the
64 Finance Department directing that a fiscal impact statement be prepared and submitted to the
65 LOC by August 17, 2022.

66 ■ On August 12, 2022, the Finance Department provided the Legislative Operating Committee
67 with a fiscal impact statement for the proposed amendments to the Children’s Code.

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

70 ■ October 13, 2020: LOC work session with the Indian Child Welfare Department and Oneida
71 Law Office.

72 ■ April 12, 2021: LOC work session with the Oneida Family Court.

73 ■ April 12, 2021: LOC work session with the Indian Child Welfare Department and Oneida Law
74 Office.

75 ■ April 26, 2021: LOC work session with the Oneida Family Court.

76 ■ June 4, 2021: Work session with the Indian Child Welfare Department and the Oneida Law
77 Office.

78 ■ February 16, 2022: LOC work session with Oneida Law Office.

79 ■ April 12, 2022: LOC work session with the Indian Child Welfare Department, Oneida Law
80 Office, and the Oneida Family Court.

81 ■ May 12, 2022: LOC work session.

82 ■ July 14, 2022: LOC work session.

83 ■ July 28, 2022: LOC work session with the Indian Child Welfare Department, Oneida Law
84 Office, and the Oneida Family Court.

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

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

92 ■ *Effect.* The overall purpose of this provision is to provide clarification that any orders made by the
93 Court under this law, or any orders made by a court of competent jurisdiction regarding child
94 welfare matters, shall supersede any other order made by this Court or a court of competent
95 jurisdiction regarding custody or placement of a child until the Children’s Code or other child
96 welfare orders are dismissed. This clarification was added to prevent an individual from seeking a
97 custody or placement order for a child in this Court or a court of competent jurisdiction in an attempt
98 to trump a child welfare order.

99 **B. *Protective Plans.*** The Children’s Code provides the various duties and responsibilities of the Indian
100 Child Welfare Worker. [7 O.C. 708.7-1]. The Children’s Code provides that an Indian Child Welfare
101 worker may enter into informal dispositions with families. [7 O.C. 708.7-1(f)]. The proposed
102 amendments to the Children’s Code revise the responsibilities and duties of the Indian Child Welfare
103 work to include that they also may enter into a protective plan with a family. *Id.* Definitions for both
104 informal dispositions and protective plans were then added to the Children’s Code. Informal disposition
105 is defined in the Children’s Code as a written agreement with all the parties describing the conditions

106 and obligations that must be met to ensure the child is protected and to alleviate the condition that led
107 to the referral to the Department. [7 O.C. 708.3-1(bb)]. An informal disposition is utilized by the
108 Department when the Department determines that the interest of the child does not require a formal
109 Court intervention to provide protection and services to the child. *Id.* Protective plan is defined as an
110 immediate short-term action that protects a child from present danger threats in order to allow for
111 completion of the initial assessment, investigation and, if needed, the implementation of a safety plan.
112 [7 O.C. 708.3-1(nn)].

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

115 **C. General Notice Provisions.** The proposed amendments to the Children’s Code update the general
116 notice provisions in the Children’s Code. The proposed amendments to the Children’s Code provide
117 that service of documents and notices shall be as specified in this law, and if a method of service is not
118 specified in this law then service shall be by first-class mail to the recently verified last-known address
119 of the party. [7 O.C. 708.12-1]. If a party’s whereabouts are unknown and cannot be found after diligent
120 effort, service shall be by publication as described in the Oneida Judiciary Rules of Civil Procedure. *Id.*
121 The proposed amendments provide that the Court shall provide the parties with notice of all hearings
122 at least seven (7) days prior to the hearing, with the purpose of providing the parties an opportunity to
123 be heard, except in situations where a hearing is scheduled and it is not possible to provide notice at
124 least seven (7) days prior to the hearing, the Court shall make an appropriate effort to notice all parties
125 of the hearing. [7 O.C. 708.12-2]. Additionally, the proposed amendments provide that when the
126 Department is required to perform personal service, the Indian Child Welfare Worker may deliver the
127 document(s) directly to the party(s) if such service is appropriate and safe under the circumstances, and
128 in the alternative, personal service may be accomplished according to the Oneida Judiciary Rules of
129 Civil Procedure. The proposed amendments also include a new provision which provides that in all
130 proceedings under this law, the Department may withhold the placement provider’s identifying
131 information from the child’s parent, guardian, or legal custodian if there are reasonable grounds to
132 believe that disclosure would result in imminent danger to the child or anyone else, but that a parent,
133 guardian, or legal custodian may request judicial review of the decision to withhold the identifying
134 information. [7 O.C. 708.12-4]. Previously the Children’s Code provided general provisions on the
135 notice of petitions, and provided that petitions alleging that a child is in need of protection or services
136 may be given to the parties directly by the Nation’s Child Welfare attorney or the Indian Child Welfare
137 Worker or served on the parties pursuant to the Oneida Judiciary Rules of Civil Procedure. While
138 petitions for termination of parental rights, guardianship, and adoption shall be served on all other
139 parties pursuant to the Oneida Judiciary Rules of Civil Procedure. The Children’s previously provided
140 that all parties shall be notified of all subsequent hearings under this law by first-class mail to the
141 recently verified last-known address of the party.

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

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

- 152 ▪ *Section 708.16-3.* The proposed amendments to the Children’s Code remove a provision
153 which states that prior to the start of a hearing for emergency custody, the Court shall
154 provide a copy of the petition to the parent, guardian, and legal custodian, if present, and
155 to the child if he or she is twelve (12) years of age or older. Instead, the proposed
156 amendments now provide that for any parties not present at the hearing, the Department
157 shall serve the petition on those parties by verified mail, return receipt requested.
- 158 ▪ *Section 708.17-1.* The proposed amendments to the Children’s Code provide that upon
159 filing with the Court, the Department shall provide a copy of the petition for a child in need
160 of protection or services to the parties by personal service or, if personal service is not
161 possible, by certified mail with return receipt requested.
- 162 ▪ *Section 708.17-5.* The proposed amendments to the Children’s Code provide that upon
163 filing with the Court, the Department shall provide a copy of the amended petition to the
164 parties by certified mail with return receipt requested. Previously, this section of the
165 Children’s Code provided that an amended petition may be given to the parties directly by
166 the Nation’s Child Welfare attorney or the Indian Child Welfare Worker or served on the
167 parties pursuant to the Oneida Judiciary Rules of Civil Procedure.
- 168 ▪ *Section 708.21-1.* The Children’s Code provides that before the dispositional hearing, the
169 Department shall submit a written report to the Court, with a copy provided to the parties
170 at least seven (7) days prior to the hearing. The proposed amendments to the Children’s
171 Code clarify that the copy of the written report shall be provided to the parties by first-class
172 mail.
- 173 ▪ *Section 708.23-3.* The proposed amendments to the Children’s Code provide that at least
174 seven (7) days before the date of the permanency plan hearing, the Department shall file
175 the updated permanency plan with the Court and provide a copy to the parties by first-class
176 mail. Previously, this section of the Children’s Code required that at least five (5) business
177 days before the date of the hearing the Department shall provide a copy of the updated
178 permanency plan to the Court and the parties.
- 179 ▪ *Section 708.24-4.* The proposed amendments to the Children’s Code provide that upon
180 filing with the Court, the Department shall provide a copy of the request for a change in
181 placement to the parties by first-class mail. Previously, this section of the Children’s Code
182 provided that written notice of the proposed change in placement shall be sent to all of the
183 parties pursuant to the Oneida Judiciary Rules of Civil Procedure.
- 184 ▪ *Section 708.24-6.* The proposed amendments to the Children’s Code provide that the
185 Department shall notify the parties of the emergency change in placement by personal
186 service as soon as possible but no later than seventy-two (72) hours after the emergency
187 change in placement excluding Saturdays, Sundays, and holidays. Previously, this section
188 of the Children’s Code provided that notice of the emergency change in placement shall be
189 sent to the parties as soon as possible but no later than seventy-two (72) hours after the
190 emergency change in placement excluding Saturdays, Sundays, and holidays.
- 191 ▪ *Section 708.25-4.* The proposed amendments to the Children’s Code provide that upon
192 filing a request for trial reunification with the Court and at least seven (7) days before the

- 193 date of reunification, the Department shall provide the parent, guardian, legal custodian,
194 and any other party written notice of the proposed reunification by first-class mail.
195 Previously, this section of the Children’s Code provided that Department or Nation’s Child
196 Welfare attorney shall provide the parent, guardian, legal custodian, and any other party
197 written notice pursuant to the Oneida Judiciary Rules of Civil Procedure.
- 198 ■ *Section 708.24-7.* The proposed amendments to the Children’s Code provide that no later
199 than seven (7) days prior to the expiration of the trial reunification, the Department shall
200 submit the request for an extension of the trial reunification to the Court and shall cause
201 notice of the request to be provided to all parties by first-class mail. Previously, this section
202 of the Children’s Code provided that no later than ten (10) days prior to the expiration of
203 the trial reunification, the Department shall submit the request to the Court and shall cause
204 notice of the request to be provided to all parties.
 - 205 ■ *Section 708.25-8.* The proposed amendments to the Children’s Code clarify that the
206 Department is required to provide written notice of the end of a trial reunification period
207 to the parties by first-class mail.
 - 208 ■ *Section 708.25-9(a)(1).* The proposed amendments to the Children’s Code clarify that the
209 Department’s request for revocation of the trial reunification is required to be provided by
210 first-class mail.
 - 211 ■ *Section 708.26-2.* The proposed amendments to the Children’s Code clarify that the
212 Department’s request for a revision of the dispositional order is required to be provided to
213 the parties by first-class mail. Previously, this section of the Children’s Code provided that
214 notice be provided to the parties pursuant to the Oneida Judiciary Rules of Civil Procedure.
 - 215 ■ *Section 708.27-1.* The proposed amendments to the Children’s Code clarify that the
216 Department’s request for an extension of the dispositional order is required to be provided
217 to the parties by first-class mail. Previously, this section of the Children’s Code provided
218 that notice be provided to the parties pursuant to the Oneida Judiciary Rules of Civil
219 Procedure.
 - 220 ■ *Section 708.29.4.* The proposed amendments to the Children’s Code provide that upon
221 filing with the Court and at least seven (7) days prior to the plea hearing, the party that filed
222 the guardianship petition shall provide a copy of the petition to the other parties by personal
223 service or, if personal service is not possible, by certified mail with return receipt requested.
 - 224 ■ *Section 708.29-8(a).* The proposed amendments to the Children’s Code provide that upon
225 filing with the Court and at least seven (7) days prior to the fact-finding hearing, the
226 Department shall provide the parent, guardian, legal custodian, proposed guardian, and any
227 other parties a written copy of the report by first-class mail. Previously, this section of the
228 Children’s Code provided that the Department shall file its report with the Court prior to
229 the fact-finding hearing and shall provide the parties with a copy of the report at least three
230 (3) business days prior to the hearing.
 - 231 ■ *Section 708.30-2.* The proposed amendments to the Children’s Code provide that the
232 motion for a revision of guardianship shall be filed with the Court and, upon filing, a written
233 copy shall be provided to all parties by first-class mail. Previously, the notice of revision
234 was required to be filed with the Court with notice provided to the parties pursuant to the
235 Oneida Judiciary Rules of Civil Procedure. Additionally, the proposed amendments to
236 subsection (a) of 708.30-2 provide that upon filing with the Court and at least seven (7)

237 days prior to the revision hearing, the Department shall provide the parties with a written
238 copy of their report by first-class mail. Previously, subsection (a) provided that the
239 department shall file its report with the Court prior to the hearing on the revision of
240 guardianship and shall provide the parties with a copy of the report at least three (3)
241 business days prior to the hearing.

242 ■ *Section 708.31-2(a)*. The proposed amendments to the Children’s Code provide that upon
243 filing with the Court and at least seven (7) days prior to the termination hearing, the
244 Department shall provide the parties with a written copy of the report for the termination
245 of a guardianship by first class mail. Previously, the Children’s Code provided that the
246 Department shall file its report with the Court prior to the hearing on the termination of
247 guardianship and shall provide the parties with a copy of the report at least three (3)
248 business days prior to the hearing.

249 ■ *Section 708.35-5*. The proposed amendments to the Children’s Code provide that upon
250 filing with the Court and at least seven (7) days prior to the initial hearing, the petitioner
251 shall serve the summons and petition upon the following persons by personal service or, if
252 personal service is not possible, by certified mail, return receipt requested: The parent(s)
253 of the child, including an alleged father if paternity has not been established; and The
254 child’s foster parent, guardian or legal custodian, if applicable. Previously, the Children’s
255 Code provided that the petitioner shall ensure the summons and petition are served upon
256 the following persons pursuant to the Oneida Judiciary Rules of Civil Procedure: The
257 parent(s) of the child, including an alleged father if paternity has not been established; The
258 child’s foster parent, guardian or legal custodian, if applicable; and The Nation’s Child
259 Welfare attorney and the Department, if the petition is filed by anyone other than the
260 Nation’s Child Welfare attorney or the Department.

261 ■ *Section 708.43-4*. The proposed amendments to the Children’s Code provide that the
262 Department or other agency or department making the adoption investigation shall file its
263 report with the Court prior to the hearing on the petition and shall provide a copy of the
264 report to the parties by first-class mail at least seven (7) days prior to the hearing.
265 Previously, this section of the Law provided that the Department or other agency or
266 department making the investigation shall file its report with the Court prior to the hearing
267 on the petition and shall provide the parties with a copy of the report at least three (3)
268 business days prior to the hearing.

269 ■ *Section 708.43-9*. The proposed amendments to the Children’s Code provide that within
270 five (5) days after entry of the order granting a closed adoption, the Department shall mail
271 a copy of the order to the State of Wisconsin Bureau of Vital Statistics and furnish any
272 additional data needed for the issuance of a new birth certificate. Previously this section
273 provided that after entry of the order granting the adoption, the Department shall promptly
274 mail a copy of the order to the State of Wisconsin Bureau of Vital Statistics and furnish
275 any additional data needed for the issuance of a new birth certificate.

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

278 **E. Referral of a Paternity Action to the Oneida Nation Child Support Agency.** The proposed
279 amendments to the Children’s Code addresses referrals for paternity actions. The proposed amendments
280 provides that if an alleged father appears at a hearing under this law, the Court may order the

281 Department to refer the matter to the Oneida Nation Child Support Agency to adjudicate paternity. [7
282 *O.C. 708.13-3*]. There is a new provision added to the that that provides that if the Court enters such
283 an order, then the Department may sign documents required by the Oneida Nation Child Support
284 Agency on behalf of the family for the limited purpose of initiating a paternity action. *Id.* While
285 paternity is being established, the Court shall enter an order finding good cause to suspend the time
286 limits established under this law. *Id.* Previously, the Children’s Code provided that if an alleged father
287 appears at a hearing under this law, the Court may refer the matter to the Oneida Nation Child Support
288 Agency to adjudicate paternity.

289 ▪ *Effect.* The proposed amendments to the Children’s Code provide greater clarification on how a
290 referral to the Oneida Nation Child Support Agency occurs – that the Court may order the
291 Department to refer the matter to the Oneida Nation Child Support Agency – so it is not the Court
292 itself that refers the matter to the Oneida Nation Child Support Agency. Authority was given to the
293 Department to sign documents required by the Oneida Nation Child Support Agency on behalf of
294 the family for the limited purpose of initiating a paternity action, so that a situation could be avoided
295 where a paternity action is unable to be initiated because the mother of the child is unable to or not
296 around to sign the necessary documents.

297 **F. *Access of Records for a Guardian Ad Litem.*** The proposed amendments add a new provision to the
298 Children’s Code which provides that the Department shall make available for inspection or disclosure
299 the contents of any record kept, regardless of the originating source, to a guardian ad litem appointed
300 in a Children’s Code or family law case when that access is granted by order of the Court. [7 *O.C.*
301 *708.14-2*].

302 ▪ *Effect.* When the Court appoints a GAL, whether that be in a case under the Children’s Code or
303 the Child Custody, Placement, and Visitation law, the Court’s order contains the following
304 statement: *The guardian ad litem shall be provided access to all records in possession of juvenile*
305 *intake; the tribal, county or state department of social services; child welfare agencies; schools;*
306 *or law enforcement agencies pertaining to the above captioned case, regardless of the originating*
307 *source, including but not limited to, medical, mental health, psychological, counseling, drug or*
308 *alcohol records from a non-federally assisted program as defined in 42 CFR Part 2, financial,*
309 *educational, employment, probation, and law enforcement records.* The inclusion of this statement
310 in the Court order intends to avoid unnecessary delay in seeking other consent authorization for
311 access to records, especially when the GAL has to meet expedited timelines included under the
312 Children’s Code. Requiring a GAL to seek a signed authorization form from the parent in order to
313 access information from the Indian Child Welfare Department or other department of the Nation
314 should not be necessary when the order made by the Court already addresses the release of
315 information to the GAL. This amendment clarifies this issue and intends to avoid unnecessary delay
316 in the future.

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

- 325 ▪ *Effect.* The Children’s Code provides that upon written request, the parties and their counsel shall
326 have the right to inspect, copy or photograph social, psychiatric, psychological, medical, and school
327 reports, and records concerning the child including reports of preliminary inquiries, predisposition
328 studies and supervision records relating to the child which are in the possession of the Nation’s
329 Child Welfare attorney or the Department that pertain to any case under this law. [7 O.C. 708.14-
330 1]. The Indian Child Welfare Department expressed concerns that the Department may have certain
331 records which if released could cause harm to the child. This provision was added to give the
332 Department a method to seek intervention by the Court to determine if certain records can be
333 withheld in the interest in protecting the child.
- 334 **H. *Holding a Child in Custody.*** The Children’s Code provides a list of options for where a child may be
335 held in custody as long as the place is in the best interest of the child and all people residing or regularly
336 visiting the premises have cleared a background check. [7 O.C. 708.15-6]. The proposed amendments
337 to the Children’s Code add a new option to the list of where a child may be held in custody at, which
338 is a hospital or other medical or mental health facility. [7 O.C. 708.15-6].
- 339 ▪ *Effect.* The option to hold a child in custody in a hospital or other medical or mental health facility
340 was added to address child welfare cases where the child may need to be hospitalized or held in a
341 medical facility. This provides greater flexibility in determining where a child should be held in
342 custody that best meets the needs and interests of the child.
- 343 **I. *Order for Holding a Child in Custody at an Emergency Custody Hearing.*** The Children’s Code
344 provides that all orders to hold a child in custody at an emergency custody hearing shall be in writing
345 and provides what information is required to be included in the order. [7 O.C. 7008.16-6(a)]. The
346 proposed amendments to the Children’s Code will now include the addition of information that may
347 be, but not required to be, included in the order to hold a child in custody. [7 O.C. 7008.16-6(b)]. Now
348 an order to hold a child in custody may include a transfer of the legal custody of the child, including
349 decisions about health care and education.
- 350 ▪ *Effect.* Allowing an order to hold a child in custody at an emergency custody hearing to include a
351 transfer of the legal custody of the child, including decisions about health care and education, allow
352 for legal custody to be transferred to the Department or the other parent, if necessary, especially if
353 medical decisions need to be made on behalf of the child.
- 354 **J. *Request for Out of Home Placement of the Child at the Plea Hearing.*** The proposed amendments to
355 the Children’s Code provide that at the plea hearing the Department may request placement of the child
356 outside of the child’s home in accordance with the placement preferences in section 708.11-1, if notice
357 of the Department’s intent to seek out of home placement of the child was provided to the parties prior
358 to the hearing in substantial compliance with section 708.15-9. [7 O.C. 708.19-5]. The Children’s Code
359 will not require that in the request for placement of the child outside of the child’s home the Department
360 shall present as evidence specific information as outlined in 708.16-6(a)(1)-(5). *Id.* If the Court orders
361 the out of home placement of the child, the order shall be in writing and shall contain the information
362 required by section 708.16-6(a)(1)-(5). [7 O.C. 708.19-6]. Previously, the Children’s Code did not
363 allow for the Department to request the out of home placement of a child at the plea hearing.
- 364 ▪ *Effect.* The proposed amendments to the Children’s Code will allow for the Department to request
365 the placement of a child outside of the child’s home at the plea hearing. Currently, it has been
366 interpreted that a request for the placement of the child outside of the child’s home can only occur
367 at an emergency custody hearing or at the dispositional hearing for a child in need of protection or
368 services. The Department requested this amendment so that the Department would have the ability

369 to avoid taking a child into emergency custody when the parents are already in agreement with a
370 protective plan and the child is already staying out of home under the protective plan. This allows
371 the Department to avoid unnecessary litigation and pressure to the family if the emergency custody
372 hearing can be skipped, and the department can file a petition for a child in need of protection or
373 services and request the ordered out of home placement at the time of the plea hearing. A protective
374 plan is a safety tool the Department can implement during the Initial Assessment stage of a case.
375 Initial Assessment lasts sixty (60) days and during that time the Indian Child Welfare Department
376 workers gather information, and a determination is made whether a petition for a child in need of
377 protection or services needs to be filed. Parents have to agree to a protective plan and the plan can
378 only last for sixty (60) days. There isn't a formal order placing the child out of home within a
379 protective plan because a protective plan is temporary and agreed to by the parents. When the sixty
380 (60) days for the initial assessment ends, if it is clear that a petition for a child in need of protection
381 or services needs to be filed, then the Department would like the ability to skip a contentious
382 emergency custody hearing and simply file a petition and ask for an order for out of home
383 placement at the first hearing, which is the plea hearing. An emergency custody hearing is also not
384 the best option in these situations because an "emergency" does not necessarily exist because the
385 child is safe under the protective plan and staying out of the home.

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

391 ▪ *Effect.* Section 708.21-3 of the Children's Code- which provided that the Department may request
392 the Court to withhold identifying information in the dispositional report from the child's parent,
393 guardian or legal custodian if there are reasonable grounds to believe that disclosure would result
394 in imminent danger to the child or anyone else - was eliminated from the Children's Code because
395 it was duplicative of section 708.12-4 – a new, more general, addition to the Code – which provides
396 that in all proceedings under this law, the Department may withhold the placement provider's
397 identifying information from the child's parent, guardian, or legal custodian if there are reasonable
398 grounds to believe that disclosure would result in imminent danger to the child or anyone else.
399 Section 708.12-4 then allows a parent, guardian, or legal custodian may request judicial review of
400 the decision to withhold the identifying information.

401 **L. *Copy of the Dispositional Order to the Child.*** The proposed amendments to the Children's Code
402 remove the requirement to provide a copy of the dispositional order to the child is the child is age twelve
403 (12) or older.

404 ▪ *Effect.* After much discussion between the Indian Child Welfare Department, Oneida Law Office,
405 and Oneida Family Court it was determined that it may not be appropriate to provide a child age
406 twelve (12) or older a copy of the dispositional order due to the nature of the information that may
407 be included in the dispositional order and therefore this provision of the Children's Code should be
408 removed.

409 **M. *Capacity of the Child to Express their Wishes.*** The Children's Code provides that in making a decision
410 about the appropriate disposition, the Court shall consider any report submitted by the Department and
411 shall consider, but not be limited to, whether the person would be a suitable guardian of the child, the
412 willingness and ability of the person to serve as the child's guardian for an extended period of time or

413 until the child reaches the age of eighteen (18) years, and the wishes of the child. The proposed
414 amendments to the Children’s Code clarify that the wishes of the child should only be considered when
415 the child has the capacity to express their wishes. This same revision occurs in section 708.39-3 of the
416 Children’s Code.

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

419 **N. *Suspension of Parental Rights.*** The proposed amendments to the Children’s Code now allow for the
420 suspension of parental rights in addition to the termination of parental rights. The suspension of parental
421 rights is the permanent suspension of the rights of biological parents to provide for the care, custody,
422 and control of their child. [7 O.C. 708.32-3]. It is the philosophy of the Nation that children deserve a
423 sense of permanency and belonging throughout their lives and at the same time they deserve to have
424 knowledge about their unique cultural heritage including their tribal customs, history, language,
425 religion, and values. [7 O.C. 708.32-1]. Much like the termination of parental rights, the suspension of
426 parental rights should only be used as a last resort when all efforts have failed to avoid suspension or
427 termination and it is in the best interests of the child concerned to proceed with the suspension or
428 termination of parental rights. [7 O.C. 708.32-2]. The suspension of parental rights can occur on a
429 voluntary or involuntary basis. [7 O.C. 708.32-5]. An order suspending or terminating parental rights
430 permanently severs all legal rights and duties between the parent whose parental rights are suspended
431 or terminated and the child. [7 O.C. 708.32-6]. The suspension or termination of parental rights shall
432 not adversely affect the child’s rights and privileges as a member of the Nation, nor as a member of any
433 tribe to which the child is entitled to membership, nor shall it affect the child’s enrollment status with
434 the Nation, nor shall it interfere with the child’s cultural level and traditional and spiritual growth as a
435 member of the Nation. [7 O.C. 708.32-6]. The suspension of parental rights is handled the same way
436 as the termination of parental rights in regard to the process for the voluntary suspension or termination
437 [7 O.C. 708.33], grounds for involuntary suspension or termination [7 O.C. 708.34], the petition for
438 the suspension or termination [7 O.C. 708.35], the initial hearing on the suspension or termination [7
439 O.C. 708.36], the fact-finding hearing for the suspension or termination [7 O.C. 708.37], the
440 Department’s suspension or termination of parental rights report [7 O.C. 708.38], standards and factors
441 to be utilized by the Court when making a decision [7 O.C. 708.39], and the dispositional hearing for
442 the suspension or termination of parental rights [7 O.C. 708.40].

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

447 **O. *Continuing Need of Protection or Services as a Ground for Involuntary Suspension or Termination***
448 ***of Parental Rights.*** The Children’s Code provides various grounds for suspension or termination of
449 parental rights. [7 O.C. 708.34-1]. Specifically, the Children’s Code provides what needs to be proved
450 to demonstrate that the child is in continuing need of protection or services – which is a ground for the
451 suspension or termination of parental rights. [7 O.C. 708.34-1(c)]. The proposed amendments to the
452 Children’s Code provides that it must be provided that the child has been outside the home for a
453 cumulative total period of six (6) months or longer pursuant to such orders; and that the parent has
454 failed to meet the conditions established for the safe return of the child to the home and, if the child has
455 been placed outside the home for less than fifteen (15) of the most recent twenty-two (22) months, that
456 there is a substantial likelihood that the parent will not meet these conditions as of the date on which

457 the child will have been placed outside the home for fifteen (15) of the most recent twenty-two (22)
458 months, not including any period during which the child was a runaway from the out-of-home
459 placement or was residing in a trial reunification home. [7 O.C. 708.34-1(c)(3)]. Previously the
460 Children’s required that it be proved that the child has been outside the home for a cumulative total
461 period of six (6) months or longer pursuant to such orders; and that the parent has failed to meet the
462 conditions established for the safe return of the child to the home and there is a substantial likelihood
463 that the parent will not meet these conditions within the nine (9) month period following the termination
464 of parental rights fact-finding hearing.

465 ▪ *Effect.* This proposed revision to the Children’s Code was made to be consistent with recent
466 revisions to Wis. Stat. §48.415(2). Although the Nation is under no obligation to amend its laws to
467 be consistent with laws of the State, concern was expressed that it may be beneficial to ensure the
468 Nation’s grounds for suspension or termination of parental rights are consistent with the State’s
469 grounds so that if a case transfers after being filed in State court, we are not in a position where we
470 have to dismiss the petition if the grounds pled in State court are different from the grounds found
471 in the Children’s Code, causing the Department to have to refile, assuming they have a factual basis
472 to do so.

473 **P. *Order of Disposition for the Suspension or Termination of Parental Rights.*** The Children’s Code
474 provides that if the disposition of the Court is for the suspension or termination of parental rights, the
475 order shall be in writing, and the Children’s Code then provides the information that is required to be
476 included in that order.[7 O.C. 708.40-4(b)]. The proposed amendments to the Children’s Code now
477 provide what the order for the disposition for the suspension or termination of parental rights may, but
478 is not required, to include. [7 O.C. 708.40-4(c)]. If the disposition is for the suspension or termination
479 of parental rights, the order may contain a termination of the right of the parent to have contact with
480 the minor child including contact in person, by mail, by telephone, or through third parties; an order
481 restraining a parent from contacting the minor child, the child’s foster parent, the child’s adoptive parent
482 and/or the social services agency or agencies possessing information regarding the child; an order that
483 the biological parents’ obligation to pay child support, except for arrearages, is hereby terminated; and
484 an order that any prior court order for custody, visitation, or contact, with the minor child is hereby
485 terminated. [7 O.C. 708.40-4(c)(1)-(4)]. The proposed amendments now also require that the Court
486 provide a copy of the order suspending or terminating parental rights to the child's parent, guardian,
487 and legal custodian; the other parties to the action; and the current or future foster parents for the
488 purpose of pursuing adoption.

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

498 **Q. *Form of Adoption.*** The proposed amendments to the Children’s Code provide clarification on adoption
499 now that suspension of parental rights is available. The amendments provide that an adoption under
500 this law shall take the form of customary adoption when the Court has granted a petition to suspend

501 parental rights. [7 O.C. 708.41-1]. When the Court grants a petition to terminate parental rights, the
502 adoption shall be closed. *Id.* Previously, the Law provided that adoptions shall take the form of
503 customary adoptions unless the Court determines there is good cause for the adoption to be closed.

504 ■ *Effect.* Previously, the Children’s Code only provided for the termination of parental rights. Now
505 that the suspension of parental rights is also allowed under the Children’s Code, this proposed
506 amendment provides guidance on what form of adoption should be sought and utilized based on
507 whether a suspension or termination of parental rights occur. The Department sought amendments
508 to the Children’s Code so that customary adoptions would occur when a suspension of parental
509 rights occurs, rather than a termination of parental rights. The Department sought this amendment
510 because in order to qualify for Adoption Assistance with the State, for a customary adoption, it had
511 to be a suspension of parental rights that occurred and not a termination of parental rights. The
512 Department wanted to ensure that adopting families under the Children’s Code had access to
513 support and financial assistance under the State.

514 **R. Adoption Investigations.** The Children’s Code provides that when a petition for adoption is filed, the
515 Court shall order an investigation to determine whether the child is a proper subject for adoption and
516 whether the petitioner's home is suitable for the child. [7 O.C. 708.43-3]. The Court shall order one of
517 the following to conduct the investigation: if the Department, or another agency or department, has
518 guardianship of the child, the agency or department that has guardianship; or if no agency or department
519 has guardianship of the child and a relative, including a stepparent, has filed the petition for adoption,
520 the Department. [7 O.C. 708.43-3(a)(1)-(2)]. The proposed amendment to the Law clarifies that if the
521 Court orders the Department to conduct the investigation, the Department may contract with a third-
522 party agency to conduct the investigation. [7 O.C. 708.43-3(b)].

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

527 **S. Other Revisions.** Other minor drafting revisions are made throughout the Children’s Code

528 **SECTION 6. EXISTING LEGISLATION**

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

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

536 ■ The Children’s Code provides that if an alleged father appears at a hearing under this
537 law, the Court may order the Department to refer the matter to the Oneida Nation Child
538 Support Agency to adjudicate paternity. [7 O.C. 708.13-3]. If the Court enters such an
539 order, then the Department may sign documents required by the Oneida Nation Child
540 Support Agency on behalf of the family for the limited purpose of initiating a paternity
541 action. *Id.* While paternity is being established, the Court shall enter an order finding
542 good cause to suspend the time limits established under this law. *Id.*
543

- 544 ▪ The process for adjudicating paternity is then provided by the Paternity law.
545 [7 O.C. 703.1-6].
- 546 ▪ *Oneida Judiciary Rules of Civil Procedure.* The Oneida Judiciary Rules of Civil Procedure
547 governs all civil actions that fall under the jurisdiction of the Nation to ensure that there is a
548 consistent set of rules governing the process for civil claims, in order to ensure equal and fair
549 treatment to all persons who come before the Tribal Courts to have their disputes resolved. [8
550 O.C. 803.1-1, 803.1-2].
- 551 ▪ The Children’s Code provides that service of documents and notices shall be as
552 specified in this law. If a method of service is not specified in this law, then service
553 shall be by first-class mail to the recently verified last-known address of the party. If a
554 party’s whereabouts are unknown and cannot be found after diligent effort, service
555 shall be by publication as described in the Oneida Judiciary Rules of Civil Procedure.
556 [7 O.C. 708.12-1].
- 557 ▪ The Oneida Judiciary Rules of Civil Procedure provides that when the other
558 party’s whereabouts are unknown and cannot be found after diligent effort,
559 service may be completed by publication. The publication shall be in the Tribal
560 newspaper or in a newspaper of general circulation in the area of the party’s
561 last known address and shall be designated as “Legal Notice.” This notice shall
562 be published at least two (2) times within a thirty (30) day period. The two (2)
563 notices shall be published at least ten (10) days before the hearing. Copies of
564 the two (2) published notices and an affidavit of service stating the facts
565 surrounding the failure of personal and mail service shall be filed with the
566 Court as proof of service. The Court may, on its own, order different time
567 limits for service by publication. [8 O.C. 803.5-6(c)].
- 568 ▪ The Children’s Code provides that when the Department is required to perform
569 personal service, the Indian Child Welfare Worker may deliver the document(s)
570 directly to the party(s) if such service is appropriate and safe under the circumstances.
571 In the alternative, personal service may be accomplished according to the Oneida
572 Judiciary Rules of Civil Procedure. [7 O.C. 708.12-3].
- 573 ▪ The Oneida Judiciary Rules of Civil Procedure provides that personal service
574 shall consist of delivering to the party a copy of the paper being served by a
575 law enforcement officer or other person, who is not a party to the action and
576 who is at least eighteen (18) years of age. An affidavit of service shall be filed
577 with the Court as proof of service. Personal service shall be completed by hand
578 delivering the required papers to any of the following: The party named in the
579 action or proceeding; An individual residing at the party’s home or usual place
580 of abode, so long as the person signing for delivery is at least eighteen (18)
581 years of age; An officer, manager, agent, or partner of a non-individual party;
582 or an attorney or advocate of the party, if represented. [8 O.C. 803.5-6(a)].
- 583 ▪ The Children’s Code provides that in addition to the discovery procedures permitted
584 under this law, the discovery procedures permitted under the Oneida Judiciary Rules
585 of Civil Procedure shall apply in all proceedings under this law. [7 O.C. 708.14-5].
- 586 ▪ The Oneida Judiciary Rules of Civil Procedure provides procedures for
587 discovery including the scope, required disclosures, limitations, time for

- 588 required disclosures, required pretrial disclosures, protective orders,
589 supplementing disclosures and responses, signatures required and the effect of
590 signatures, failure to disclose and information produced. [8 O.C. 803.14].
- 591 ■ The Children’s Code provides that the fact-finding hearing for a child in need of
592 protection or services shall be conducted according to the Oneida Judiciary Rules of
593 Civil Procedure except that the Court may exclude the child from the hearing. [7 O.C.
594 708.20-2].
 - 595 ■ The Oneida Judiciary Rules of Civil Procedure provides general hearing
596 procedures. [8 O.C. 803.38].
 - 597 ■ The Children’s Code provides that after receiving any evidence relating to the
598 disposition for guardianship, the Court shall enter a disposition and issue a written
599 decision consistent with the Oneida Judiciary Rules of Civil Procedure. [7 O.C. 708.29-
600 11].
 - 601 ■ The Oneida Judiciary Rules of Civil Procedure provides procedure for entering
602 and enforcing a judgment of the Court. [8 O.C. 803.31].
 - 603 ■ The Children’s Code provides that the fact-finding hearing for the suspension or
604 termination of parental rights shall be conducted according to the Oneida Judiciary
605 Rules of Civil Procedure except that the Court may exclude the child from the hearing.
606 [7 O.C. 708.37-2].
 - 607 ■ The Oneida Judiciary Rules of Civil Procedure provides general hearing
608 procedures. [8 O.C. 803.38].
 - 609 ■ The Children’s Code provides that after receiving any evidence relating to the
610 disposition for the suspension or termination of parental rights, the Court shall enter a
611 disposition and issue a written decision consistent with the Oneida Judiciary Rules of
612 Civil Procedure. [7 O.C. 708.40-1].
 - 613 ■ The Oneida Judiciary Rules of Civil Procedure provides procedure for entering
614 and enforcing a judgment of the Court. [8 O.C. 803.31].
 - 615 ■ *Family Court Law.* The purpose of the Family Court law is to establish a Family Court, and to
616 provide for the administration of law, justice, judicial procedures and practices by the Oneida
617 Tribe as a sovereign nation by exercising the inherent power to make, execute, apply, and
618 enforce its own law, and to apply its own customs and traditions in matters affecting the Oneida
619 people as it pertains to the family and/or to our children.
 - 620 ■ The Children’s Code provides that the Court has personal jurisdiction over an Oneida
621 Child, and over a non-Oneida child in certain circumstances. [7 O.C. 708.5-1].
622 Additionally, the Children’s Code provides that the Court has jurisdiction over a child
623 alleged to be in need of protection or services if personal jurisdiction has been
624 established and the child meets certain requirements. [7 O.C. 708.5-2]. Court is defined
625 in the Children’s Code as the Oneida Nation Family Court, which is the branch of the
626 Oneida Nation Judiciary that has the designated responsibility to oversee family
627 matters. [7 O.C. 708.3-1(j)].
 - 628 ■ The Family Court law provides that there is a Family Court, which shall
629 administer the judicial authorities and responsibilities of the Tribe over all
630 matters pertaining to the family, children, and elders, except for probate
631 matters. [8 O.C. 806.4-1]. The Family Court shall have subject matter

632 jurisdiction over cases and controversies arising under the following: Tribal
633 laws which specifically authorize the Court to exercise jurisdiction, and the
634 Constitution. [8 O.C. 806.5-2]. The Family Court law then describes when the
635 Family Court has personal jurisdiction of an individual including Indians and
636 non-Indians. [8 O.C. 806.5-3].

637 ■ *Oneida Judiciary Rules of Evidence.* The Oneida Judiciary Rules of Evidence establishes rules
638 of evidence to apply in proceedings held in the Trial court and Family Court of the Oneida
639 Judiciary administer Court proceedings fairly, eliminate unjustifiable expense and delay, and
640 promote the development of evidence law, by obtaining the truth and securing a just
641 determination. [8 O.C. 804.1-1, 804.1-2].

642 ■ The Children’s Code provides that the Oneida Judiciary Rules of Evidence are not
643 binding at emergency custody hearings, dispositional hearings, or a hearing about
644 changes in placement, revision of dispositional orders, extension of dispositional
645 orders, or termination of guardianship orders. At those hearings, the Court shall admit
646 all testimony having reasonable probative value, but shall exclude immaterial,
647 irrelevant, or unduly repetitious testimony. Hearsay evidence may be admitted if it has
648 demonstrable circumstantial guarantees of trustworthiness. The Court shall give effect
649 to the rules of privilege recognized by laws of the Nation. The Court shall apply the
650 basic principles of relevancy, materiality, and probative value to proof of all questions
651 of fact. [7 O.C. 708.13-2].

652 ■ *Child Support Law.* The purpose of the Child Support law is to establish the legal responsibility
653 of parents to provide financially for their children’s general well-being; make support payments
654 more equitable by ensuring consistent treatment of persons in similar circumstances; make
655 support payments based on the real earning capability of parents; and improve the efficiency
656 of child support establishment and enforcement. [7 O.C. 704.1-1].

657 ■ The Children’s Code provides that at any time, the Court or the Department may refer
658 the matter to the Nation’s Child Support Agency. [7 O.C. 708.13-4].

659

660 SECTION 7. OTHER CONSIDERATIONS

661 A. *Fiscal Impact.* Under the Legislative Procedures Act, a fiscal impact statement is required for all
662 legislation except emergency legislation [1 O.C. 109.6-1]. Oneida Business Committee resolution BC-
663 10-28-20-A titled, “*Further Interpretation of ‘Fiscal Impact Statement’ in the Legislative Procedures*
664 *Act,*” provides further clarification on who the Legislative Operating Committee may direct complete
665 a fiscal impact statement at various stages of the legislative process, as well as timeframes for
666 completing the fiscal impact statement.

667 ■ *Conclusion.* The Legislative Operating Committee received a fiscal impact statement for the
668 proposed amendments to the Children’s Code from the Finance Department on August 12, 2022.

669

Title 7. Children, Elders and Family - Chapter 708

~~CHILDREN'S CODE~~

Latiksa'shúha Laotilihwá'ke
the children – their issues

CHILDREN'S CODE

708.1.	Purpose and Policy	708.26.	Revision of Dispositional Orders
708.2.	Adoption, Amendment, Repeal	708.27.	Extension of Dispositional Orders
708.3.	Definitions	708.28.	Continuation of Dispositional Orders
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708.5.	Jurisdiction	708.30.	Revisions of Guardianship Order
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708.7.	Indian Child Welfare Department Duties and Responsibilities	708.32.	<u>Suspension or</u> Termination of Parental Rights
708.8.	Guardian ad litem	708.33.	Voluntary <u>Suspension or</u> Termination of Parental Rights
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708.10.	Cultural Wellness Facilitator and Healer	708.35.	Petition for <u>Suspension or</u> Termination of Parental Rights
708.11.	Order of Placement Preferences	708.36.	Initial Hearing on the <u>Suspension or</u> Termination of Parental Rights Petition
708.12.	Notice of Petition	708.37.	Fact Finding Hearing for a <u>Suspension or</u> Termination of Parental Rights
708.13.	Hearings (General)	708.38.	Department's <u>Suspension or</u> Termination of Parental Rights Report
708.14.	Discovery and Records	708.39.	Standards and Factors
708.15.	Taking a Child into Custody	708.40.	Dispositional Hearings for <u>Suspension or</u> Termination of Parental Rights
708.16.	Emergency Custody Hearing	708.41.	Adoption
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708.19.	Plea Hearing for a Child in Need of Protection or Services	708.44.	Non-Compliance with a Residual Rights Agreement
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708.22.	Dispositional Hearing for a Child in Need of Protection or Services	708.47.	Liability
708.23.	Permanency Plans		
708.24.	Change in Placement		
708.25.	Trial Reunification		

1

2 **708.1. Purpose and Policy**

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

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

13

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

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

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

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

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

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

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

34 **708.3. Definitions**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

207 208 **708.4. Scope**

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

212 213 **708.5. Jurisdiction**

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

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

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

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

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

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

233 (a) is without a parent or guardian;

234 (b) has been abandoned;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

278 (c) hold adoption proceedings.

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

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

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

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

291 **708.6. Nation's Child Welfare Attorney**

292 708.6-1. A Child Welfare attorney shall represent the Nation in all proceedings under this law.
293 The Child Welfare attorney shall be one of the following:

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

297 **708.7. Indian Child Welfare Department Duties and Responsibilities**

298
299 708.7-1. *Indian Child Welfare Worker.* The Indian Child Welfare Worker shall carry out the duties
300 and responsibilities set forth in this law which include, but are not limited to the following:

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

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

350

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

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

363 708.8-2. *Qualifications.*

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

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

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

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

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

410 411 **708.9. Advocate**

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

415 708.9-2. *Qualifications.*

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

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

424 425 **708.10 Cultural Wellness Facilitator and Healer**

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

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

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

432

433 **708.11. Order of Placement Preferences**

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

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

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

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

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

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

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

462

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

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

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

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

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

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

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

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

489 **708.13. Hearings (General)**

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

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

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

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

509 **708.14. Discovery and Records**

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

516 708.14-2. The Department shall make available for inspection or disclosure the contents of any
517 record kept, regardless of the originating source, to a guardian ad litem appointed in a Children's
518 Code or family law case when that access is granted by order of the Court.

519 708.14-3. If a request for discovery is refused, the person may submit an application to the Court
520 requesting an order granting discovery. Motions for discovery shall certify that a request for
521 discovery has been made and refused.

522 708.14-~~34~~. If the discovery violates a privileged communication or a work product rule, the Court
523 may deny, in whole or part, otherwise limit or set conditions on the discovery authorized.

524 708.14-~~45~~. The identity of the individual that initiated the investigation by contacting the
525 Department, shall be redacted in all documents that are made available to the parties.

526 708.14-~~56~~. In addition to the discovery procedures permitted under this law, the discovery
527 procedures permitted under the Oneida Judiciary Rules of Civil Procedure shall apply in all
528 proceedings under this law.

529 708.14-7. The Department may make an ex parte request to the Court to conduct an in camera
530 review to determine what information should and should not be released to the parties and their
531 counsel. In making that determination, the Court shall balance what is necessary to a fair
532 determination of the child welfare legal matter, including access to records, against the interest in
533 protecting the child from the risk of harm. After the Court conducts the in camera review, the
534 decision regarding the release of records shall be provided to the parties in writing.

535

536 **708.15. Taking a Child into Custody**

537 708.15-1. *Grounds for Taking a Child into Custody.* A child may be taken into custody without
538 a Court order by an Indian Child Welfare Worker or law enforcement officer if there are reasonable
539 grounds to believe:

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

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

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

545 708.15-2. The Court may enter an order directing that a child be taken into custody upon a showing
546 satisfactory to the judge that the welfare of the child demands that the child be immediately
547 removed from his or her present custody.

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

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

560 708.15-5. *Probable Cause for Taking a Child into Custody.* A child may be held in custody if the
 561 Indian Child Welfare Worker determines the child is within the jurisdiction of the Court and
 562 probable cause exists to believe any of the following if the child is not held in custody:

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

575 708.15-6. *Holding a Child in Custody.* A child held in custody may be held in any of the following
 576 places as long as the places are in the child's best interest and all people residing or regularly
 577 visiting the premises have cleared a background check:

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

594 708.15-7. When holding a child in custody for emergency placement the use of the preferences
 595 for placement stated in section 708.11-1 are preferred, but not mandatory. If the preferences for
 596 placement are not followed, the Department shall try to transition that child into a home that fits
 597 the order of preferences for placement as quickly as deemed appropriate by the Department.

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

604 708.15-9. The Indian Child Welfare Worker shall also notify the parent, guardian, and legal
 605 custodian of the following:

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

610 708.15-10. When the child is age twelve (12) or older, the Indian Child Welfare Worker shall
 611 notify the child of the date, time, and place and the nature and possible outcomes of the emergency
 612 custody hearing.

613

614 **708.16. Emergency Custody Hearing**

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

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

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

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

636 ~~708.16-4. Prior to the start of the hearing, the Court shall provide a copy of the petition to the~~
 637 ~~parent, guardian, and legal custodian if present, and to the child if he or she is twelve (12) years of~~
 638 ~~age or older.~~

639 ~~708.16-5-708.16-4.~~ Prior to the start of the hearing, the Court shall inform the parent, guardian, or
 640 legal custodian of the following:

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

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

650 708.16-~~7~~6. All orders to hold a child in custody shall be in writing ~~and shall include all of the~~
 651 ~~following.~~

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

653 ~~(a)~~ (1) A finding that continued placement of the child in his or her home would
654 be contrary to the best interests of the child;

655 ~~(b)~~ (2) A finding that the Department and/or anyone else providing services to
656 the child had reasonable grounds to remove the child from the home based on the
657 child's best interest;

658 ~~(c)~~ (3) A finding that the Department- has made reasonable efforts to prevent
659 the removal of the child from the home, while assuring that the child's best
660 ~~interest~~interests are the paramount concerns;

661 ~~(d)~~ (4) The Department made reasonable efforts to make it possible for the
662 child to return safely home; and

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

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

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

675 708.16-~~87~~. An order to hold a child in custody remains in effect until a dispositional order is
676 granted, the petition is withdrawn or dismissed, or the order is modified or terminated by further
677 order of the Court.

678 708.16-~~98~~. An order to hold a child in custody may be re-heard upon motion of any party if, in
679 the Court's discretion, good cause is found, whether or not counsel was present.

681 **708.17. Petition for a Child in Need of Protection or Services**

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

687 708.17-2. The petition shall include the following:

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

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

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

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

696 (e) A plain and concise statement of facts upon which the allegations are based, including
697 the dates, times, and location at which the alleged acts occurred. If the child is being held

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

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

703 708.17-3. The petition shall state if any of the facts required for a petition are not known or cannot
704 be ascertained by the petitioner.

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

710

711 **708.18. Consent Decree**

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

719 708.18-2. *Requirements of a Consent Decree.* If at the time the consent decree is entered into the
720 child is placed outside the home and if the consent decree maintains the child in that placement,
721 the consent decree shall include all of the following:

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

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

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

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

739 708.18-3. *Time Limits of Consent Decree.* A consent decree shall remain in effect up to six (6)
740 months unless the child, parent, guardian, or legal custodian is discharged sooner by the
741 Court. The time limits under this law shall be tolled during the pendency of the consent decree.

742 708.18-4. *Extension of a Consent Decree.* Upon the motion of the Court or the request of the
743 child, parent, guardian, legal custodian, child's guardian ad litem, or the Department, the Court

744 may, after giving notice to the parties to the consent decree, extend the decree for up to an
745 additional six (6) months in the absence of objection to the extension by the parties to the initial
746 consent decree. If the child, parent, guardian, legal custodian, or child's guardian ad litem objects
747 to the extension, the Court shall schedule a hearing and make a determination on the issue of
748 extension.

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

754 **708.19. Plea Hearing for a Child in Need of Protection or Services**

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

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

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

766 708.19-4. Before accepting an admission or plea of no contest of the alleged facts in a petition,
767 the Court shall:

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

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

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

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

780 708.19-6. If the Court orders the out of home placement of the child, the order shall be in writing
781 and shall contain the information required by section 708.16-6(a)(1)-(5).

782

783 **708.20. Fact finding Hearing for a Child in Need of Protection or Services**

784 708.20-1. The fact-finding hearing is a hearing conducted by the Court to determine whether there
785 is clear and convincing evidence to establish that the child is in need of protection or services.

786 708.20-2. The fact-finding hearing shall be conducted according to the Oneida Judiciary Rules of
787 Civil Procedure except that the Court may exclude the child from the hearing.
788

789 708.20-3. At the close of the fact-finding hearing, the Court shall set a date for the dispositional
790 hearing which allows a reasonable time for the parties to prepare but is no more than forty-five
791 (45) days after the fact-finding hearing, unless the Court enters an order finding good cause to go
792 outside the time limits. If all the parties agree and the Department has submitted court report
793 pursuant to section 708.21, the Court may proceed immediately with the dispositional hearing.
794

795 **708.21. Department's Disposition Report for a Child in Need of Protection or Services**

796 708.21-1. Before the dispositional hearing, the Department shall submit a written report to the
797 Court, with a copy provided to the parties by first-class mail at least seven (7) days prior to the
798 hearing, which shall contain all of the following:

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

806 708.21-2. If the Department is recommending out-of-home placement, the written report shall
807 include all of the following:

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

828 ~~708.21-3. The Department may request the Court to withhold identifying information from the~~
829 ~~child's parent, guardian or legal custodian if there are reasonable grounds to believe that disclosure~~
830 ~~would result in imminent danger to the child or anyone else.~~

831

832 **708.22. Dispositional Hearing for a Child in Need of Protection or Services**

833 708.22-1. At a dispositional hearing, any party may present evidence relevant to the issue of
834 disposition, including expert testimony, and may make alternative dispositional recommendations.

835 708.22-2. During a dispositional hearing, if the Department is recommending placement of the
836 child outside of the child's home in accordance with the placement preferences in section 708.11-
837 1, the Department shall present as evidence specific information showing all of the following:

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

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

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

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

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

864 708.22-4. *Dispositional Orders.* The Court's dispositional order shall be in writing and shall
865 contain:

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

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

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

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

878 (2) A dispositional order made before the child reaches eighteen (18) years of age
879 that places or continues the placement of the child outside of the home shall

880 terminate on the latest of the following dates, unless the Court specifies a shorter
881 period or the Court terminates the order sooner:

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

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

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

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

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

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

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

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

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

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

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

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

923 (2) The treatment goals and objectives for each condition or requirement
924 established in the plan. If the child has been removed from the home, the

925 ~~treatment~~service plan must include, but is not limited to, the conditions or
926 requirements that must be established for the safe return of the child to the family;
927 (3) The specific treatment objectives that clearly identify the separate roles and
928 responsibilities of all parties addressed in the ~~treatment~~service plan, including the
929 Department's specific responsibilities to make reasonable efforts to assist the
930 parent, guardian or legal custodian in their efforts toward reunification with the
931 child; and

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

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

- 938 (1) Outpatient mental health treatment;
- 939 (2) Substance abuse treatment;
- 940 (3) Anger management;
- 941 (4) Individual or family counseling;
- 942 (5) Parent training and education;
- 943 (6) Cultural wellness treatment and training; and/or
- 944 (7) Any other treatment as deemed appropriate by the Court.

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

950 708.22-7. The Court shall provide a copy of the dispositional order to the child's parent, guardian,
951 and legal custodian, and other parties to the action, ~~and the child if the child is age twelve (12) or~~
952 ~~older.~~

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

959 **708.23. Permanency Plans**

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

- 963 (a) The permanency plan shall include all of the following:
 - 964 (1) The name, birth date, address, and tribal affiliation of the child;
 - 965 (b2) The names, birth dates, addresses, and tribal affiliation of the child's parent(s),
966 guardian(s), and legal custodian(s);
 - 967 (e3) The date on which the child was removed from the home;
 - 968 (d4) A statement as to the availability of a safe and appropriate placement with an
969 extended family member;
 - 970

971 (e5) The goal(s) of the permanency plan which may include one or more of the
972 following: reunification, adoption, guardianship, placement with a fit and willing
973 relative, or long-term foster care;

974 (f6) Date by which it is likely the goal(s) of the permanency plan will likely be
975 achieved;

976 (g7) A description of the services offered and any services provided in an effort to
977 prevent removal of the child from the home or to return the child to the home, while
978 assuring that the best interests of the child are the paramount concerns;

979 (h8) If the child has one (1) or more siblings who have been removed from the
980 home, a description of the efforts made to place the child in a placement that enables
981 the sibling group to remain together. If a decision is made to not place the siblings
982 together, a description of the efforts made to provide for frequent and ongoing
983 visitation or other ongoing interaction between the child and siblings;

984 (i9) Information about the child's education; and

985 (j10) Any other appropriate information as deemed necessary by the Court or the
986 Department.

987 708.23-2. The Department shall file the initial permanency plan with the Court within sixty (60)
988 days after the date the child was first removed from the home unless the child is returned to the
989 home within that time period.

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

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

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

1000 708.23-4. After the hearing, the Court shall enter a written order addressing the following:

1001 (a) The continuing necessity for and the safety and appropriateness of the placement;

1002 (b) The compliance with the permanency plan by the Department and any other service
1003 providers, the child's parent(s), and the child;

1004 (c) Efforts taken to involve appropriate service providers and Department staff in meeting
1005 the special needs of the child and the child's parent(s);

1006 (d) The progress toward eliminating the causes for the child's placement outside the home
1007 and returning the child safely to the home or obtaining a permanent placement for the child;

1008 (e) The date by which it is likely that the child will be returned to the home or placed for
1009 adoption, with a guardian, with a fit and willing relative, or in some other permanent living
1010 arrangement;

1011 (f) Whether reasonable efforts were made by the Department to achieve the permanency
1012 plan goal(s);

1013 (g) Whether reasonable efforts were made by the Department to place the child in a
1014 placement that enables the sibling group to remain together or have frequent visitation or
1015 other ongoing interaction; and

1016 (h) The date of the next review hearing, if appropriate.

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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

1062 outside the home the Court may extend the expiration date of the original dispositional order to
1063 the latest of the following dates, unless the Court specifies a shorter period:

- 1064 (a) The date on which the child reaches eighteen (18) years of age;
- 1065 (b) The date that is one (1) year after the date on which the change-in-placement order is
1066 granted; or
- 1067 (c) The date on which the child is granted a high school or high school equivalency
1068 diploma or the date on which the child reaches nineteen (19) years of age, whichever occurs
1069 first, if the child is a full-time student at a secondary school or its vocational or technical
1070 equivalent and is reasonably expected to complete the program before reaching nineteen
1071 (19) years of age.

1072 708.24-9. If the change in placement is from a placement outside the home to a placement in the
1073 child's home and if the expiration date of the original dispositional order is more than one (1) year
1074 after the date on which the change-in-placement order is granted, the Court shall shorten the
1075 expiration date of the original dispositional order to the date that is one (1) year after the date on
1076 which the change-in-placement order is granted or to an earlier date as specified by the Court.

1077
1078 **708.25. Trial Reunification**

1079 708.25-1. The Department or the Nation's Child Welfare attorney may request the Court to order
1080 a trial reunification. A trial reunification occurs when a child placed in an out-of-home placement
1081 resides in the home of a parent, guardian, or legal custodian from which the child was removed for
1082 a period of seven (7) consecutive days or longer, but not exceeding one hundred fifty (150) days,
1083 for the purpose of determining the appropriateness of changing the placement of the child to that
1084 home. A trial reunification is not a change in placement under section 708.24.

1085 708.25-2. *Request for Trial Reunification.* The Department or the Nation's Child Welfare attorney
1086 shall include the following in the request for a trial reunification:

- 1087 (a) The name and address of the requested trial reunification home;
- 1088 (b) A statement describing why the trial reunification is in the best interests of the child;
1089 and
- 1090 (c) A statement describing how the trial reunification satisfies the objective of the child's
1091 permanency plan.

1092 708.25-3. *Emergency Removal of a Child.* A request for a trial reunification may not be made on
1093 the sole grounds that an emergency condition necessitates an immediate removal of the child from
1094 the child's out-of-home placement. If an emergency condition necessitates such an immediate
1095 removal, the Department shall proceed with an emergency change in placement as described in
1096 section 708.24-6.

1097 708.25-4. *Notice.* The Department or Nation's Child Welfare attorney shall submit the request to
1098 the Court ~~and~~ Upon filing with the Court and at least seven (7) days before the date of
1099 reunification, the Department shall provide the parent, guardian, legal custodian, and any other
1100 party written notice ~~pursuant to the Oneida Judiciary Rules of Civil Procedure~~ of the proposed
1101 reunification by first-class mail. The notice shall contain the information that is required to be
1102 included in the request under section 708.25-2.

1103 708.25-5. *Trial Reunification Hearing.* Any party who is entitled to receive notice of a requested
1104 trial reunification may obtain a hearing on the matter by filing an objection with the Court within
1105 ten (10) days after the trial reunification request was filed with the Court.

- 1106 (a) If no objection against the trial reunification is filed, the Court may issue an order for
1107 the trial reunification.

1108 (b) If an objection is filed, a hearing shall be held within forty five (45) days after the
1109 request was filed with the Court. A trial reunification shall not occur until after the hearing.
1110 Not less than three (3) business days before the hearing the ~~Department or the~~ Court shall
1111 provide notice of the hearing to all parties ~~with a request for the trial reunification attached~~
1112 ~~to the notice.~~

1113 (1) If a hearing is held and the trial reunification would remove a child from a foster
1114 home or other placement with a legal custodian, the Court shall give the foster
1115 parent or other legal custodian a right to be heard at the hearing by permitting the
1116 foster parent or legal custodian to make a written or oral statement relating to the
1117 child and the requested trial reunification.

1118 (2) The Court may appoint a guardian ad litem for the child during the trial
1119 reunification hearing.

1120 708.25-6. *Order.* If the Court finds that the trial reunification is in the best interest of the child
1121 and that the trial reunification satisfies the objectives of the child’s permanency plan, the Court
1122 shall order the trial reunification. The trial reunification shall terminate ninety (90) days after the
1123 date of the order, unless the Court specifies a shorter period in the order, or extends or revokes the
1124 trial reunification. No trial reunification order may extend the expiration date of the original
1125 dispositional order or any extension of the dispositional order.

1126 708.25-7. *Extension of Trial Reunification.* The Department may request an extension of a trial
1127 reunification.

1128 (a) *Extension Request.* The request shall contain a statement describing how the trial
1129 reunification continues to be in the best interests of the child. No later than ~~ten (10)~~seven
1130 (7) days prior to the expiration of the trial reunification, the Department shall submit the
1131 request to the Court and shall cause notice of the request to be provided to all parties by
1132 first-class mail.

1133 (b) *Extension Hearing.* Any party may obtain a hearing on the requested extension by
1134 filing an objection with the Court within ten (10) days after the extension request was filed
1135 with the Court.

1136 (1) If no objection is filed, the Court may order an extension of the trial
1137 reunification.

1138 (2) If an objection is filed, the Court shall schedule a hearing on the matter. If the
1139 Court is unable to conduct a hearing on the matter before the trial reunification
1140 expires, the trial reunification shall remain in effect until the Court is able hold the
1141 hearing. Not less than three (3) business days before the hearing the ~~Department or~~
1142 ~~the~~ Court shall provide notice of the hearing to all parties ~~with a copy of the~~
1143 ~~extension request attached.~~

1144 (c) *Extension Order.* If the Court finds that the trial reunification continues to be in the
1145 best interests of the child, the Court shall grant an order extending the trial reunification
1146 for a period specified by the Court. Any number of extensions may be granted, but the total
1147 period for a trial reunification may not exceed one hundred and fifty (150) days.

1148 708.25-8. *End of Trial Reunification Period.* When a trial reunification period ends, the
1149 Department shall do one (1) of the following:

1150 (a) Return the child to his or her out-of-home placement. The Department may do so
1151 without further order of the Court, but within five (5) days after the return of the child to
1152 his or her out-of-home placement the Department shall provide the parties with written
1153 notice of the following by first-class mail:

- 1154 (1) the date of the return of the child to the out-of-home placement; and
1155 (2) the address of that placement to all parties, unless providing the address would
1156 present imminent danger to the child;

1157 (b) Request a change in placement under section 708.24 to place the child in a new out-of-
1158 home placement; or

1159 (c) Request a change in placement under section 708.24 to place the child in the trial
1160 reunification home.

1161 708.25-9. *Revocation of Trial Reunification.* The Department may determine that a trial
1162 reunification is no longer in the best interests of the child and revoke the trial reunification before
1163 the specified trial reunification period ends.

1164 (a) *Revocation Request.* If the Department determines that the trial reunification is no
1165 longer in the best interests of the child, the Department, without prior order by the Court,
1166 may remove the child from the trial reunification home and place the child in the child's
1167 previous out-of-home placement or place the child in a new out-of-home placement.

1168 (1) If the Department places the child in the child's previous out-of-home
1169 placement, within three (3) business days of removing the child from the trial
1170 reunification home, the Department shall submit a request for revocation of the trial
1171 reunification to the Court and shall provide notice of the request to all parties: by
1172 first-class mail. The request shall contain the following information:

1173 (A) the date on which the child was removed from the trial reunification
1174 home;

1175 (B) the address of the child's current placement, unless providing the
1176 address would present imminent danger to the child; and

1177 (C) the reasons for the proposed revocation.

1178 (2) If the Department places the child in a new out-of-home placement, within
1179 three (3) business days of removing the child from the trial reunification home, the
1180 Department shall request a change in placement under section 708.22. The
1181 procedures specified in section 708.24, including all notice procedures, apply to a
1182 change in placement requested under this subdivisionsubsection, except that the
1183 request shall include the date on which the child was removed from the trial
1184 reunification home in addition to the information required in 708.24-2. The trial
1185 reunification is revoked when the change in placement order is granted.

1186 (b) *Revocation Hearing.* Any party may obtain a hearing on the matter by filing an
1187 objection with the Court within ten (10) days after the request was filed with the Court.

1188 (1) If no objection is filed, the Court may issue a revocation order.

1189 (2) If an objection is filed, the Court shall schedule a hearing on the matter. Not
1190 less than three (3) business days before the hearing the Court shall provide notice
1191 of the hearing together with a copy of the request for the revocation, to all parties.

1192 (c) *Revocation Order.* If the Court finds that the trial reunification is no longer in the best
1193 interests of the child who has been placed in his or her previous out-of-home placement,
1194 the Court shall grant an order revoking the trial reunification.

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

1200 not been reversed, set aside, vacated or pardoned, the Court shall revoke the trial reunification and
1201 the child shall be returned to his or her previous out-of-home placement, or placed in a new out-
1202 of-home placement.

1203 (a) *Exception.* A prohibition against trial reunifications based on homicide of a parent or
1204 a crime against a child does not apply if the Court determines by clear and convincing
1205 evidence that the placement would be in the best interests of the child.
1206

1207 **708.26. Revision of Dispositional Orders**

1208 708.26-1. A party, or the Court on its own motion, may request a revision in the dispositional
1209 order that does not involve a change in placement.

1210 708.26-2. The request or Court proposal shall set forth in detail the nature of the proposed revision
1211 and what new information is available that affects the advisability of the Court's disposition. The
1212 request for revision shall be filed with the Court with notice provided ~~by the parties pursuant to~~
1213 ~~the Oneida Judiciary Rules of Civil Procedure~~ to the parties by first-class mail.

1214 708.26-3. The Court shall hold a hearing on the matter prior to any revision of the dispositional
1215 order if the request or Court proposal indicates that new information is available that affects the
1216 advisability of the Court's dispositional order, unless the parties file a signed stipulation and the
1217 Court approves.

1218 708.26-4. If a hearing is held, any party may present evidence relevant to the issue of revision of
1219 the dispositional order. In addition, the Court shall give a foster parent or other legal custodian a
1220 right to be heard at the hearing by permitting the foster parent or other legal custodian to make a
1221 written or oral statement during the hearing, or to submit a written statement prior to the hearing,
1222 relevant to the issue of revision.
1223

1224 **708.27. Extension of Dispositional Orders**

1225 708.27-1. A party, or the Court on its own motion, may request an extension of a dispositional
1226 order. The request shall be filed with the Court with notice to the parties ~~pursuant to the Oneida~~
1227 ~~Judiciary Rules of Civil Procedure~~ by first-class mail.

1228 708.27-2. No order may be extended without a hearing, unless the parties file a signed stipulation
1229 and the Court approves.

1230 708.27-3. Any party may present evidence relevant to the issue of extension. If the child is placed
1231 outside of his or her home, the Department shall present as evidence specific information showing
1232 that the Department has made reasonable efforts to achieve the permanency goal of the child's
1233 permanency plan. In addition, the Court shall give a foster parent or other legal custodian a right
1234 to be heard at the hearing by permitting the foster parent or other legal custodian to make a written
1235 or oral statement during the hearing, or to submit a written statement prior to the hearing, relevant
1236 to the issue of extension.

1237 708.27-4. The Court shall make findings of fact and conclusions of law based on the evidence.
1238 The findings of fact shall include a finding as to whether reasonable efforts were made by the
1239 Department to achieve the permanency goal of the child's permanency plan ~~- if applicable.~~

1240 708.27-5. If a request to extend a dispositional order is made prior to the termination of the order,
1241 but the Court is unable to conduct a hearing on the request prior to the termination date, the order
1242 shall remain in effect until such time as an extension hearing is conducted.
1243

1244 **708.28. Continuation of Dispositional Orders**

1245 708.28-1. If a petition for suspension or termination of parental rights or guardianship is filed or
1246 an appeal from a suspension or termination of parental rights or guardianship judgment is filed
1247 during the year in which a child in need of protection or services dispositional order is in effect,
1248 the dispositional order shall remain in effect until all proceedings related to the petition or appeal
1249 are concluded.

1250
1251 **708.29. Guardianship for Certain Children in Need of Protection or Services**

1252 708.29-1. *Conditions for Guardianship.* The Court may appoint a guardian for a child if the Court
1253 finds all of the following:

1254 (a) That the child has been found to be in need of protection or services under this law and
1255 has been placed outside of his or her home pursuant to one (1) or more Court orders, or
1256 that the child has been found to be in need of protection or services and placement of the
1257 child in the home of a guardian under this section has been recommended by the
1258 Department at the dispositional hearing;

1259 (b) That the person nominated as the guardian of the child is a person with whom the child
1260 has been placed or in whose home placement of the child is recommended by the
1261 Department and that it is likely that the child will continue to be placed with that person
1262 for an extended period of time or until the child attains the age of eighteen (18) years;

1263 (c) That, if appointed, it is likely that the person would be willing and able to serve as the
1264 child's guardian for an extended period of time or until the child attains the age of eighteen
1265 (18) years;

1266 (d) That it is not in the best interests of the child that a petition to suspend or terminate
1267 parental rights be filed with respect to the child;

1268 (e) That the child's parents are neglecting, refusing or unable to carry out the duties of a
1269 guardian; and

1270 (f) That the Department has made reasonable efforts to make it possible for the child to
1271 return to his or her home, while assuring that the child's best interests are the paramount
1272 concerns, but that reunification of the child with the child's parent(s) is unlikely or contrary
1273 to the best interests of the child and that further reunification efforts are unlikely to be made
1274 or are contrary to the best interests of the child or that the Department has made reasonable
1275 efforts to prevent the removal of the child from his or her home, while assuring the child's
1276 best interests, but that continued placement of the child in the home would be contrary to
1277 the best interests of the child.

1278 708.29-2. *Who May File a Petition for Guardianship.* Any of the following persons may file a
1279 petition for the appointment of a guardian for a child under this section:

1280 (a) The child;

1281 (b) The child's guardian ad litem;

1282 (c) The child's parent;

1283 (d) The person with whom the child is placed or in whose home placement of the child is
1284 recommended by the Department;

1285 (e) The Department; or

1286 (f) The Nation's Child Welfare attorney.

1287 708.29-3. *Petition for Guardianship.* A proceeding for the appointment of a guardian for a child
1288 shall be initiated by a petition which shall include the following:

1289 (a) The name, birth date, address, and tribal affiliation of the child;

1290 (b) The names, birth dates, addresses, and tribal affiliation of the child's parents;

1291 (c) A copy of the order adjudicating the child to be in need of protection or services and
1292 the order placing the child outside of the parental home; and

1293 (d) A statement of the facts and circumstances which the petitioner alleges establish that
1294 the conditions for guardianship specified in section 708.2729-1(a)-(f) are met.

1295 ~~708.29-4~~708.29-4. *Notice of Petition for Guardianship.* Upon filing with the Court and at least
1296 seven (7) days prior to the plea hearing, the party that filed the guardianship petition shall provide
1297 a copy of the petition to the other parties by personal service or, if personal service is not possible,
1298 by certified mail with return receipt requested.

1299 708.29-5. *Presence of the Proposed Guardian.* The proposed guardian shall be present at all
1300 guardianship hearings. The Court may waive the appearance requirement for the proposed
1301 guardian if the Court determines there is good cause.

1302 708.29-56. *Plea Hearing for Guardianship.* A plea hearing to determine whether any party wishes
1303 to contest a petition for guardianship shall take place no sooner than ten (10) days after the filing
1304 of the petition. At the hearing, the non-petitioning parties shall state whether they wish to contest
1305 the petition. Before accepting an admission or a plea of no contest to the allegations in the petition,
1306 the Court shall do all of the following:

1307 (a) Address the parties present and determine that the admission or plea of no contest is
1308 made voluntarily and with understanding of the nature of the facts alleged in the petition,
1309 the nature of the potential outcomes and possible dispositions by the Court and the nature
1310 of the legal consequences of that disposition;

1311 (b) Establish whether any promises or threats were made to elicit the admission or plea of
1312 no contest; and

1313 (c) Make inquiries to establish to the satisfaction of the Court that there is a factual basis
1314 for the admission or plea of no contest.

1315 708.29-67. If the petition is not contested and if the Court accepts the admission or plea of no
1316 contest, the Court may immediately proceed to a dispositional hearing unless an adjournment is
1317 requested.

1318 708.29-78. If the petition is contested or if the Court does not accept the admission or plea of no
1319 contest, the Court shall set a date for a fact-finding hearing which allows reasonable time for the
1320 parties to prepare but is not more than sixty (60) days after the plea hearing, unless the Court enters
1321 an order finding good cause to go outside the time limits.

1322 (a) If the petition is contested, the Court shall order the Department to file with the Court
1323 a report containing as much information relating to the appointment of a guardian as is
1324 reasonably ascertainable, including an assessment of the conditions for guardianship
1325 specified in section 708.29-1(a)-(f). ~~The~~Upon filing with the Court and at least seven (7)
1326 days prior to the hearing, the Department shall file its report with the Court prior to the
1327 fact-finding hearing and shall provide the parent, guardian, legal custodian, proposed
1328 guardian, and any other parties with a written copy of the report at least three (3) business
1329 days prior to the hearing by first-class mail.

1330 708.29-89. *Fact Finding Hearing for Guardianship.* The Court shall hold a fact-finding hearing
1331 on the petition at which any party may present evidence relevant to the issue of whether the
1332 conditions for guardianship have been met. If the Court, at the conclusion of the fact-finding
1333 hearing, finds by clear and convincing evidence that the conditions for guardianship specified in
1334 section 708.29-1(a)-(f) have been met, the Court shall immediately proceed to a dispositional
1335 hearing unless an adjournment is requested.

1336 708.29-~~9~~10. *Dispositional Hearing for Guardianship.* The Court shall hold a dispositional
1337 hearing at which any party may present evidence, including expert testimony, relevant to the
1338 disposition. In determining the appropriate disposition for guardianship, the Court shall use the
1339 best interests of the child as the prevailing factor to be considered by the Court. In making a
1340 decision about the appropriate disposition, the Court shall consider any report submitted by the
1341 Department and shall consider, but not be limited to, all of the following:

- 1342 (a) Whether the person would be a suitable guardian of the child;
- 1343 (b) The willingness and ability of the person to serve as the child's guardian for an extended
1344 period of time or until the child reaches the age of eighteen (18) years; and
- 1345 (c) The wishes of the child, if the child has the capacity to express their wishes.

1346 708.29-~~10~~11. *Dispositional Order for Guardianship.* After receiving any evidence
1347 relating to the disposition, the Court shall enter one of the following dispositions and issue a written
1348 decision consistent with the Oneida Judiciary Rules of Civil Procedure:

- 1349 (a) A disposition dismissing the petition if the Court determines that appointment of the
1350 person as the child's guardian is not in the best interests of the child; or
- 1351 (b) A disposition ordering that the proposed guardian be appointed as the child's guardian
1352 if the Court determines that such an appointment is in the best interests of the child.

1353 708.29-~~11~~12. If the Court appoints a guardian for the child, the Court may dismiss the
1354 dispositional order finding that the child is in need of protection or services.

1355

1356 **708.30. Revisions of Guardianship Order**

1357 708.30-1. Any person authorized to file a guardianship petition or the Court, on its own motion
1358 may request a revision in a guardianship order.

1359 708.30-2. The motion or Court proposal shall set forth in detail the nature of the proposed revision,
1360 shall allege facts sufficient to show that there has been a substantial change in circumstances since
1361 the last order affecting the guardianship was entered and that the proposed revision would be in
1362 the best interests of the child and shall allege any other information that affects the advisability of
1363 the Court's disposition. The motion for the revision shall be filed with the Court with notice and,
1364 upon filing, a written copy shall be provided by the to all parties pursuant to the Oneida Judiciary
1365 Rules of Civil Procedure. by first-class mail.

- 1366 ~~(a)~~ (a) The Court may order the Department to file with the Court a report containing
1367 as much information relating to the revision of the guardianship as is reasonably
1368 ascertainable. ~~The~~ Upon filing with the Court and at least seven (7) days prior to the
1369 revision hearing, the Department shall file its report with the Court prior to the hearing on
1370 the revision of guardianship and shall provide the parties with a written copy of the report
1371 at least three (3) business days prior to the hearing by first-class mail.

1372 708.30-3. The Court shall hold a hearing on the matter prior to any revision of the guardianship
1373 order if the motion or Court proposal indicates that new information is available which affects the
1374 advisability of the Court's guardianship order, unless the parties file a signed stipulation and the
1375 Court approves.

1376

1377 **708.31. Termination of Guardianship**

1378 708.31-1. A guardianship under this law shall continue until any of the following are met,
1379 whichever occurs earlier:

- 1380 (a) The date on which the child attains eighteen (18) years of age;

1381 (b) The date on which the child is granted a high school or high school equivalency
1382 diploma or the date on which the child reaches nineteen (19) years of age, whichever occurs
1383 first, if the child is a full-time student at a secondary school or its vocational or technical
1384 equivalent and is reasonably expected to complete the program before reaching nineteen
1385 (19) years of age; or

1386 (c) The date on which the Court terminates the guardianship order.

1387 708.31-2. A parent of the child may request that a guardianship order be terminated. The request
1388 shall allege facts sufficient to show that there has been a substantial change in circumstances since
1389 the last order affecting the guardianship was entered, that the parent is willing and able to carry
1390 out the duties of a guardian and that the proposed termination of guardianship would be in the best
1391 interests of the child. The Court shall hold a hearing on the matter unless the parties file a signed
1392 stipulation and the Court approves.

1393 (a) The Court may order the Department to file with the Court a report containing as much
1394 information relating to the termination of the guardianship as is reasonably ascertainable,
1395 including a re-assessment of the conditions for guardianship specified in section 708.29-
1396 1(a)-(f). ~~The~~ Upon filing with the Court and at least seven (7) days prior to the termination
1397 hearing, the Department shall ~~file its report with the Court prior to the hearing on the~~
1398 ~~termination of guardianship and shall~~ provide the parties with a written copy of the report
1399 ~~at least three (3) business days prior to the hearing~~ by first-class mail.

1400 708.31-3. Any person authorized to file a petition ~~under~~ for guardianship may request that ~~a~~
1401 appointed guardian be removed for cause or the Court may, on its own motion, propose such a
1402 removal. The request or Court proposal shall allege facts sufficient to show that the guardian is or
1403 has been neglecting, is or has been refusing, or is or has been unable to discharge the guardian's
1404 trust and may allege facts relating to any other information that affects the advisability of the
1405 Court's disposition. The Court shall hold a hearing on the matter.

1406 708.31-4. A guardian appointed under this law may resign at any time if the resignation is accepted
1407 by the Court.

1408

1409 **708.32. Suspension or Termination of Parental Rights**

1410 ~~708.32-1.~~ 708.32-1. It is the philosophy of the Nation that children deserve a sense of permanency
1411 and belonging throughout their lives and at the same time they deserve to have knowledge about
1412 their unique cultural heritage including their tribal customs, history, language, religion and values.

1413 708.32-2. It is the philosophy of the Nation that a united and complete family unit is of the utmost
1414 value to the community and the individual family members, and that the parent-child relationship
1415 is of such vital importance that it should be suspended or terminated only as a last resort when all
1416 efforts have failed to avoid suspension or termination and it is in the best interests of the child
1417 concerned to proceed with the suspension or termination of parental rights.

1418 708.32-3. ~~708.32-2~~ *Suspension of Parental Rights.* The suspension of parental rights is the
1419 permanent suspension of the rights of biological parents to provide for the care, custody, and
1420 control of their child.

1421 708.32-4. *Termination of Parental Rights.* The termination of parental rights means that all rights,
1422 powers, privileges, immunities, duties and obligations existing between biological parent and child
1423 are permanently severed.

1424 708.32-5. The Court may suspend or terminate a parent's rights on a voluntary or involuntary
1425 basis.

1426 708.32-6. ~~708.32-3.~~ An order suspending or terminating parental rights permanently severs all
1427 legal rights and duties between the parent whose parental rights are suspended or terminated and
1428 the child.

1429 ~~(a) An order terminating parental rights does not affect a child's relationship with the~~
1430 ~~child's extended biological family unless the Court expressly finds that it is in the child's~~
1431 ~~best interest to terminate the child's relationship with his or her extended biological family.~~

1432 708.32-47. The suspension or termination of parental rights shall not adversely affect the child's
1433 rights and privileges as a member of the Nation, nor as a member of any tribe to which the child
1434 is entitled to membership, nor shall it affect the child's enrollment status with the Nation, nor shall
1435 it interfere with the child's cultural level and traditional and spiritual growth as a member of the
1436 Nation.

1437
1438 **708.33. Voluntary Suspension or Termination of Parental Rights**

1439 708.33-1. The Court may suspend or terminate the parental rights of a parent after the parent has
1440 given his or her consent. When such voluntary consent is given and the Department has submitted
1441 a court report pursuant to section 708.38, the Court may proceed immediately to a dispositional
1442 hearing.

1443 708.33-2. The Court may accept a voluntary consent to suspension or termination of parental
1444 rights only if the parent appears personally at the hearing and gives his or her consent to the
1445 suspension or termination of his or her parental rights. The Court may accept the consent only after
1446 the judge has explained the effect of suspension or termination of parental rights and has
1447 questioned the parent, and/or has permitted counsel who represents any of the parties to question
1448 the parent, and is satisfied that the consent is informed and voluntary. If the Court finds that it
1449 would be difficult or impossible for the parent to appear in person at the hearing, the Court may
1450 allow the parent to appear by telephone or live audiovisual means.

1451 708.33-3. If in any proceeding to suspend or terminate parental rights voluntarily any party has
1452 reason to doubt the capacity of a parent to give informed and voluntary consent to the suspension
1453 or termination, he or she shall so inform the Court. The Court shall then inquire into the capacity
1454 of that parent in any appropriate way and shall make a finding as to whether or not the parent is

1455 capable of giving informed and voluntary consent to the suspension or termination. If in the
 1456 Court's discretion a person is found incapable of knowingly and voluntarily consenting to the
 1457 suspension or termination of their parental rights, the Court shall dismiss the voluntary proceedings
 1458 without prejudice. That dismissal shall not preclude an involuntary suspension or termination of
 1459 the parent's rights.

1460 708.33-4. A parent who has executed a consent under this section may withdraw the consent for
 1461 any reason at any time prior to the entry of a final order suspending or terminating parental rights.

1462 708.33-5. Any consent given under this section prior to or within ten (10) days after the birth of
 1463 the child is not valid.

1464 708.33-6. The parties, and the placement provider or adoptive resource, may agree to attend
 1465 peacemaking to establish an agreement regarding post-voluntary suspension or termination of
 1466 parental rights contact with a birth parent, birth sibling, or other birth relative of the child.

1467 (a) Any party to a post-voluntary suspension or termination contact agreement or the
 1468 child who is the subject of the proceedings may petition the Court that approved the
 1469 agreement to compel any person who is bound by the agreement to comply with the
 1470 agreement. The petition shall allege facts sufficient to show that a person who is bound
 1471 by the agreement is not in compliance with the agreement and that the petitioner, before
 1472 filing the petition, attempted in good faith to resolve the dispute giving rise to the filing
 1473 of the petition. The petition may also allege facts showing that the noncompliance with
 1474 the agreement is not in the best interests of the child.

1475 (b) After receiving a petition for action regarding a post-voluntary suspension or
 1476 termination contact agreement the Court shall set a date and time for a hearing on the
 1477 petition and shall provide notice of the hearing to all parties to the agreement and may
 1478 reappoint a guardian ad litem for the child.

1479 (c) If the Court finds, after hearing, that any person bound by the agreement is not in
 1480 compliance with the agreement and that the petitioner, before filing the petition,
 1481 attempted in good faith to resolve the dispute giving rise to the filing of the petition,
 1482 the Court shall issue an order requiring the person to comply with the agreement and
 1483 may find a party in contempt.

1484 (d) The Court may not revoke a suspension or termination of parental rights order or
 1485 an order of adoption because an adoptive parent or other custodian of the child or a
 1486 birth parent, birth sibling, or other birth relative of the child fails to comply with a post-
 1487 voluntary suspension or termination contact agreement; however, the parties may
 1488 return to peacemaking to revise the agreement, or the Court may amend an order if it
 1489 finds an amendment to the order is in the best interests of the child.

1491 **708.34. Grounds for Involuntary Suspension or Termination of Parental Rights**

1492 708.34-1. Grounds for suspension or termination of parental rights shall be any of the following:

1493 (a) *Abandonment.* Abandonment occurs when a parent either deserts a child without any
 1494 regard for the child's physical health, safety or welfare and with the intention of wholly
 1495 abandoning the child, or in some instances, fails to provide necessary care for their child.

1496 (1) Abandonment shall be established by proving any of the following:

1497 (A) That the child has been left without provision for the child's care or
 1498 support, the petitioner has investigated the circumstances surrounding the
 1499 matter and for sixty (60) consecutive days the petitioner has been unable to
 1500 find either parent;

- 1501 (B) That the child has been left by the parent without provision for the
1502 child's care or support in a place or manner that exposes the child to
1503 substantial risk of great bodily harm or death;
- 1504 (C) That a court of competent jurisdiction has found any of the
1505 following:
- 1506 (i) That a child has been abandoned under Wis. Stat. 48.13 (2) or
1507 under a law of any other state or a federal law that is comparable to
1508 the state law;
- 1509 (ii) That the child was abandoned when the child was under one (1)
1510 year of age or has found that the parent abandoned the child when
1511 the child was under one (1) year of age in violation of Wis. Stat.
1512 948.20 or in violation of the law of any other state or federal law, if
1513 that violation would be a violation of abandonment of a child under
1514 Wis. Stat. 948.20 if committed in this state;
- 1515 (D) That the child has been placed, or continued in a placement, outside the
1516 parent's home by a Court order containing the required notice and the parent
1517 has failed to visit or communicate with the child for a period of three (3)
1518 months or longer; or
- 1519 (E) The child has been left by the parent with any person, the parent knows
1520 or could discover the whereabouts of the child and the parent has failed to
1521 visit or communicate with the child for a period of six (6) consecutive
1522 months or longer.
- 1523 (2) Incidental contact between parent and child shall not preclude the Court from
1524 finding that the parent has failed to visit or communicate with the child. The time
1525 periods under sections 708.34-1(a)(1)(D) and 708.34-1(a)(1)(E) shall not include
1526 any periods during which the parent has been prohibited by Court order from
1527 visiting or communicating with the child.
- 1528 (3) Abandonment is not established under sections 708.34-1(a)(1)(D) and 708.34-
1529 1(a)(1)(E) if the parent proves all of the following by clear and convincing
1530 evidence:
- 1531 (A) That the parent had good cause for having failed to visit with the child
1532 throughout the three (3) or six (6) month time period alleged in the petition.
- 1533 (B) That the parent had good cause for having failed to communicate with
1534 the child throughout the three (3) or six (6) month time period alleged in the
1535 petition.
- 1536 (C) If the parent proves good cause under section 708.34-1(a)(3)(B),
1537 including good cause based on evidence that the child's age or condition
1538 would have rendered any communication with the child meaningless, that
1539 one (1) of the following occurred:
- 1540 (i) The parent communicated about the child with the person or
1541 persons who had physical custody of the child during the three (3) or
1542 six (6) month time period alleged in the petition, whichever is
1543 applicable, or, with the Department during the three (3) month time
1544 period alleged in the petition.
- 1545 (ii) The parent had good cause for having failed to communicate about
1546 the child with the person or persons who had physical custody of the

1547 child or the Department throughout the three (3) or six (6) month time
1548 period alleged in the petition.

1549 (b) *Relinquishment*. Relinquishment occurs when a parent gives up or abandons their child
1550 and all rights to their child. Relinquishment shall be established by proving that a court of
1551 competent jurisdiction has found that the parent has relinquished custody of the child when
1552 the child was seventy-two (72) hours old or younger.

1553 (c) *Continuing Need of Protection or Services*. Continuing need of protection or services
1554 shall be established by proving any of the following:

1555 (1) That the child has been found to be in need of protection or services and placed,
1556 or continued in a placement, outside his or her home pursuant to one (1) or more
1557 dispositional orders containing the notice required by section 708.22-~~7~~8;

1558 (2) That the Department has made a reasonable effort to provide the services
1559 ordered by the Court;

1560 (3) That the child has been outside the home for a cumulative total period of six (6)
1561 months or longer pursuant to such orders; and that the parent has failed to meet the
1562 conditions established for the safe return of the child to the home and, if the child
1563 has been placed outside the home for less than fifteen (15) of the most recent
1564 twenty-two (22) months, that there is a substantial likelihood that the parent will
1565 not meet these conditions within the nine (9) months as of the date on which the child
1566 will have been placed outside the home for fifteen (15) of the most recent twenty-
1567 two (22) months, not including any period following the termination of parental
1568 rights fact-finding hearing during which the child was a runaway from the out-of-
1569 home placement or was residing in a trial reunification home.

1570 (d) *Continuing Parental Disability*. Continuing parental disability shall be established by
1571 proving that:

1572 (1) The parent is presently, and for a cumulative total period of at least two (2)
1573 years within the five (5) years immediately prior to the filing of the petition has
1574 been, an inpatient at one (1) or more hospitals as defined in either the Nation's laws
1575 or state law;

1576 (2) The condition of the parent is likely to continue indefinitely; and

1577 (3) The child is not being provided with adequate care by a relative who has legal
1578 custody of the child, or by a parent or a guardian.

1579 (e) *Continuing Denial of Periods of Physical Placement or Visitation*. Continuing denial
1580 of periods of physical placement or visitation shall be established by proving all of the
1581 following:

1582 (1) The parent has been denied periods of physical placement by Court order in an
1583 action affecting the family or has been denied visitation under a dispositional order
1584 containing the notice required by section 708.~~20-7~~22-8, Wis. Stat. 48.356-~~(2);(2)~~,
1585 or Wis. Stat. 938.356 (2); and

1586 (2) A Court order has denied the parent periods of physical placement or visitation
1587 for at least one (1) year.

1588 (f) *Child Abuse*. Child abuse shall be established by proving that the parent has committed
1589 child abuse against the child who is the subject of the petition and proving either of the
1590 following:

1591 (1) That the parent has caused death or injury to a child resulting in a felony
1592 conviction; or

1593 (2) That a child has previously been removed from the parent's home pursuant to a
1594 dispositional order after an adjudication that the child is in need of protection or
1595 services.

1596 (g) *Failure to Assume Parental Responsibility.* Failure to assume parental responsibility
1597 shall be established by proving that the parent or the person(s) who may be the parent of
1598 the child have not had a substantial parental relationship with the child.

1599 (1) In evaluating whether the person has had a substantial parental relationship with
1600 the child, the Court may consider such factors, including, but not limited to, the
1601 following:

1602 (A) Whether the person has expressed concern for or interest in the support,
1603 care or well-being of the child;

1604 (B) Whether the person has neglected or refused to provide care or support for
1605 the child; and

1606 (C) Whether, with respect to a person who is or may be the father of the child,
1607 the person has expressed concern for or interest in the support, care or well-
1608 being of the mother during her pregnancy.

1609 (h) *Incestuous Parenthood.* Incestuous parenthood shall be established by proving that the
1610 person whose parental rights are sought to be terminated is also related, either by blood or
1611 adoption, to the child's other parent in a degree of kinship closer than 2nd cousin.

1612 (i) *Homicide or Solicitation to Commit Homicide of a Parent.* Homicide or solicitation to
1613 commit homicide of a parent, which shall be established by proving that a parent of the
1614 child has been a victim of first-degree intentional homicide, first-degree reckless homicide
1615 or 2nd-degree intentional homicide or a crime under federal law or the law of any other
1616 state that is comparable to any of those crimes, or has been the intended victim of a
1617 solicitation to commit first-degree intentional homicide or a crime under federal law or the
1618 law of any other state that is comparable to that crime, and that the person whose parental
1619 rights are sought to be terminated has been convicted of that intentional or reckless
1620 homicide, solicitation or crime as evidenced by a final judgment of conviction.

1621 (j) *Parenthood as a Result of Sexual Assault.*

1622 (1) Parenthood as a result of sexual assault shall be established by proving that the
1623 child was conceived as a result of one of the following:

1624 (A) First degree sexual assault [under Wis. Stats. 940.225(1)];

1625 (B) Second degree sexual assault [under Wis. Stat. 940.225 (2)];

1626 (C) Third degree sexual assault [under Wis. Stat. 940.225(3)];

1627 (D) First degree sexual assault of a child [under Wis. Stat. 948.02(1)];

1628 (E) Second degree sexual assault of a child [under Wis. Stat. 948.02 (2)];

1629 (F) Engaging in repeated acts of sexual assault of the same child [under Wis.
1630 Stat. 948.025]; or

1631 (G) Sexual assault of a child placed in substitute care [under Wis. Stat.
1632 948.085].

1633 (2) Conception as a result of sexual assault may be proved by a final judgment of
1634 conviction or other evidence produced at a suspension or termination of parental
1635 rights fact-finding hearing indicating that the person who may be the parent of the
1636 child committed, during a possible time of conception, a sexual assault as specified
1637 in this section against the other parent of the child.

1638 (3) If the conviction or other evidence indicates that the child was conceived as a
1639 result of a sexual assault in violation of Wis. Stat. 948.02 (1) or (2) or 948.085, the
1640 parent of the child may be heard on his or her desire for the suspension or
1641 termination of the other parent’s parental rights.

1642 (k) *Commission of a Felony Against a Child.*

1643 (1) Commission of a serious felony against the child, shall be established by
1644 proving that the child was the victim of a serious felony and parent was convicted
1645 of that serious felony.

1646 ~~(2) Commission of a violation of trafficking of a child under Wis. Stat. 948.051~~
1647 ~~involving any child or a violation of the law of any other state or federal law, if that~~
1648 ~~violation would be a violation of Wis. Stat. 948.051 involving any child if~~
1649 ~~committed in this state.~~

1650 ~~(3)~~(2) In this subsection, “serious felony” means any of the following:

1651 (A) The commission of, the aiding or abetting of, or the solicitation,
1652 conspiracy or attempt to commit, a violation of any of the following:

1653 (i) First degree intentional homicide [under Wis. Stat. 940.01];

1654 (ii) First degree reckless homicide [under Wis. Stat. 940.02];

1655 (iii) Felony murder [under Wis. Stat. 940.03];

1656 (iv) Second-degree intentional homicide [under Wis. Stat. 940.05]; or

1657 (v) A violation of the law of any other state or federal law, if that
1658 violation would be a violation of the above-mentioned felonies if
1659 committed in Wisconsin.

1660 (B) The commission of a violation of any of the following:

1661 (i) Battery, substantial battery, aggravated battery [under Wis. Stat.
1662 940.19 (3), 1708 stats., or Wis. Stats. 940.19 (2), (4) or (5)];

1663 (ii) Sexual assault [under Wis. Stat. 940.225 (1) or (2)];

1664 (iii) Sexual assault of a child [under Wis. Stat. 948.02 (1) or (2)];

1665 (iv) Engaging in repeated acts of sexual assault of the same child [under
1666 Wis. Stat. 948.025];

1667 (v) Physical abuse of a child [under Wis. Stats. 948.03 (2) (a), (3) (a),
1668 or (5) (a) 1., 2., or 3.];

1669 (vi) Sexual ~~exploration~~exploitation of a child [under Wis. Stat. 948.05];

1670 (vii) Trafficking of a child [under Wis. Stat. 948.051];

1671 (viii) Incest with a child [under Wis. Stat. 948.06];

1672 (ix) Soliciting a child for prostitution [under Wis. Stat. 948.08];

1673 (x), Human trafficking [under Wis. Stat. 940.302 (2) if Wis. Stat.
1674 940.302 (2) (a) 1. b. applies]; or

1675 (xi) A violation of the law of any other state or federal law, if that
1676 violation would be a violation listed under the above listed felonies if
1677 committed in Wisconsin.

1678 (C) The commission of a violation of neglecting a child under Wis. Stat.
1679 948.21 or a violation of the law of any other state or federal law, if that
1680 violation would be a violation of Wis. Stat. 948.21 if committed in this state,
1681 that resulted in the death of the victim.

1682 (1) *Prior Involuntary Suspension or Termination of Parental Rights of Another Child.*
 1683 Prior involuntary suspension or termination of parental rights to another child shall be
 1684 established by proving all of the following:

1685 (1) That the child who is the subject of the petition is in need of protection or
 1686 services under section 708.5-2(b), (d), or (k); or that the child who is the subject of
 1687 the petition was born after the filing of a petition under this subsection whose
 1688 subject is a sibling of the child; and

1689 (2) That, within three (3) years prior to the date the Court determined the child to
 1690 be in need of protection or services as specified in section 708.34-1 (l) (1) or, in the
 1691 case of a child born after the filing of a petition as specified in section 708.34-1 (l)
 1692 (1), within three (3) years prior to the date of birth of the child, a Court has ordered
 1693 the suspension or termination of parental rights with respect to another child of the
 1694 person whose parental rights are sought to be suspended or terminated on one or
 1695 more of the grounds specified in this section.

1697 **708.35. Petition for Suspension or Termination of Parental Rights**

1698 708.35-1. *Who May File a Petition for Suspension or Termination of Parental Rights.* A petition
 1699 for the suspension or termination of parental rights shall be filed by the:

- 1700 (a) Nation's Child Welfare attorney, ~~the~~;
 1701 (b) Department, ~~;~~ or ~~the~~
 1702 (c) child's parent in the case of a step-parent adoption.

1703 708.35-2. A petition for the suspension or termination of parental rights ~~may~~shall be filed when
 1704 the child has been placed outside of his or her home for fifteen (15) of the most recent twenty-two
 1705 (22) months or if grounds exist for suspension or termination of parental rights unless any of the
 1706 following applies:

- 1707 (a) The child is being cared for by a fit and willing relative of the child;
 1708 (b) The child's permanency plan indicates and provides documentation that suspension or
 1709 termination of parental rights to the child is not in the best interests of the child;
 1710 (c) The Department, if required by a dispositional order, failed to make reasonable efforts
 1711 to make it possible for the child to return safely to his or her home, ~~or~~ did not provide or
 1712 refer services to the family of the child for the safe return of the child to his or her home
 1713 that were consistent with the ~~time period in the child's~~ permanency plan; or
 1714 (d) Grounds for an involuntary suspension or termination of parental rights do not exist.

1715 708.35-3. A petition for the suspension or termination of parental rights shall include the following
 1716 information:

- 1717 (a) The name, birth date, address, and tribal affiliation of the child;
 1718 (b) The names, birth dates, addresses, and tribal affiliation of the child's parents;
 1719 (c) A Uniform Child Custody Jurisdiction and Enforcement Act affidavit; and
 1720 (d) One (1) of the following:

1721 (1) A statement that consent will be given to voluntary suspension or termination
 1722 of parental rights as provided in section 708.33; or

1723 (2) A statement of the grounds for involuntary suspension or termination of
 1724 parental rights under section 708.34 and a statement of the facts and circumstances
 1725 which the petitioner alleges establish these grounds.

1726 708.35-4. *Temporary Order and Injunction Prohibiting Contact.* If the petition includes a
 1727 statement of the grounds for involuntary suspension or termination of parental rights, the petitioner

1728 may, at the time the petition is filed, also petition the Court for a temporary order and an injunction
1729 prohibiting the person whose parental rights are sought to be suspended or terminated from visiting
1730 or contacting the child who is the subject of the petition. Any petition under this section shall
1731 allege facts sufficient to show that prohibiting visitation or contact would be in the best interests
1732 of the child.

1733 (a) The Court may grant an injunction prohibiting the respondent from visiting or
1734 contacting the child if the Court determines that the prohibition would be in the best
1735 interests of the child. An injunction under this subsection is effective according to its terms
1736 but may not remain in effect beyond the date the Court dismisses the petition for suspension
1737 or termination of parental rights or issues an order suspending or terminating parental
1738 rights.

1739 708.35-5. ~~The~~ Upon filing with the Court and at least seven (7) days prior to the initial hearing,
1740 the petitioner shall ~~ensure~~serve the summons and petition ~~are served~~ upon the following persons
1741 ~~pursuant to the Oneida Judiciary Rules of Civil Procedure~~ by personal service or, if personal service
1742 is not possible, by certified mail, return receipt requested:

1743 ~~(a)~~ (a) The parent(s) of the child, including an alleged father if paternity has not been
1744 established; and

1745 ~~(b)~~ (b) The child's foster parent, guardian or legal custodian, if applicable. If the
1746 address has been marked confidential by the Court, the Court shall send a copy of the
1747 summons and petition to the home in which the child is placed via first-class U.S. mail;
1748 and.

1749 ~~(c) The Nation's Child Welfare attorney and the Department, if the petition is filed by~~
1750 ~~anyone other than the Nation's Child Welfare attorney or the Department.~~

1751
1752 **708.36. Initial Hearing on the Suspension or Termination of Parental Rights Petition**

1753 708.36-1. The initial hearing on the petition to suspend or terminate parental rights shall be held
1754 within forty-five (45) days after the petition is filed. At the hearing the Court shall determine
1755 whether any party wishes to contest the petition and inform the parties of their rights.

1756 708.36-2. If the petition is contested, the Court shall set a date for a fact-finding hearing to be held
1757 within sixty (60) days after the hearing on the petition, unless the Court enters an order finding
1758 good cause to go outside the time limits.

1759 708.36-3. If the petition is not contested, the Court shall hear testimony in support of the
1760 allegations in the petition and may proceed immediately with a dispositional hearing if the parties
1761 agree. Before accepting an admission of the alleged facts in a petition, the Court shall:

1762 (a) Address the parties present and determine that the admission is made voluntarily with
1763 understanding of the nature of the acts alleged in the petition and the potential outcomes
1764 and possible dispositions by the Court;

1765 (b) Establish whether any promises or threats were made to elicit an admission; and

1766 (c) Make such inquiries to establish a factual basis for the admission.

1767
1768 **708.37. Fact Finding Hearing for a Suspension or Termination of Parental Rights**

1769 708.37-1. The fact-finding hearing is a hearing conducted by the Court to determine whether there
1770 is clear and convincing evidence to establish that grounds exist for the suspension or termination
1771 of parental rights.

1772 708.37-2. The fact-finding hearing shall be conducted according to the Oneida Judiciary Rules of
1773 Civil Procedure except that the Court may exclude the child from the hearing.

1774 708.37-3. If grounds for the suspension or termination of parental rights are found by the Court,
1775 the Court shall find the parent(s) unfit. ~~A finding of unfitness shall not prevent a dismissal of a~~
1776 suspension or termination of parental rights petition. ~~Unless the parties agree to proceed~~
1777 immediately with the dispositional hearing and the Court accepts, the Court shall set a date for a
1778 dispositional hearing no later than forty-five (45) days after the fact-finding hearing, unless the
1779 Court enters an order finding good cause to go outside the time limits.

1781 **708.38. Department's Suspension or Termination of Parental Rights Report**

1782 708.38-1. In any case that the Department is a party, the Department shall submit a written report
1783 to the Court prior to any dispositional hearing, with a copy to the parties by first-class mail no later
1784 than seven (7) days prior to the hearing, which shall contain all of the following:

1785 (a) The social history of the child and family, including any relevant medical conditions;
1786 (b) A statement of the facts supporting the need for suspension or termination of parental
1787 rights;

1788 (c) If the child has been previously adjudicated to be in need of protection or services, a
1789 statement of the steps the Department has taken to remedy the conditions responsible for
1790 Court intervention and the parent's response to and cooperation with these services. ~~If the~~
1791 child has been removed from the home, the report shall also include a statement of the
1792 reasons why the child cannot be returned safely to the family and the steps the Department
1793 has taken to effect this return;

1794 (d) A statement applying the standards and factors identified in sections 708.39-2 and
1795 708.39-3 regarding the case before the Court; and

1796 (e) If the report recommends that the parental rights of both of the child's parents or the
1797 child's only living or known parent are to be suspended or terminated, the report shall
1798 contain a statement of the likelihood that the child will be adopted. ~~This statement shall~~
1799 include a presentation of the factors that might prevent adoption, those that may facilitate
1800 adoption, and the Department shall be responsible for accomplishing the adoption.

1801 (1) If the Department determines that it is unlikely that the child will be adopted,
1802 or if adoption would not be in the best interests of the child, the report shall include
1803 a plan for placing the child in a permanent family setting. The plan shall include a
1804 recommendation for the appointment of a guardian for the child.

1805 708.38-2. The Court may order a report as specified under this section to be prepared by the
1806 Department in those cases where the Department is not a party.

1808 **708.39. Standards and Factors**

1809 708.39-1. In making a decision about the appropriate disposition for suspension or termination of
1810 parental rights, the Court shall consider the standards and factors enumerated in this section and
1811 any report submitted by the Department.

1812 708.39-2. The best interests of the child shall be the prevailing standard considered by the Court
1813 in determining the disposition of all suspension and termination of parental rights proceedings.

1814 708.39-3. In considering the best interests of the child the Court shall also consider, but not be
1815 limited to, the following factors:

1816 (a) The likelihood of the child's adoption after suspension or termination;

1817 (b) Whether the child will be raised in an environment that is respectful of the child's
1818 race(s), culture(s), and heritage(s);

- 1819 (c) The age and health of the child, both at the time of the disposition and, if applicable, at
 1820 the time the child was removed from the home;
- 1821 (d) Whether the child has substantial relationships with the parent or other family
 1822 members, and whether it would be harmful to the child to sever these relationships;
- 1823 (e) The wishes of the child, if the child has the capacity to express their wishes;
- 1824 (f) The duration of the separation of the parent from the child; and
- 1825 (g) Whether the child will be able to enter into a more stable and permanent family
 1826 relationship as a result of the suspension or termination, taking into account the conditions
 1827 of the child's current placement, the likelihood of future placements and the results of prior
 1828 placements.
 1829

1830 **708.40. Dispositional Hearings for Suspension or Termination of Parental Rights**

1831 708.40-1. Any party may present evidence relevant to the issue of disposition, including expert
 1832 testimony, and may make alternative dispositional recommendations to the Court. After receiving
 1833 any evidence related to the disposition, the Court shall enter a disposition and issue a written
 1834 decision consistent with the Oneida Judiciary Rules of Civil Procedure.

1835 (a) The Court shall give the foster parent or other legal custodian a right to be heard at the
 1836 dispositional hearing by permitting the foster parent or other legal custodian to make a
 1837 written or oral statement during the dispositional hearing, or to submit a written statement
 1838 prior to disposition, relevant to the issue of disposition.

1839 708.40-2. The Court shall enter one (1) of the following dispositions:

1840 (a) The Court may dismiss the petition if it finds the evidence does not warrant the
 1841 suspension or termination of parental rights or if the Court finds that a parent is attempting
 1842 to voluntarily suspend or terminate their parental rights for the sole purpose of avoiding a
 1843 child support obligation; or

1844 (b) The Court may enter an order suspending or terminating the parental rights of one or
 1845 both parents.

1846 708.40-3. If the rights of both parents, or of the only living parent, are suspended or terminated
 1847 and if a guardian has not been appointed, the Court shall do one (1) of the following while adhering
 1848 to the placement preferences pursuant to section 708.11-1 when possible:

1849 (a) Transfer guardianship and custody of the child pending adoptive placement to:

1850 (1) A tribal or county department authorized to accept guardianship;

1851 (2) A child welfare agency licensed to accept guardianship;

1852 (3) The State of Wisconsin upon written confirmation from the State that they are
 1853 willing to accept guardianship;

1854 (4) A relative with whom the child resides, if the relative has filed a petition to
 1855 adopt the child or if the relative is a kinship care relative or is receiving payments
 1856 for providing care and maintenance for the child; or

1857 (5) An individual who has been appointed guardian of the child by a court of a
 1858 competent jurisdiction; or

1859 (b) Appoint a guardian and transfer guardianship and custody of the child to the guardian.

1860 708.40-4. The written Court order shall include the following:

1861 (a) If the Court dismisses the petition, the order shall contain the reasons for dismissal; or

1862 (b) If the disposition is for the suspension or termination of parental rights, the order shall
 1863 contain all of the following:

- 1864 (1) The identity of any agency, department, or individual that has received
 1865 guardianship of the child;
 1866 (2) If an agency or department receives guardianship and custody of the child, an
 1867 order ordering the child into the placement and care responsibility of the agency or
 1868 department and assigning the agency or department primary responsibility for
 1869 providing services to the child; and
 1870 (3) A finding that the suspension or termination of parental rights is in the best
 1871 interests of the child.

1872 ~~708.40-5. If an order is entered to terminate a parent's~~ (c) If the disposition is for the
 1873 suspension or termination of parental rights, the order may contain all of the following:

- 1874 (1) A termination of the right of the parent to have contact with the minor child
 1875 including contact in person, by mail, by telephone, or through third parties;
 1876 (2) Order restraining a parent from contacting the minor child, the child's foster
 1877 parent, the child's adoptive parent and/or the social services agency or agencies
 1878 possessing information regarding the child;
 1879 (3) Order that the biological parents' obligation to pay child support, except for
 1880 arrears, is hereby terminated; and
 1881 (4) Order that any prior court order for custody, visitation, or contact, with the
 1882 minor child is hereby terminated.

1883 708.40-5. The Court shall provide a copy of the order suspending or terminating parental rights
 1884 to the child's parent, guardian, and legal custodian; the other parties to the action; and the current
 1885 or future foster parents for the purpose of pursuing adoption.

1886 708.40-6. If an order is entered involuntarily suspending or terminating parental rights, the Court
 1887 shall orally inform the parent(s) who appear in Court or place in the written order the ground~~(s)~~
 1888 for suspension or termination of their parental rights specified in section 708.34-1(1), which
 1889 provides that a prior involuntary suspension or termination of parental rights, under certain
 1890 circumstances, is a ground for the suspension or termination of parental rights for another child.

1891 ~~708.40-67.~~ If the Court suspends or terminates parental rights, the Department, or the Court if the
 1892 Department is not a party to the action, ~~shall~~may forward the following information to the State of
 1893 Wisconsin:

- 1894 (a) The name, date of birth, and tribal affiliation of the child whose birth parent's rights
 1895 have been suspended or terminated;
 1896 (b) The names and current addresses of the child's birth parents, guardian and legal
 1897 custodian; and
 1898 (c) Any medical or genetic information received by the Department.

1899 ~~708.40-78.~~ If only one (1) parent consents ~~for~~to a voluntary suspension or termination of parental
 1900 rights or if the grounds for involuntary suspension or termination of parental rights are found to
 1901 exist as to only one (1) parent, the rights of only that parent may be suspended or terminated
 1902 without affecting the rights of the other parent if the Court finds such suspension or termination to
 1903 be in the best interest of the child.

1904 1905 **708.41. Adoption**

1906 708.41-1. Adoptions under this law shall take the form of customary adoptions ~~unless~~when the
 1907 Court ~~determines there is good cause for~~has granted a petition to suspend parental rights. When
 1908 the Court grants a petition to terminate parental rights the adoption ~~to~~shall be closed.

1909 708.41-2. *Customary Adoptions*. The purpose of customary adoption is not to permanently deprive
1910 the adopted child of connections to, or knowledge of, the adopted child's biological family, but to
1911 provide the adopted child a permanent home. The following shall apply to all customary adoptions
1912 and shall be contained in all adoptive orders and decrees:

1913 (a) The relationship between an adoptive parent and adoptiveadopted child shall have all
1914 the same rights, responsibilities, and other legal consequences as the relationship between
1915 a biological child and parent;

1916 (b) The adoptiveadopted child shall have an absolute right, absent a convincing and
1917 compelling reason to the contrary, to information and knowledge about his or her biological
1918 family and his or her Oneida heritage, if applicable. The adopted child may obtain adoption
1919 information from files maintained by the Court or Department;

1920 (c) Adoption shall not prevent an adoptiveadopted child from inheriting from a biological
1921 parent in the same manner as any other biological child. The biological parents shall not
1922 be entitled to inherit from an adoptiveadopted child in the same manner as parents would
1923 otherwise be entitled to inherit. An adoptiveadopted child shall be entitled to inherit from
1924 adoptive parents, and vice versa, in the same manner as if biological parents and child;

1925 (d) Although parental rights have been terminatedsuspended, the biological parent may
1926 retain certain residual parental rights when appropriate as determined by agreement
1927 between the adoptive parent and biological parent made through peacemaking, or by order
1928 of the Court. Such residual parental rights may include:

1929 (1) The right to communication;

1930 (2) The right to visitation;

1931 (3) The right or obligation to contribute to support or education;

1932 (4) The right to be consulted regarding the adopted child's religious affiliation,
1933 major medical treatment, marriage, or other matters of major importance in the
1934 child's life; and/or

1935 (5) Such other residual rights the Court may deem appropriate, considering the
1936 circumstances.

1937 (e) Adoption does not extinguish the relationships between the adopted child and the
1938 adopted child's extended biological family. –The adopted child's extended biological
1939 family retains the right to reasonable communication and visitation with the adopted child,
1940 subject to reasonable controls of the adoptive parents.

1941 708.41-3. *Closed Adoptions*. Closed adoptions occur in situations where an adopted child needs
1942 a permanent home and it is necessary to sever all ties between the adopted child and his or her
1943 biological family. The following shall apply to all closed adoptions:

1944 (a) The relationship between an adoptive parent and adoptiveadopted child shall have all
1945 the same rights, responsibilities, and other legal consequences as the relationship between
1946 a biological child and parent;

1947 (b) The relationship between the adopted child and all persons whose relationship to the
1948 adopted child is derived through the biological parents shall be completely altered and all
1949 the rights, duties, and other legal consequences of those relationships shall cease to exist;

1950 (c) The adopted child's biological family shall not be entitled to or have access to any
1951 information regarding said child;

1952 (d) The adopted child shall be entitled to information and knowledge regarding his or her
1953 culture and heritage; and

1954 (e) The adopted child shall be entitled to information regarding his or her biological family
1955 upon reaching the age of majority. The adopted child may obtain adoption information
1956 from files maintained by the Court or Department.
1957

1958 **708.42. Adoption Criteria and Eligibility**

1959 708.42-1. *Criteria for Adoption.* Any child who is subject to this law may be adopted if any of the
1960 following criteria are met:

- 1961 (a) Both of the child's parents are deceased;
- 1962 (b) The parental rights of both of the child's parents with respect to the child have been
1963 suspended or terminated;
- 1964 (c) The parental rights of one of the child's parents with respect to the child have been
1965 suspended or terminated and the child's other parent is deceased; or
- 1966 (d) The person filing the petition for adoption is the spouse of the child's parent and either
1967 of the following applies:
 - 1968 (1) The child's other parent is deceased; or
 - 1969 (2) The parental rights of the child's other parent with respect to the child have been
1970 suspended or terminated.

1971 708.42-2. *Eligibility.* The following persons are eligible to adopt a child who falls under the
1972 jurisdiction of this law pending the successful clearing of a background check:

- 1973 (a) A married adult couple;
- 1974 (b) Either spouse if the other spouse is a parent of the child; or
- 1975 (c) An unmarried adult.

1976 708.42-3. If the person proposing to adopt the child cannot successfully clear a background check,
1977 and any convictions the person may possess have not been pardoned, forgiven, reversed, set aside
1978 or vacated, the Court may still deem the person eligible to adopt if the Court determines by clear
1979 and convincing evidence that the adoption would be in the best interests of the child.
1980

1981 **708.43. Adoption Procedure**

1982 708.43-1. *Petition for Adoption.* A person proposing to adopt, or the Department, shall initiate a
1983 proceeding for the adoption of a child by filing a petition with the Court. The petition shall include
1984 the following information:

- 1985 (a) The name, birth date, address, and tribal affiliation of the petitioner;
- 1986 (b) The name, birth date, address, and tribal affiliation of the child;
- 1987 (c) The names, birth dates, addresses, and tribal affiliation of the child's biological parents;
- 1988 (d) The name by which the child shall be known if the petition is granted;
- 1989 (e) The relationship of the petitioner to the child; and
- 1990 (f) A copy of the order suspending or terminating parental rights of the child's biological
1991 parent(s).

1992 708.43-2. Upon the filing of a petition for adoption, the Court shall schedule a hearing within
1993 sixty (60) days. ~~Notice of the hearing shall be served on the parties pursuant to the Oneida~~
1994 ~~Judiciary Rules of Civil Procedure.~~

1995 708.43-3. When a petition for adoption is filed, the Court shall order an investigation to determine
1996 whether the child is a proper subject for adoption and whether the petitioner's home is suitable for
1997 the child. ~~The Court shall order one (1) of the following to conduct the investigation:~~

- 1998 (a) The Court shall order one (1) of the following to conduct the investigation:

1999 ~~(a)~~ (1) If the Department, or another agency or department, has guardianship
 2000 of the child, the agency or department that has guardianship; or

2001 ~~(b)~~ (2) If no agency or department has guardianship of the child and a relative,
 2002 including a stepparent, has filed the petition for adoption, the Department.

2003 (b) If the Court orders the Department to conduct the investigation, the Department may
 2004 contract with a third-party agency to conduct the investigation.

2005 708.43-4. The Department or other agency or department making the investigation shall file its
 2006 report with the Court prior to the hearing on the petition and shall provide ~~the parties with~~ a copy
 2007 of the report to the parties by first-class mail at least ~~three (3) business~~ seven (7) days prior to the
 2008 hearing.

2009 708.43-5. If the report of the investigation is unfavorable or if it discloses a situation which, in the
 2010 opinion of the Court, raises a serious question as to the suitability of the proposed adoption, the
 2011 Court may appoint a guardian ad litem for the child whose adoption is proposed.

2012 708.43-6. During the hearing the parties may agree to attend peacemaking to establish an
 2013 agreement regarding residual rights of a birth parent, birth sibling, or other birth relative of the
 2014 child.

2015 708.43-7. If after the hearing and a study of the report required by section 708.43-3 the Court is
 2016 satisfied that the adoption is in the best interests of the child, the Court shall make an order granting
 2017 the adoption. The order may change the name of the child to that requested by petitioners.

2018 708.43-8. After the order of adoption is entered the relation of parent and child and all the rights,
 2019 duties and other legal consequences of the natural relation of child and parent thereafter exists
 2020 between the adopted child and the adoptive parents. The relationship between the adopted child
 2021 and biological parents shall be completely altered and all the rights, duties, and other legal
 2022 consequences of those relationships shall cease to exist, excluding any residual rights granted to
 2023 the biological parents and extended family through customary adoption. If the biological parent
 2024 is the spouse of the adoptive parent, the relationship shall be completely altered and those rights,
 2025 duties, and other legal consequences shall cease to exist only with respect to the biological parent
 2026 who is not the spouse of the adoptive parent.

2027 708.43-9. ~~After~~ Within five (5) days after entry of the order granting ~~the a closed~~ adoption, the
 2028 Department shall ~~promptly~~ mail a copy of the order to the State of Wisconsin Bureau of Vital
 2029 Statistics and furnish any additional data needed for the issuance of a new birth certificate.

2030

2031 **708.44. Non-Compliance with a Residual Rights Agreement**

2032 708.44-1. Any party to a residual rights agreement or the child who is the subject of the
 2033 proceedings may petition the Court that approved the agreement to compel any person who is
 2034 bound by the agreement to comply with the agreement. The petition shall allege facts sufficient to
 2035 show that a person who is bound by the agreement is not in compliance with the agreement and
 2036 that the petitioner, before filing the petition, attempted in good faith to resolve the dispute giving
 2037 rise to the filing of the petition. The petition may also allege facts showing that the noncompliance
 2038 with the agreement is not in the best interests of the child.

2039 708.44-2. After receiving a petition for action regarding a residual rights contact agreement the
 2040 Court shall set a date and time for a hearing on the petition and shall provide notice of the hearing
 2041 to all parties to the agreement and may reappoint a guardian ad litem for the child.

2042 708.44-3. If the Court finds, after hearing, that any person bound by the agreement is not in
 2043 compliance with the agreement and that the petitioner, before filing the petition, attempted in good

2044 faith to resolve the dispute giving rise to the filing of the petition, the Court shall issue an order
2045 requiring the person to comply with the agreement and may find a party in contempt.
2046 708.44-4. The Court may not revoke a suspension or termination of parental rights order or an
2047 order of customary adoption because an adoptive parent or other custodian of the child or a birth
2048 parent, birth sibling, or other birth relative of the child fails to comply with a residual rights
2049 agreement; however, the parties may return to peacemaking to revise the agreement, or the Court
2050 may amend an order if it finds an amendment to the order is in the best interests of the child.

2051

2052 **708.45. Peacemaking and Mediation**

2053 708.45-1. The Court may refer the parties to peacemaking or mediation if the parties agree to
2054 attend peacemaking or mediation. The Court shall not refer the parties to peacemaking or
2055 mediation if attending the session will cause undue hardship or would endanger the health or safety
2056 of a party.

2057 708.45-2. When the parties attend peacemaking or mediation based on a referral from the Court,
2058 the Court shall enter an order finding good cause to suspend the time limits established under this
2059 law.

2060

2061 **708.46. Appeals**

2062 708.46-1. Appeals of all orders issued under this law shall be heard by the Nation's Court of
2063 Appeals in accordance with the Rules of Appellate Procedure.

2064

2065 **708.47. Liability**

2066 708.47-1. No liability shall attach to the Department, Indian Child Welfare Worker, the Nation's
2067 Child Welfare Attorney or any person acting under their authority for statements, acts or omissions
2068 made in good faith while in the course of activities taken under this law.

2069

2070 *End.*

2071 Adopted – BC-07-26-17-J

2072 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.

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

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

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

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

34 **708.3. Definitions**

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

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

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

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

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

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

708.4. Scope

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

708.5. Jurisdiction

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

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

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

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

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

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

(a) is without a parent or guardian;

(b) has been abandoned;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

286 **708.6-1.** A Child Welfare attorney shall represent the Nation in all proceedings under this law.
287 The Child Welfare attorney shall be one of the following:

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

291 (c) An attorney contracted by the Department.

292

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

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

296 (a) Receive, examine, and investigate complaints and allegations that a child is in need of
297 protection or services for the purpose of determining the appropriate response under this
298 law, which may include notifying law enforcement;

299 (b) Receive referral information, conduct intake inquiries, and determine whether to
300 initiate child welfare proceedings;

301 (c) Determine whether a child should be held pursuant to the emergency provisions of this
302 law;

303 (d) Make appropriate referrals of cases to other agencies when appropriate, and share
304 information with other agencies if their assistance appears to be needed or desirable;

305 (e) Maintain records;

306 (f) Enter into informal dispositions or protective plans with families;

307 (g) Refer counseling or any other functions or services to the child and/or family as
308 designated by the Court;

309 (h) Identify and develop resources within the community that may be utilized by the
310 Department and Court;

311 (i) Make reasonable efforts to obtain necessary services for the child and family and
312 investigate and develop resources for the child and family to utilize;

313 (j) Accept legal custody of children when ordered by the Court;

314 (k) Make reports and recommendations to the Court;

315 (l) Make recommendations to the Nation's Child Welfare attorney;

316 (m) Request transfer from state court to the Nation's court when appropriate;

317 (n) Perform any other functions ordered by the Court within the limitations of the law;

318 (o) Develop appropriate plans and conduct reviews;

319 (p) Negotiate agreements for services, record sharing, referral, and funding for child family
320 service records within the Department;

321 (q) Provide measures and procedures for preserving the confidential nature of child and
322 family service records within the Department;

323 (r) Participate in continuing training, conferences and workshops pertinent to child welfare
324 issues;

325 (s) Explain the court proceedings to the child in language and terms appropriate to the
326 child's age and maturity level when a guardian ad litem is not appointed for a child; and

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

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

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

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

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

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

345 **708.8. Guardian ad litem**

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

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

357 708.8-2. *Qualifications.*

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

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

378 guardian. The guardian ad litem shall:

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

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

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

404
405 **708.9. Advocate**

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

409 708.9-2. *Qualifications.*

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

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

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

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

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

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

426

427 **708.11. Order of Placement Preferences**

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

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

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

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

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

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

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

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

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

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

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

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

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

477

478 **708.13. Hearings (General)**

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

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

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

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

497

498 **708.14. Discovery and Records**

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

504 708.14-2. The Department shall make available for inspection or disclosure the contents of any
505 record kept, regardless of the originating source, to a guardian ad litem appointed in a Children's
506 Code or family law case when that access is granted by order of the Court.

507 708.14-3. If a request for discovery is refused, the person may submit an application to the Court
508 requesting an order granting discovery. Motions for discovery shall certify that a request for
509 discovery has been made and refused.

510 708.14-4. If the discovery violates a privileged communication or a work product rule, the Court
511 may deny, in whole or part, otherwise limit or set conditions on the discovery authorized.

512 708.14-5. The identity of the individual that initiated the investigation by contacting the
513 Department, shall be redacted in all documents that are made available to the parties.

514 708.14-6. In addition to the discovery procedures permitted under this law, the discovery
515 procedures permitted under the Oneida Judiciary Rules of Civil Procedure shall apply in all
516 proceedings under this law.

517 708.14-7. The Department may make an ex parte request to the Court to conduct an in camera
518 review to determine what information should and should not be released to the parties and their
519 counsel. In making that determination, the Court shall balance what is necessary to a fair
520 determination of the child welfare legal matter, including access to records, against the interest in
521 protecting the child from the risk of harm. After the Court conducts the in camera review, the
522 decision regarding the release of records shall be provided to the parties in writing.

523

524 **708.15. Taking a Child into Custody**

525 708.15-1. *Grounds for Taking a Child into Custody.* A child may be taken into custody without
526 a Court order by an Indian Child Welfare Worker or law enforcement officer if there are reasonable
527 grounds to believe:

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

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

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

533 708.15-2. The Court may enter an order directing that a child be taken into custody upon a showing
534 satisfactory to the judge that the welfare of the child demands that the child be immediately
535 removed from his or her present custody.

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

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

548 708.15-5. *Probable Cause for Taking a Child into Custody.* A child may be held in custody if the
549 Indian Child Welfare Worker determines the child is within the jurisdiction of the Court and
550 probable cause exists to believe any of the following if the child is not held in custody:

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

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

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

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

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

563 708.15-6. *Holding a Child in Custody.* A child held in custody may be held in any of the following
564 places as long as the places are in the child's best interest and all people residing or regularly
565 visiting the premises have cleared a background check:

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

573 (b) A licensed foster home;

574 (c) A licensed group home;

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

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

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

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

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

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

592 708.15-9. The Indian Child Welfare Worker shall also notify the parent, guardian, and legal
593 custodian of the following:

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

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

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

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

598 708.15-10. When the child is age twelve (12) or older, the Indian Child Welfare Worker shall
599 notify the child of the date, time, and place and the nature and possible outcomes of the emergency
600 custody hearing.

601

602 **708.16. Emergency Custody Hearing**

603 708.16-1. If a child who has been taken into custody under section 708.15-5 is not released, a
604 hearing to determine whether the child shall continue to be held in custody under the criteria of
605 probable cause for taking a child into custody under section 708.15-5(a)-(e) shall be conducted by
606 the Court as soon as possible but no later than seventy-two (72) hours after the time the decision
607 to hold the child was made, excluding Saturdays, Sundays, and holidays. By the time of the
608 hearing, a petition for a child in need of protection or services under section 708.17 shall be filed
609 unless the Department seeks and receives an extension pursuant to section 708.16-2. The child
610 shall be released from custody if a hearing is not held within the specified timelines.

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

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

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

624 708.16-4. Prior to the start of the hearing, the Court shall inform the parent, guardian, or legal
625 custodian of the following:

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

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

635 708.16-6. All orders to hold a child in custody shall be in writing.

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

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

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

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

659 708.16-7. An order to hold a child in custody remains in effect until a dispositional order is
660 granted, the petition is withdrawn or dismissed, or the order is modified or terminated by further
661 order of the Court.

662 708.16-8. An order to hold a child in custody may be re-heard upon motion of any party if, in the
663 Court's discretion, good cause is found, whether or not counsel was present.

664
665 **708.17. Petition for a Child in Need of Protection or Services**

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

671 708.17-2. The petition shall include the following:

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

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

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

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

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

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

687 708.17-3. The petition shall state if any of the facts required for a petition are not known or cannot
688 be ascertained by the petitioner.

689 708.17-4. A petition may be amended at any time at the discretion of the Court. Upon filing with
690 the Court, the Department shall provide a copy of the amended petition to the parties by certified
691 mail with return receipt requested.

692

693 **708.18. Consent Decree**

694 708.18-1. *Consent Decree.* At any time after the filing of a petition pursuant to section 708.17
695 and before the entry of judgment, the Court may suspend the proceedings and place the child under
696 supervision in the home or present placement of the child. The Court may establish terms and
697 conditions applicable to the child and the child's parent, guardian or legal custodian. The order
698 under this section shall be known as a consent decree and must be agreed to by the child who is
699 twelve (12) years of age or older, the parent, guardian or legal custodian, and the person filing the
700 petition. The consent decree shall be reduced to writing and given to the parties.

701 708.18-2. *Requirements of a Consent Decree.* If at the time the consent decree is entered into the
702 child is placed outside the home and if the consent decree maintains the child in that placement,
703 the consent decree shall include all of the following:

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

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

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

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

721 708.18-3. *Time Limits of Consent Decree.* A consent decree shall remain in effect up to six (6)
722 months unless the child, parent, guardian, or legal custodian is discharged sooner by the
723 Court. The time limits under this law shall be tolled during the pendency of the consent decree.

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

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

736

737 **708.19. Plea Hearing for a Child in Need of Protection or Services**

738 708.19-1. A plea hearing shall take place on a date which allows reasonable time for the parties to
739 prepare but is within forty-five (45) days after the filing of a petition, unless the Court enters an
740 order finding good cause to go outside of the time limits.

741 708.19-2. If a petition is not contested, the Court shall set a date for the dispositional hearing
742 which allows reasonable time for the parties to prepare but is within forty-five (45) days after the
743 plea hearing, unless the Court enters an order finding good cause to go outside the time limits. If
744 all the parties agree and the Department has submitted a court report pursuant to section 708.21,
745 the Court may proceed immediately with the dispositional hearing.

746 708.19-3. If the petition is contested, the Court shall set a date for the fact-finding hearing which
747 allows reasonable time for the parties to prepare but is within sixty (60) days after the plea hearing,
748 unless the Court enters an order finding good cause to go outside the time limits.

749 708.19-4. Before accepting an admission or plea of no contest of the alleged facts in a petition,
750 the Court shall:

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

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

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

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

763 708.19-6. If the Court orders the out of home placement of the child, the order shall be in writing
764 and shall contain the information required by section 708.16-6(a)(1)-(5).

765

766 **708.20. Fact finding Hearing for a Child in Need of Protection or Services**

767 708.20-1. The fact-finding hearing is a hearing conducted by the Court to determine whether there
768 is clear and convincing evidence to establish that the child is in need of protection or services.

769 708.20-2. The fact-finding hearing shall be conducted according to the Oneida Judiciary Rules of
770 Civil Procedure except that the Court may exclude the child from the hearing.

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

776

777 **708.21. Department's Disposition Report for a Child in Need of Protection or Services**

778 708.21-1. Before the dispositional hearing, the Department shall submit a written report to the
779 Court, with a copy provided to the parties by first-class mail at least seven (7) days prior to the
780 hearing, which shall contain all of the following:

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

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

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

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

788 708.21-2. If the Department is recommending out-of-home placement, the written report shall
789 include all of the following:

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

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

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

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

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

810

811 **708.22. Dispositional Hearing for a Child in Need of Protection or Services**

812 708.22-1. At a dispositional hearing, any party may present evidence relevant to the issue of
813 disposition, including expert testimony, and may make alternative dispositional recommendations.

814 708.22-2. During a dispositional hearing, if the Department is recommending placement of the
815 child outside of the child's home in accordance with the placement preferences in section 708.11-

816 1, the Department shall present as evidence specific information showing all of the following:

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

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

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

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

834 708.22-3. The Court's dispositional order shall employ those means necessary to maintain and
835 protect the best interests of the child which are the least restrictive of the rights of the parent and
836 child and which assure the care, treatment or rehabilitation of the child and the family consistent
837 with the protection of the public. When appropriate, and, in cases of child abuse or neglect when
838 it is consistent with the best interest of the child in terms of physical safety and physical health,
839 the family unit shall be preserved and there shall be a policy of transferring custody of a child from
840 the parent only when there is no less drastic alternative. If there is no less drastic alternative for a
841 child than transferring custody from the parent, the Court shall consider transferring custody
842 pursuant to the preferences for placement set forth in section 708.11-1.

843 708.22-4. *Dispositional Orders*. The Court's dispositional order shall be in writing and shall
844 contain:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

894 708.22-5. *Service plans and Conditions.* In a proceeding in which a child has been found to be in
895 need of protection or services, the Court may order the child's parent, guardian and legal custodian
896 to comply with any conditions and/or service plan determined by the Court to be necessary for the
897 child's welfare.

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

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

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

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

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

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

916 (1) Outpatient mental health treatment;

917 (2) Substance abuse treatment;

918 (3) Anger management;

919 (4) Individual or family counseling;

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

923 708.22-6. If the Court finds that the parent was convicted of committing a crime against the life
924 and bodily security of a child or a crime against a child, contained within Chapters 940 and 948 of
925 the Wisconsin Statutes or another similar law in another jurisdiction, the Court may find that the
926 Department is not required to make reasonable efforts with respect to the parent to make it possible
927 for the child to return safely to his or her home.

928 708.22-7. The Court shall provide a copy of the dispositional order to the child's parent, guardian,
929 and legal custodian, and other parties to the action.

930 708.22-8. Whenever the Court orders a child to be placed outside his or her home or denies a
931 parent visitation because the child is in need of protection or services, the Court shall orally inform
932 the parent who appears in Court of any grounds for suspension or termination of parental rights
933 which may be applicable and of the conditions necessary for the child to be returned to the home
934 or for the parent to be granted visitation. The Court shall also include this information in the written
935 dispositional order provided to the parent.

936
937 **708.23. Permanency Plans**

938 708.23-1. The Department shall prepare a written permanency plan anytime a child is placed
939 outside the home pursuant to dispositional order that finds the child is in need of protection or
940 services.

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

964 708.23-2. The Department shall file the initial permanency plan with the Court within sixty (60)
965 days after the date the child was first removed from the home unless the child is returned to the
966 home within that time period.

967 708.23-3. The Court shall hold a hearing to review the permanency plan no later than six (6)
968 months after the date on which the child was first removed from the home and every six months
969 thereafter for as long as the child is placed outside the home and is found to be in need of protection
970 or services.

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

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

977 708.23-4. After the hearing, the Court shall enter a written order addressing the following:

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

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

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

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

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

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

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

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

994

995 **708.24. Change in Placement**

996 708.24-1. The Department, the Nation's Child Welfare attorney, or a party to the dispositional
997 order may request a change in the placement of the child who is the subject of the dispositional
998 order by filing a motion with the Court. The Court may also propose a change in placement on its
999 own motion.

1000 708.24-2. The request for a change in placement shall contain the name and address of the new
1001 placement requested and shall state what new information is available that affects the advisability
1002 of the current placement.

1003 708.24-3. If the proposed change in placement moves the child outside of his or her home, the
1004 request shall contain specific information showing that continued placement of the child in the
1005 home would be contrary to the best interests of the child and if the Department is making the
1006 request, specific information showing that the Department has made reasonable efforts to prevent
1007 the removal of the child from the home, while assuring that the child's best interests are the
1008 paramount concerns.

1009 708.24-4. Upon filing with the Court, the Department shall provide a copy of the request for a
1010 change in placement to the parties by first-class mail.

1011 (a) The Department shall schedule a hearing prior to placing the child outside of the home,
1012 unless emergency conditions that necessitate an immediate change in the placement of a
1013 child apply.

1014 (b) A hearing is not required when the child currently placed outside the home transfers to
1015 another out-of-home placement.

1016 (1) A party may request a hearing when the child is transferred to a different out-
1017 of-home placement by submitting a written request to the Court within ten (10)
1018 days of being served with the notice of the proposed change.

1019 708.24-5. If a hearing is held, any party may present evidence relevant to the issue of the change
1020 in placement. In addition, the Court shall give a foster parent or other legal custodian a right to be
1021 heard at the hearing by permitting the foster parent or other legal custodian to make a written or
1022 oral statement during the hearing, or to submit a written statement prior to the hearing, relevant to
1023 the issue of change in placement.

1024 708.24-6. *Emergency Change in Placement.* If emergency conditions necessitate an immediate
1025 change in the placement of a child, the Department may remove the child to a new placement,
1026 whether or not authorized by the existing dispositional order. The Department shall notify the
1027 parties of the emergency change in placement by personal service as soon as possible but no later
1028 than seventy-two (72) hours after the emergency change in placement excluding Saturdays,
1029 Sundays, and holidays. If the emergency conditions necessitate an immediate change in placement
1030 of a child placed in the home to a placement outside the home, the Department shall schedule the
1031 matter for a hearing as soon as possible but no later than seventy-two (72) hours after the
1032 emergency change in placement is made, excluding Saturdays, Sundays, and holidays.

1033 708.24-7. The parties may agree to a change in placement by signing a stipulation and filing it
1034 with the Court for approval.

1035 708.24-8. No change in placement may extend the expiration date of the original dispositional
1036 order, except that if the change in placement is from a placement in the child's home to a placement
1037 outside the home the Court may extend the expiration date of the original dispositional order to
1038 the latest of the following dates, unless the Court specifies a shorter period:

1039 (a) The date on which the child reaches eighteen (18) years of age;

1040 (b) The date that is one (1) year after the date on which the change-in-placement order is
1041 granted; or

1042 (c) The date on which the child is granted a high school or high school equivalency
1043 diploma or the date on which the child reaches nineteen (19) years of age, whichever occurs
1044 first, if the child is a full-time student at a secondary school or its vocational or technical
1045 equivalent and is reasonably expected to complete the program before reaching nineteen
1046 (19) years of age.

1047 708.24-9. If the change in placement is from a placement outside the home to a placement in the
1048 child's home and if the expiration date of the original dispositional order is more than one (1) year
1049 after the date on which the change-in-placement order is granted, the Court shall shorten the
1050 expiration date of the original dispositional order to the date that is one (1) year after the date on
1051 which the change-in-placement order is granted or to an earlier date as specified by the Court.

1052
1053 **708.25. Trial Reunification**

1054 708.25-1. The Department or the Nation's Child Welfare attorney may request the Court to order
1055 a trial reunification. A trial reunification occurs when a child placed in an out-of-home placement
1056 resides in the home of a parent, guardian, or legal custodian from which the child was removed for

1057 a period of seven (7) consecutive days or longer, but not exceeding one hundred fifty (150) days,
1058 for the purpose of determining the appropriateness of changing the placement of the child to that
1059 home. A trial reunification is not a change in placement under section 708.24.

1060 708.25-2. *Request for Trial Reunification.* The Department or the Nation’s Child Welfare attorney
1061 shall include the following in the request for a trial reunification:

- 1062 (a) The name and address of the requested trial reunification home;
- 1063 (b) A statement describing why the trial reunification is in the best interests of the child;
- 1064 and
- 1065 (c) A statement describing how the trial reunification satisfies the objective of the child’s
- 1066 permanency plan.

1067 708.25-3. *Emergency Removal of a Child.* A request for a trial reunification may not be made on
1068 the sole grounds that an emergency condition necessitates an immediate removal of the child from
1069 the child’s out-of-home placement. If an emergency condition necessitates such an immediate
1070 removal, the Department shall proceed with an emergency change in placement as described in
1071 section 708.24-6.

1072 708.25-4. *Notice.* The Department or Nation’s Child Welfare attorney shall submit the request to
1073 the Court. Upon filing with the Court and at least seven (7) days before the date of reunification,
1074 the Department shall provide the parent, guardian, legal custodian, and any other party written
1075 notice of the proposed reunification by first-class mail. The notice shall contain the information
1076 that is required to be included in the request under section 708.25-2.

1077 708.25-5. *Trial Reunification Hearing.* Any party who is entitled to receive notice of a requested
1078 trial reunification may obtain a hearing on the matter by filing an objection with the Court within
1079 ten (10) days after the trial reunification request was filed with the Court.

1080 (a) If no objection against the trial reunification is filed, the Court may issue an order for
1081 the trial reunification.

1082 (b) If an objection is filed, a hearing shall be held within forty five (45) days after the
1083 request was filed with the Court. A trial reunification shall not occur until after the hearing.
1084 Not less than three (3) business days before the hearing the Court shall provide notice of
1085 the hearing to all parties.

1086 (1) If a hearing is held and the trial reunification would remove a child from a foster
1087 home or other placement with a legal custodian, the Court shall give the foster
1088 parent or other legal custodian a right to be heard at the hearing by permitting the
1089 foster parent or legal custodian to make a written or oral statement relating to the
1090 child and the requested trial reunification.

1091 (2) The Court may appoint a guardian ad litem for the child during the trial
1092 reunification hearing.

1093 708.25-6. *Order.* If the Court finds that the trial reunification is in the best interest of the child
1094 and that the trial reunification satisfies the objectives of the child’s permanency plan, the Court
1095 shall order the trial reunification. The trial reunification shall terminate ninety (90) days after the
1096 date of the order, unless the Court specifies a shorter period in the order, or extends or revokes the
1097 trial reunification. No trial reunification order may extend the expiration date of the original
1098 dispositional order or any extension of the dispositional order.

1099 708.25-7. *Extension of Trial Reunification.* The Department may request an extension of a trial
1100 reunification.

1101 (a) *Extension Request.* The request shall contain a statement describing how the trial
1102 reunification continues to be in the best interests of the child. No later than seven (7) days

1103 prior to the expiration of the trial reunification, the Department shall submit the request to
1104 the Court and shall cause notice of the request to be provided to all parties by first-class
1105 mail.

1106 (b) *Extension Hearing.* Any party may obtain a hearing on the requested extension by
1107 filing an objection with the Court within ten (10) days after the extension request was filed
1108 with the Court.

1109 (1) If no objection is filed, the Court may order an extension of the trial
1110 reunification.

1111 (2) If an objection is filed, the Court shall schedule a hearing on the matter. If the
1112 Court is unable to conduct a hearing on the matter before the trial reunification
1113 expires, the trial reunification shall remain in effect until the Court is able hold the
1114 hearing. Not less than three (3) business days before the hearing the Court shall
1115 provide notice of the hearing to all parties.

1116 (c) *Extension Order.* If the Court finds that the trial reunification continues to be in the
1117 best interests of the child, the Court shall grant an order extending the trial reunification
1118 for a period specified by the Court. Any number of extensions may be granted, but the total
1119 period for a trial reunification may not exceed one hundred and fifty (150) days.

1120 708.25-8. *End of Trial Reunification Period.* When a trial reunification period ends, the
1121 Department shall do one (1) of the following:

1122 (a) Return the child to his or her out-of-home placement. The Department may do so
1123 without further order of the Court, but within five (5) days after the return of the child to
1124 his or her out-of-home placement the Department shall provide the parties with written
1125 notice of the following by first-class mail:

1126 (1) the date of the return of the child to the out-of-home placement; and

1127 (2) the address of that placement to all parties, unless providing the address would
1128 present imminent danger to the child;

1129 (b) Request a change in placement under section 708.24 to place the child in a new out-of-
1130 home placement; or

1131 (c) Request a change in placement under section 708.24 to place the child in the trial
1132 reunification home.

1133 708.25-9. *Revocation of Trial Reunification.* The Department may determine that a trial
1134 reunification is no longer in the best interests of the child and revoke the trial reunification before
1135 the specified trial reunification period ends.

1136 (a) *Revocation Request.* If the Department determines that the trial reunification is no
1137 longer in the best interests of the child, the Department, without prior order by the Court,
1138 may remove the child from the trial reunification home and place the child in the child's
1139 previous out-of-home placement or place the child in a new out-of-home placement.

1140 (1) If the Department places the child in the child's previous out-of-home
1141 placement, within three (3) business days of removing the child from the trial
1142 reunification home, the Department shall submit a request for revocation of the trial
1143 reunification to the Court and shall provide notice of the request to all parties by
1144 first-class mail. The request shall contain the following information:

1145 (A) the date on which the child was removed from the trial reunification
1146 home;

1147 (B) the address of the child's current placement, unless providing the
1148 address would present imminent danger to the child; and

1149 (C) the reasons for the proposed revocation.
1150 (2) If the Department places the child in a new out-of-home placement, within
1151 three (3) business days of removing the child from the trial reunification home, the
1152 Department shall request a change in placement under section 708.22. The
1153 procedures specified in section 708.24, including all notice procedures, apply to a
1154 change in placement requested under this subsection, except that the request shall
1155 include the date on which the child was removed from the trial reunification home
1156 in addition to the information required in 708.24-2. The trial reunification is
1157 revoked when the change in placement order is granted.

1158 (b) *Revocation Hearing.* Any party may obtain a hearing on the matter by filing an
1159 objection with the Court within ten (10) days after the request was filed with the Court.

1160 (1) If no objection is filed, the Court may issue a revocation order.

1161 (2) If an objection is filed, the Court shall schedule a hearing on the matter. Not
1162 less than three (3) business days before the hearing the Court shall provide notice
1163 of the hearing to all parties.

1164 (c) *Revocation Order.* If the Court finds that the trial reunification is no longer in the best
1165 interests of the child who has been placed in his or her previous out-of-home placement,
1166 the Court shall grant an order revoking the trial reunification.

1167 708.25-10. *Prohibited Trial Reunifications.* The Court may not order a trial reunification in the
1168 home of an adult who has been convicted of the first-degree intentional homicide or the second-
1169 degree intentional homicide of a parent of the child or any crime against a child, if the conviction
1170 has not been reversed, set aside, vacated or pardoned. If a parent in whose home a child is placed
1171 for a trial reunification is convicted of homicide or a crime against a child, and the conviction has
1172 not been reversed, set aside, vacated or pardoned, the Court shall revoke the trial reunification and
1173 the child shall be returned to his or her previous out-of-home placement, or placed in a new out-
1174 of-home placement.

1175 (a) *Exception.* A prohibition against trial reunifications based on homicide of a parent or
1176 a crime against a child does not apply if the Court determines by clear and convincing
1177 evidence that the placement would be in the best interests of the child.

1178
1179 **708.26. Revision of Dispositional Orders**

1180 708.26-1. A party, or the Court on its own motion, may request a revision in the dispositional
1181 order that does not involve a change in placement.

1182 708.26-2. The request or Court proposal shall set forth in detail the nature of the proposed revision
1183 and what new information is available that affects the advisability of the Court's disposition. The
1184 request for revision shall be filed with the Court with notice provided to the parties by first-class
1185 mail.

1186 708.26-3. The Court shall hold a hearing on the matter prior to any revision of the dispositional
1187 order if the request or Court proposal indicates that new information is available that affects the
1188 advisability of the Court's dispositional order, unless the parties file a signed stipulation and the
1189 Court approves.

1190 708.26-4. If a hearing is held, any party may present evidence relevant to the issue of revision of
1191 the dispositional order. In addition, the Court shall give a foster parent or other legal custodian a
1192 right to be heard at the hearing by permitting the foster parent or other legal custodian to make a
1193 written or oral statement during the hearing, or to submit a written statement prior to the hearing,
1194 relevant to the issue of revision.

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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

1241 (f) That the Department has made reasonable efforts to make it possible for the child to
1242 return to his or her home, while assuring that the child's best interests are the paramount
1243 concerns, but that reunification of the child with the child's parent(s) is unlikely or contrary
1244 to the best interests of the child and that further reunification efforts are unlikely to be made
1245 or are contrary to the best interests of the child or that the Department has made reasonable
1246 efforts to prevent the removal of the child from his or her home, while assuring the child's
1247 best interests, but that continued placement of the child in the home would be contrary to
1248 the best interests of the child.

1249 708.29-2. *Who May File a Petition for Guardianship.* Any of the following persons may file a
1250 petition for the appointment of a guardian for a child under this section:

- 1251 (a) The child;
- 1252 (b) The child's guardian ad litem;
- 1253 (c) The child's parent;
- 1254 (d) The person with whom the child is placed or in whose home placement of the child is
1255 recommended by the Department;
- 1256 (e) The Department; or
- 1257 (f) The Nation's Child Welfare attorney.

1258 708.29-3. *Petition for Guardianship.* A proceeding for the appointment of a guardian for a child
1259 shall be initiated by a petition which shall include the following:

- 1260 (a) The name, birth date, address, and tribal affiliation of the child;
- 1261 (b) The names, birth dates, addresses, and tribal affiliation of the child's parents;
- 1262 (c) A copy of the order adjudicating the child to be in need of protection or services and
1263 the order placing the child outside of the parental home; and
- 1264 (d) A statement of the facts and circumstances which the petitioner alleges establish that
1265 the conditions for guardianship specified in section 708.29-1(a)-(f) are met.

1266 708.29-4. *Notice of Petition for Guardianship.* Upon filing with the Court and at least seven (7)
1267 days prior to the plea hearing, the party that filed the guardianship petition shall provide a copy of
1268 the petition to the other parties by personal service or, if personal service is not possible, by
1269 certified mail with return receipt requested.

1270 708.29-5. *Presence of the Proposed Guardian.* The proposed guardian shall be present at all
1271 guardianship hearings. The Court may waive the appearance requirement for the proposed
1272 guardian if the Court determines there is good cause.

1273 708.29-6. *Plea Hearing for Guardianship.* A plea hearing to determine whether any party wishes
1274 to contest a petition for guardianship shall take place no sooner than ten (10) days after the filing
1275 of the petition. At the hearing, the non-petitioning parties shall state whether they wish to contest
1276 the petition. Before accepting an admission or a plea of no contest to the allegations in the petition,
1277 the Court shall do all of the following:

- 1278 (a) Address the parties present and determine that the admission or plea of no contest is
1279 made voluntarily and with understanding of the nature of the facts alleged in the petition,
1280 the nature of the potential outcomes and possible dispositions by the Court and the nature
1281 of the legal consequences of that disposition;
- 1282 (b) Establish whether any promises or threats were made to elicit the admission or plea of
1283 no contest; and
- 1284 (c) Make inquiries to establish to the satisfaction of the Court that there is a factual basis
1285 for the admission or plea of no contest.

1286 708.29-7. If the petition is not contested and if the Court accepts the admission or plea of no
1287 contest, the Court may immediately proceed to a dispositional hearing unless an adjournment is
1288 requested.

1289 708.29-8. If the petition is contested or if the Court does not accept the admission or plea of no
1290 contest, the Court shall set a date for a fact-finding hearing which allows reasonable time for the
1291 parties to prepare but is not more than sixty (60) days after the plea hearing, unless the Court enters
1292 an order finding good cause to go outside the time limits.

1293 (a) If the petition is contested, the Court shall order the Department to file with the Court
1294 a report containing as much information relating to the appointment of a guardian as is
1295 reasonably ascertainable, including an assessment of the conditions for guardianship
1296 specified in section 708.29-1(a)-(f). Upon filing with the Court and at least seven (7) days
1297 prior to the hearing, the Department shall provide the parent, guardian, legal custodian,
1298 proposed guardian, and any other parties a written copy of the report by first-class mail.

1299 708.29-9. *Fact Finding Hearing for Guardianship.* The Court shall hold a fact-finding hearing
1300 on the petition at which any party may present evidence relevant to the issue of whether the
1301 conditions for guardianship have been met. If the Court, at the conclusion of the fact-finding
1302 hearing, finds by clear and convincing evidence that the conditions for guardianship specified in
1303 section 708.29-1(a)-(f) have been met, the Court shall immediately proceed to a dispositional
1304 hearing unless an adjournment is requested.

1305 708.29-10. *Dispositional Hearing for Guardianship.* The Court shall hold a dispositional hearing
1306 at which any party may present evidence, including expert testimony, relevant to the disposition.
1307 In determining the appropriate disposition for guardianship, the Court shall use the best interests
1308 of the child as the prevailing factor to be considered by the Court. In making a decision about the
1309 appropriate disposition, the Court shall consider any report submitted by the Department and shall
1310 consider, but not be limited to, all of the following:

- 1311 (a) Whether the person would be a suitable guardian of the child;
1312 (b) The willingness and ability of the person to serve as the child's guardian for an extended
1313 period of time or until the child reaches the age of eighteen (18) years; and
1314 (c) The wishes of the child, if the child has the capacity to express their wishes.

1315 708.29-11. *Dispositional Order for Guardianship.* After receiving any evidence relating to the
1316 disposition, the Court shall enter one of the following dispositions and issue a written decision
1317 consistent with the Oneida Judiciary Rules of Civil Procedure:

- 1318 (a) A disposition dismissing the petition if the Court determines that appointment of the
1319 person as the child's guardian is not in the best interests of the child; or
1320 (b) A disposition ordering that the proposed guardian be appointed as the child's guardian
1321 if the Court determines that such an appointment is in the best interests of the child.

1322 708.29-12. If the Court appoints a guardian for the child, the Court may dismiss the dispositional
1323 order finding that the child is in need of protection or services.

1324

1325 **708.30. Revisions of Guardianship Order**

1326 708.30-1. Any person authorized to file a guardianship petition or the Court, on its own motion
1327 may request a revision in a guardianship order.

1328 708.30-2. The motion or Court proposal shall set forth in detail the nature of the proposed revision,
1329 shall allege facts sufficient to show that there has been a substantial change in circumstances since
1330 the last order affecting the guardianship was entered and that the proposed revision would be in
1331 the best interests of the child and shall allege any other information that affects the advisability of

1332 the Court's disposition. The motion for the revision shall be filed with the Court and, upon filing,
1333 a written copy shall be provided to all parties by first-class mail.

1334 (a) The Court may order the Department to file with the Court a report containing as much
1335 information relating to the revision of the guardianship as is reasonably ascertainable. Upon
1336 filing with the Court and at least seven (7) days prior to the revision hearing, the
1337 Department shall provide the parties with a written copy of the report by first-class mail.

1338 708.30-3. The Court shall hold a hearing on the matter prior to any revision of the guardianship
1339 order if the motion or Court proposal indicates that new information is available which affects the
1340 advisability of the Court's guardianship order, unless the parties file a signed stipulation and the
1341 Court approves.

1342

1343 **708.31. Termination of Guardianship**

1344 708.31-1. A guardianship under this law shall continue until any of the following are met,
1345 whichever occurs earlier:

1346 (a) The date on which the child attains eighteen (18) years of age;

1347 (b) The date on which the child is granted a high school or high school equivalency
1348 diploma or the date on which the child reaches nineteen (19) years of age, whichever occurs
1349 first, if the child is a full-time student at a secondary school or its vocational or technical
1350 equivalent and is reasonably expected to complete the program before reaching nineteen
1351 (19) years of age; or

1352 (c) The date on which the Court terminates the guardianship order.

1353 708.31-2. A parent of the child may request that a guardianship order be terminated. The request
1354 shall allege facts sufficient to show that there has been a substantial change in circumstances since
1355 the last order affecting the guardianship was entered, that the parent is willing and able to carry
1356 out the duties of a guardian and that the proposed termination of guardianship would be in the best
1357 interests of the child. The Court shall hold a hearing on the matter unless the parties file a signed
1358 stipulation and the Court approves.

1359 (a) The Court may order the Department to file with the Court a report containing as much
1360 information relating to the termination of the guardianship as is reasonably ascertainable,
1361 including a re-assessment of the conditions for guardianship specified in section 708.29-
1362 1(a)-(f). Upon filing with the Court and at least seven (7) days prior to the termination
1363 hearing, the Department shall provide the parties with a written copy of the report by first-
1364 class mail.

1365 708.31-3. Any person authorized to file a petition for guardianship may request that an appointed
1366 guardian be removed for cause or the Court may, on its own motion, propose such a removal. The
1367 request or Court proposal shall allege facts sufficient to show that the guardian is or has been
1368 neglecting, is or has been refusing, or is or has been unable to discharge the guardian's trust and
1369 may allege facts relating to any other information that affects the advisability of the Court's
1370 disposition. The Court shall hold a hearing on the matter.

1371 708.31-4. A guardian appointed under this law may resign at any time if the resignation is accepted
1372 by the Court.

1373

1374 **708.32. Suspension or Termination of Parental Rights**

1375 708.32-1. It is the philosophy of the Nation that children deserve a sense of permanency and
1376 belonging throughout their lives and at the same time they deserve to have knowledge about their
1377 unique cultural heritage including their tribal customs, history, language, religion and values.

1378 708.32-2. It is the philosophy of the Nation that a united and complete family unit is of the utmost
1379 value to the community and the individual family members, and that the parent-child relationship
1380 is of such vital importance that it should be suspended or terminated only as a last resort when all
1381 efforts have failed to avoid suspension or termination and it is in the best interests of the child
1382 concerned to proceed with the suspension or termination of parental rights.

1383 708.32-3. *Suspension of Parental Rights.* The suspension of parental rights is the permanent
1384 suspension of the rights of biological parents to provide for the care, custody, and control of their
1385 child.

1386 708.32-4. *Termination of Parental Rights.* The termination of parental rights means that all rights,
1387 powers, privileges, immunities, duties and obligations existing between biological parent and child
1388 are permanently severed.

1389 708.32-5. The Court may suspend or terminate a parent's rights on a voluntary or involuntary
1390 basis.

1391 708.32-6. An order suspending or terminating parental rights permanently severs all legal rights
1392 and duties between the parent whose parental rights are suspended or terminated and the child.

1393 708.32-7. The suspension or termination of parental rights shall not adversely affect the child's
1394 rights and privileges as a member of the Nation, nor as a member of any tribe to which the child
1395 is entitled to membership, nor shall it affect the child's enrollment status with the Nation, nor shall
1396 it interfere with the child's cultural level and traditional and spiritual growth as a member of the
1397 Nation.

1398

1399 **708.33. Voluntary Suspension or Termination of Parental Rights**

1400 708.33-1. The Court may suspend or terminate the parental rights of a parent after the parent has
1401 given his or her consent. When such voluntary consent is given and the Department has submitted
1402 a court report pursuant to section 708.38, the Court may proceed immediately to a dispositional
1403 hearing.

1404 708.33-2. The Court may accept a voluntary consent to suspension or termination of parental
1405 rights only if the parent appears personally at the hearing and gives his or her consent to the
1406 suspension or termination of his or her parental rights. The Court may accept the consent only after
1407 the judge has explained the effect of suspension or termination of parental rights and has
1408 questioned the parent, and/or has permitted counsel who represents any of the parties to question
1409 the parent, and is satisfied that the consent is informed and voluntary. If the Court finds that it
1410 would be difficult or impossible for the parent to appear in person at the hearing, the Court may
1411 allow the parent to appear by telephone or live audiovisual means.

1412 708.33-3. If in any proceeding to suspend or terminate parental rights voluntarily any party has
1413 reason to doubt the capacity of a parent to give informed and voluntary consent to the suspension
1414 or termination, he or she shall so inform the Court. The Court shall then inquire into the capacity
1415 of that parent in any appropriate way and shall make a finding as to whether or not the parent is
1416 capable of giving informed and voluntary consent to the suspension or termination. If in the
1417 Court's discretion a person is found incapable of knowingly and voluntarily consenting to the
1418 suspension or termination of their parental rights, the Court shall dismiss the voluntary proceedings

1419 without prejudice. That dismissal shall not preclude an involuntary suspension or termination of
1420 the parent's rights.

1421 708.33-4. A parent who has executed a consent under this section may withdraw the consent for
1422 any reason at any time prior to the entry of a final order suspending or terminating parental rights.

1423 708.33-5. Any consent given under this section prior to or within ten (10) days after the birth of
1424 the child is not valid.

1425 708.33-6. The parties, and the placement provider or adoptive resource, may agree to attend
1426 peacemaking to establish an agreement regarding post-voluntary suspension or termination of
1427 parental rights contact with a birth parent, birth sibling, or other birth relative of the child.

1428 (a) Any party to a post-voluntary suspension or termination contact agreement or the
1429 child who is the subject of the proceedings may petition the Court that approved the
1430 agreement to compel any person who is bound by the agreement to comply with the
1431 agreement. The petition shall allege facts sufficient to show that a person who is bound
1432 by the agreement is not in compliance with the agreement and that the petitioner, before
1433 filing the petition, attempted in good faith to resolve the dispute giving rise to the filing
1434 of the petition. The petition may also allege facts showing that the noncompliance with
1435 the agreement is not in the best interests of the child.

1436 (b) After receiving a petition for action regarding a post-voluntary suspension or
1437 termination contact agreement the Court shall set a date and time for a hearing on the
1438 petition and shall provide notice of the hearing to all parties to the agreement and may
1439 reappoint a guardian ad litem for the child.

1440 (c) If the Court finds, after hearing, that any person bound by the agreement is not in
1441 compliance with the agreement and that the petitioner, before filing the petition,
1442 attempted in good faith to resolve the dispute giving rise to the filing of the petition,
1443 the Court shall issue an order requiring the person to comply with the agreement and
1444 may find a party in contempt.

1445 (d) The Court may not revoke a suspension or termination of parental rights order or
1446 an order of adoption because an adoptive parent or other custodian of the child or a
1447 birth parent, birth sibling, or other birth relative of the child fails to comply with a post-
1448 voluntary suspension or termination contact agreement; however, the parties may
1449 return to peacemaking to revise the agreement, or the Court may amend an order if it
1450 finds an amendment to the order is in the best interests of the child.

1451

1452 **708.34. Grounds for Involuntary Suspension or Termination of Parental Rights**

1453 708.34-1. Grounds for suspension or termination of parental rights shall be any of the following:

1454 (a) *Abandonment*. Abandonment occurs when a parent either deserts a child without any
1455 regard for the child's physical health, safety or welfare and with the intention of wholly
1456 abandoning the child, or in some instances, fails to provide necessary care for their child.

1457 (1) Abandonment shall be established by proving any of the following:

1458 (A) That the child has been left without provision for the child's care or
1459 support, the petitioner has investigated the circumstances surrounding the
1460 matter and for sixty (60) consecutive days the petitioner has been unable to
1461 find either parent;

1462 (B) That the child has been left by the parent without provision for the
1463 child's care or support in a place or manner that exposes the child to
1464 substantial risk of great bodily harm or death;

- 1465 (C) That a court of competent jurisdiction has found any of the
1466 following:
- 1467 (i) That a child has been abandoned under Wis. Stat. 48.13 (2) or
1468 under a law of any other state or a federal law that is comparable to
1469 the state law;
- 1470 (ii) That the child was abandoned when the child was under one (1)
1471 year of age or has found that the parent abandoned the child when
1472 the child was under one (1) year of age in violation of Wis. Stat.
1473 948.20 or in violation of the law of any other state or federal law, if
1474 that violation would be a violation of abandonment of a child under
1475 Wis. Stat. 948.20 if committed in this state;
- 1476 (D) That the child has been placed, or continued in a placement, outside the
1477 parent's home by a Court order containing the required notice and the parent
1478 has failed to visit or communicate with the child for a period of three (3)
1479 months or longer; or
- 1480 (E) The child has been left by the parent with any person, the parent knows
1481 or could discover the whereabouts of the child and the parent has failed to
1482 visit or communicate with the child for a period of six (6) consecutive
1483 months or longer.
- 1484 (2) Incidental contact between parent and child shall not preclude the Court from
1485 finding that the parent has failed to visit or communicate with the child. The time
1486 periods under sections 708.34-1(a)(1)(D) and 708.34-1(a)(1)(E) shall not include
1487 any periods during which the parent has been prohibited by Court order from
1488 visiting or communicating with the child.
- 1489 (3) Abandonment is not established under sections 708.34-1(a)(1)(D) and 708.34-
1490 1(a)(1)(E) if the parent proves all of the following by clear and convincing
1491 evidence:
- 1492 (A) That the parent had good cause for having failed to visit with the child
1493 throughout the three (3) or six (6) month time period alleged in the petition.
- 1494 (B) That the parent had good cause for having failed to communicate with
1495 the child throughout the three (3) or six (6) month time period alleged in the
1496 petition.
- 1497 (C) If the parent proves good cause under section 708.34-1(a)(3)(B),
1498 including good cause based on evidence that the child's age or condition
1499 would have rendered any communication with the child meaningless, that
1500 one (1) of the following occurred:
- 1501 (i) The parent communicated about the child with the person or
1502 persons who had physical custody of the child during the three (3) or
1503 six (6) month time period alleged in the petition, whichever is
1504 applicable, or, with the Department during the three (3) month time
1505 period alleged in the petition.
- 1506 (ii) The parent had good cause for having failed to communicate about
1507 the child with the person or persons who had physical custody of the
1508 child or the Department throughout the three (3) or six (6) month time
1509 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.

1556 (g) *Failure to Assume Parental Responsibility.* Failure to assume parental responsibility
1557 shall be established by proving that the parent or the person(s) who may be the parent of
1558 the child have not had a substantial parental relationship with the child.

1559 (1) In evaluating whether the person has had a substantial parental relationship with
1560 the child, the Court may consider such factors, including, but not limited to, the
1561 following:

1562 (A) Whether the person has expressed concern for or interest in the support,
1563 care or well-being of the child;

1564 (B) Whether the person has neglected or refused to provide care or support for
1565 the child; and

1566 (C) Whether, with respect to a person who is or may be the father of the child,
1567 the person has expressed concern for or interest in the support, care or well-
1568 being of the mother during her pregnancy.

1569 (h) *Incestuous Parenthood.* Incestuous parenthood shall be established by proving that the
1570 person whose parental rights are sought to be terminated is also related, either by blood or
1571 adoption, to the child's other parent in a degree of kinship closer than 2nd cousin.

1572 (i) *Homicide or Solicitation to Commit Homicide of a Parent.* Homicide or solicitation to
1573 commit homicide of a parent, which shall be established by proving that a parent of the
1574 child has been a victim of first-degree intentional homicide, first-degree reckless homicide
1575 or 2nd-degree intentional homicide or a crime under federal law or the law of any other
1576 state that is comparable to any of those crimes, or has been the intended victim of a
1577 solicitation to commit first-degree intentional homicide or a crime under federal law or the
1578 law of any other state that is comparable to that crime, and that the person whose parental
1579 rights are sought to be terminated has been convicted of that intentional or reckless
1580 homicide, solicitation or crime as evidenced by a final judgment of conviction.

1581 (j) *Parenthood as a Result of Sexual Assault.*

1582 (1) Parenthood as a result of sexual assault shall be established by proving that the
1583 child was conceived as a result of one of the following:

1584 (A) First degree sexual assault [under Wis. Stats. 940.225(1)];

1585 (B) Second degree sexual assault [under Wis. Stat. 940.225 (2)];

1586 (C) Third degree sexual assault [under Wis. Stat. 940.225(3)];

1587 (D) First degree sexual assault of a child [under Wis. Stat. 948.02(1)];

1588 (E) Second degree sexual assault of a child [under Wis. Stat. 948.02 (2)];

1589 (F) Engaging in repeated acts of sexual assault of the same child [under Wis.
1590 Stat. 948.025]; or

1591 (G) Sexual assault of a child placed in substitute care [under Wis. Stat.
1592 948.085].

1593 (2) Conception as a result of sexual assault may be proved by a final judgment of
1594 conviction or other evidence produced at a suspension or termination of parental
1595 rights fact-finding hearing indicating that the person who may be the parent of the
1596 child committed, during a possible time of conception, a sexual assault as specified
1597 in this section against the other parent of the child.

1598 (3) If the conviction or other evidence indicates that the child was conceived as a
1599 result of a sexual assault in violation of Wis. Stat. 948.02 (1) or (2) or 948.085, the
1600 parent of the child may be heard on his or her desire for the suspension or
1601 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)

1648 (1), within three (3) years prior to the date of birth of the child, a Court has ordered
1649 the suspension or termination of parental rights with respect to another child of the
1650 person whose parental rights are sought to be suspended or terminated on one or
1651 more of the grounds specified in this section.
1652

1653 **708.35. Petition for Suspension or Termination of Parental Rights**

1654 708.35-1. *Who May File a Petition for Suspension or Termination of Parental Rights.* A petition
1655 for the suspension or termination of parental rights shall be filed by the:

- 1656 (a) Nation's Child Welfare attorney;
- 1657 (b) Department; or
- 1658 (c) child's parent in the case of a step-parent adoption.

1659 708.35-2. A petition for the suspension or termination of parental rights shall be filed when the
1660 child has been placed outside of his or her home for fifteen (15) of the most recent twenty-two (22)
1661 months or if grounds exist for suspension or termination of parental rights unless any of the
1662 following applies:

- 1663 (a) The child is being cared for by a fit and willing relative of the child;
- 1664 (b) The child's permanency plan indicates and provides documentation that suspension or
1665 termination of parental rights to the child is not in the best interests of the child;
- 1666 (c) The Department, if required by a dispositional order, failed to make reasonable efforts
1667 to make it possible for the child to return safely to his or her home or did not provide or
1668 refer services to the family of the child for the safe return of the child to his or her home
1669 that were consistent with the permanency plan; or
- 1670 (d) Grounds for an involuntary suspension or termination of parental rights do not exist.

1671 708.35-3. A petition for the suspension or termination of parental rights shall include the following
1672 information:

- 1673 (a) The name, birth date, address, and tribal affiliation of the child;
- 1674 (b) The names, birth dates, addresses, and tribal affiliation of the child's parents;
- 1675 (c) A Uniform Child Custody Jurisdiction and Enforcement Act affidavit; and
- 1676 (d) One (1) of the following:

- 1677 (1) A statement that consent will be given to voluntary suspension or termination
1678 of parental rights as provided in section 708.33; or
- 1679 (2) A statement of the grounds for involuntary suspension or termination of
1680 parental rights under section 708.34 and a statement of the facts and circumstances
1681 which the petitioner alleges establish these grounds.

1682 708.35-4. *Temporary Order and Injunction Prohibiting Contact.* If the petition includes a
1683 statement of the grounds for involuntary suspension or termination of parental rights, the petitioner
1684 may, at the time the petition is filed, also petition the Court for a temporary order and an injunction
1685 prohibiting the person whose parental rights are sought to be suspended or terminated from visiting
1686 or contacting the child who is the subject of the petition. Any petition under this section shall
1687 allege facts sufficient to show that prohibiting visitation or contact would be in the best interests
1688 of the child.

- 1689 (a) The Court may grant an injunction prohibiting the respondent from visiting or
1690 contacting the child if the Court determines that the prohibition would be in the best
1691 interests of the child. An injunction under this subsection is effective according to its terms
1692 but may not remain in effect beyond the date the Court dismisses the petition for suspension

1693 or termination of parental rights or issues an order suspending or terminating parental
1694 rights.

1695 708.35-5. Upon filing with the Court and at least seven (7) days prior to the initial hearing, the
1696 petitioner shall serve the summons and petition upon the following persons by personal service or,
1697 if personal service is not possible, by certified mail, return receipt requested:

1698 (a) The parent(s) of the child, including an alleged father if paternity has not been
1699 established; and

1700 (b) The child's foster parent, guardian or legal custodian, if applicable. If the address has
1701 been marked confidential by the Court, the Court shall send a copy of the summons and
1702 petition to the home in which the child is placed via first-class U.S. mail.
1703

1704 **708.36. Initial Hearing on the Suspension or Termination of Parental Rights Petition**

1705 708.36-1. The initial hearing on the petition to suspend or terminate parental rights shall be held
1706 within forty-five (45) days after the petition is filed. At the hearing the Court shall determine
1707 whether any party wishes to contest the petition and inform the parties of their rights.

1708 708.36-2. If the petition is contested, the Court shall set a date for a fact-finding hearing to be held
1709 within sixty (60) days after the hearing on the petition, unless the Court enters an order finding
1710 good cause to go outside the time limits.

1711 708.36-3. If the petition is not contested, the Court shall hear testimony in support of the
1712 allegations in the petition and may proceed immediately with a dispositional hearing if the parties
1713 agree. Before accepting an admission of the alleged facts in a petition, the Court shall:

1714 (a) Address the parties present and determine that the admission is made voluntarily with
1715 understanding of the nature of the acts alleged in the petition and the potential outcomes
1716 and possible dispositions by the Court;

1717 (b) Establish whether any promises or threats were made to elicit an admission; and

1718 (c) Make such inquiries to establish a factual basis for the admission.
1719

1720 **708.37. Fact Finding Hearing for a Suspension or Termination of Parental Rights**

1721 708.37-1. The fact-finding hearing is a hearing conducted by the Court to determine whether there
1722 is clear and convincing evidence to establish that grounds exist for the suspension or termination
1723 of parental rights.

1724 708.37-2. The fact-finding hearing shall be conducted according to the Oneida Judiciary Rules of
1725 Civil Procedure except that the Court may exclude the child from the hearing.

1726 708.37-3. If grounds for the suspension or termination of parental rights are found by the Court,
1727 the Court shall find the parent(s) unfit. A finding of unfitness shall not prevent a dismissal of a
1728 suspension or termination of parental rights petition. Unless the parties agree to proceed
1729 immediately with the dispositional hearing and the Court accepts, the Court shall set a date for a
1730 dispositional hearing no later than forty-five (45) days after the fact-finding hearing, unless the
1731 Court enters an order finding good cause to go outside the time limits.
1732

1733 **708.38. Department's Suspension or Termination of Parental Rights Report**

1734 708.38-1. In any case that the Department is a party, the Department shall submit a written report
1735 to the Court prior to any dispositional hearing, with a copy to the parties by first-class mail no later
1736 than seven (7) days prior to the hearing, which shall contain all of the following:

1737 (a) The social history of the child and family, including any relevant medical conditions;

- 1738 (b) A statement of the facts supporting the need for suspension or termination of parental
1739 rights;
- 1740 (c) If the child has been previously adjudicated to be in need of protection or services, a
1741 statement of the steps the Department has taken to remedy the conditions responsible for
1742 Court intervention and the parent's response to and cooperation with these services. If the
1743 child has been removed from the home, the report shall also include a statement of the
1744 reasons why the child cannot be returned safely to the family and the steps the Department
1745 has taken to effect this return;
- 1746 (d) A statement applying the standards and factors identified in sections 708.39-2 and
1747 708.39-3 regarding the case before the Court; and
- 1748 (e) If the report recommends that the parental rights of both of the child's parents or the
1749 child's only living or known parent are to be suspended or terminated, the report shall
1750 contain a statement of the likelihood that the child will be adopted. This statement shall
1751 include a presentation of the factors that might prevent adoption, those that may facilitate
1752 adoption, and the Department shall be responsible for accomplishing the adoption.
- 1753 (1) If the Department determines that it is unlikely that the child will be adopted,
1754 or if adoption would not be in the best interests of the child, the report shall include
1755 a plan for placing the child in a permanent family setting. The plan shall include a
1756 recommendation for the appointment of a guardian for the child.
- 1757 708.38-2. The Court may order a report as specified under this section to be prepared by the
1758 Department in those cases where the Department is not a party.

1759
1760 **708.39. Standards and Factors**

- 1761 708.39-1. In making a decision about the appropriate disposition for suspension or termination of
1762 parental rights, the Court shall consider the standards and factors enumerated in this section and
1763 any report submitted by the Department.
- 1764 708.39-2. The best interests of the child shall be the prevailing standard considered by the Court
1765 in determining the disposition of all suspension and termination of parental rights proceedings.
- 1766 708.39-3. In considering the best interests of the child the Court shall also consider, but not be
1767 limited to, the following factors:
- 1768 (a) The likelihood of the child's adoption after suspension or termination;
- 1769 (b) Whether the child will be raised in an environment that is respectful of the child's
1770 race(s), culture(s), and heritage(s);
- 1771 (c) The age and health of the child, both at the time of the disposition and, if applicable, at
1772 the time the child was removed from the home;
- 1773 (d) Whether the child has substantial relationships with the parent or other family
1774 members, and whether it would be harmful to the child to sever these relationships;
- 1775 (e) The wishes of the child, if the child has the capacity to express their wishes;
- 1776 (f) The duration of the separation of the parent from the child; and
- 1777 (g) Whether the child will be able to enter into a more stable and permanent family
1778 relationship as a result of the suspension or termination, taking into account the conditions
1779 of the child's current placement, the likelihood of future placements and the results of prior
1780 placements.
- 1781

1782 **708.40. Dispositional Hearings for Suspension or Termination of Parental Rights**

1783 708.40-1. Any party may present evidence relevant to the issue of disposition, including expert
1784 testimony, and may make alternative dispositional recommendations to the Court. After receiving
1785 any evidence related to the disposition, the Court shall enter a disposition and issue a written
1786 decision consistent with the Oneida Judiciary Rules of Civil Procedure.

1787 (a) The Court shall give the foster parent or other legal custodian a right to be heard at the
1788 dispositional hearing by permitting the foster parent or other legal custodian to make a
1789 written or oral statement during the dispositional hearing, or to submit a written statement
1790 prior to disposition, relevant to the issue of disposition.

1791 708.40-2. The Court shall enter one (1) of the following dispositions:

1792 (a) The Court may dismiss the petition if it finds the evidence does not warrant the
1793 suspension or termination of parental rights or if the Court finds that a parent is attempting
1794 to voluntarily suspend or terminate their parental rights for the sole purpose of avoiding a
1795 child support obligation; or

1796 (b) The Court may enter an order suspending or terminating the parental rights of one or
1797 both parents.

1798 708.40-3. If the rights of both parents, or of the only living parent, are suspended or terminated
1799 and if a guardian has not been appointed, the Court shall do one (1) of the following while adhering
1800 to the placement preferences pursuant to section 708.11-1 when possible:

1801 (a) Transfer guardianship and custody of the child pending adoptive placement to:

1802 (1) A tribal or county department authorized to accept guardianship;

1803 (2) A child welfare agency licensed to accept guardianship;

1804 (3) The State of Wisconsin upon written confirmation from the State that they are
1805 willing to accept guardianship;

1806 (4) A relative with whom the child resides, if the relative has filed a petition to
1807 adopt the child or if the relative is a kinship care relative or is receiving payments
1808 for providing care and maintenance for the child; or

1809 (5) An individual who has been appointed guardian of the child by a court of a
1810 competent jurisdiction; or

1811 (b) Appoint a guardian and transfer guardianship and custody of the child to the guardian.

1812 708.40-4. The written Court order shall include the following:

1813 (a) If the Court dismisses the petition, the order shall contain the reasons for dismissal; or

1814 (b) If the disposition is for the suspension or termination of parental rights, the order shall
1815 contain all of the following:

1816 (1) The identity of any agency, department, or individual that has received
1817 guardianship of the child;

1818 (2) If an agency or department receives guardianship and custody of the child, an
1819 order ordering the child into the placement and care responsibility of the agency or
1820 department and assigning the agency or department primary responsibility for
1821 providing services to the child; and

1822 (3) A finding that the suspension or termination of parental rights is in the best
1823 interests of the child.

1824 (c) If the disposition is for the suspension or termination of parental rights, the order may
1825 contain all of the following:

1826 (1) A termination of the right of the parent to have contact with the minor child
1827 including contact in person, by mail, by telephone, or through third parties;

- 1828 (2) Order restraining a parent from contacting the minor child, the child's foster
1829 parent, the child's adoptive parent and/or the social services agency or agencies
1830 possessing information regarding the child;
1831 (3) Order that the biological parents' obligation to pay child support, except for
1832 arrearages, is hereby terminated; and
1833 (4) Order that any prior court order for custody, visitation, or contact, with the
1834 minor child is hereby terminated.

1835 708.40-5. The Court shall provide a copy of the order suspending or terminating parental rights
1836 to the child's parent, guardian, and legal custodian; the other parties to the action; and the current
1837 or future foster parents for the purpose of pursuing adoption.

1838 708.40-6. If an order is entered involuntarily suspending or terminating parental rights, the Court
1839 shall orally inform the parent(s) who appear in Court or place in the written order the ground for
1840 suspension or termination of their parental rights specified in section 708.34-1(l), which provides
1841 that a prior involuntary suspension or termination of parental rights, under certain circumstances,
1842 is a ground for the suspension or termination of parental rights for another child.

1843 708.40-7. If the Court suspends or terminates parental rights, the Department, or the Court if the
1844 Department is not a party to the action, may forward the following information to the State of
1845 Wisconsin:

- 1846 (a) The name, date of birth, and tribal affiliation of the child whose birth parent's rights
1847 have been suspended or terminated;
1848 (b) The names and current addresses of the child's birth parents, guardian and legal
1849 custodian; and
1850 (c) Any medical or genetic information received by the Department.

1851 708.40-8. If only one (1) parent consents to a voluntary suspension or termination of parental
1852 rights or if the grounds for involuntary suspension or termination of parental rights are found to
1853 exist as to only one (1) parent, the rights of only that parent may be suspended or terminated
1854 without affecting the rights of the other parent if the Court finds such suspension or termination to
1855 be in the best interest of the child.

1856
1857 **708.41. Adoption**

1858 708.41-1. Adoptions under this law shall take the form of customary adoptions when the Court has
1859 granted a petition to suspend parental rights. When the Court grants a petition to terminate parental
1860 rights the adoption shall be closed.

1861 708.41-2. *Customary Adoptions.* The purpose of customary adoption is not to permanently deprive
1862 the adopted child of connections to, or knowledge of, the adopted child's biological family, but to
1863 provide the adopted child a permanent home. The following shall apply to all customary adoptions
1864 and shall be contained in all adoptive orders and decrees:

- 1865 (a) The relationship between an adoptive parent and adopted child shall have all the same
1866 rights, responsibilities, and other legal consequences as the relationship between a
1867 biological child and parent;
1868 (b) The adopted child shall have an absolute right, absent a convincing and compelling
1869 reason to the contrary, to information and knowledge about his or her biological family and
1870 his or her Oneida heritage, if applicable. The adopted child may obtain adoption
1871 information from files maintained by the Court or Department;
1872 (c) Adoption shall not prevent an adopted child from inheriting from a biological parent in
1873 the same manner as any other biological child. The biological parents shall not be entitled

1874 to inherit from an adopted child in the same manner as parents would otherwise be entitled
1875 to inherit. An adopted child shall be entitled to inherit from adoptive parents, and vice
1876 versa, in the same manner as if biological parents and child;

1877 (d) Although parental rights have been suspended, the biological parent may retain certain
1878 residual parental rights when appropriate as determined by agreement between the adoptive
1879 parent and biological parent made through peacemaking, or by order of the Court. Such
1880 residual parental rights may include:

- 1881 (1) The right to communication;
- 1882 (2) The right to visitation;
- 1883 (3) The right or obligation to contribute to support or education;
- 1884 (4) The right to be consulted regarding the adopted child's religious affiliation,
1885 major medical treatment, marriage, or other matters of major importance in the
1886 child's life; and/or
- 1887 (5) Such other residual rights the Court may deem appropriate, considering the
1888 circumstances.

1889 (e) Adoption does not extinguish the relationships between the adopted child and the
1890 adopted child's extended biological family. The adopted child's extended biological family
1891 retains the right to reasonable communication and visitation with the adopted child, subject
1892 to reasonable controls of the adoptive parents.

1893 **708.41-3. Closed Adoptions.** Closed adoptions occur in situations where an adopted child needs a
1894 permanent home and it is necessary to sever all ties between the adopted child and his or her
1895 biological family. The following shall apply to all closed adoptions:

- 1896 (a) The relationship between an adoptive parent and adopted child shall have all the same
1897 rights, responsibilities, and other legal consequences as the relationship between a
1898 biological child and parent;
- 1899 (b) The relationship between the adopted child and all persons whose relationship to the
1900 adopted child is derived through the biological parents shall be completely altered and all
1901 the rights, duties, and other legal consequences of those relationships shall cease to exist;
- 1902 (c) The adopted child's biological family shall not be entitled to or have access to any
1903 information regarding said child;
- 1904 (d) The adopted child shall be entitled to information and knowledge regarding his or her
1905 culture and heritage; and
- 1906 (e) The adopted child shall be entitled to information regarding his or her biological family
1907 upon reaching the age of majority. The adopted child may obtain adoption information
1908 from files maintained by the Court or Department.

1909
1910 **708.42. Adoption Criteria and Eligibility**

1911 **708.42-1. Criteria for Adoption.** Any child who is subject to this law may be adopted if any of the
1912 following criteria are met:

- 1913 (a) Both of the child's parents are deceased;
- 1914 (b) The parental rights of both of the child's parents with respect to the child have been
1915 suspended or terminated;
- 1916 (c) The parental rights of one of the child's parents with respect to the child have been
1917 suspended or terminated and the child's other parent is deceased; or
- 1918 (d) The person filing the petition for adoption is the spouse of the child's parent and either
1919 of the following applies:

- 1920 (1) The child's other parent is deceased; or
1921 (2) The parental rights of the child's other parent with respect to the child have been
1922 suspended or terminated.

1923 708.42-2. *Eligibility*. The following persons are eligible to adopt a child who falls under the
1924 jurisdiction of this law pending the successful clearing of a background check:

- 1925 (a) A married adult couple;
1926 (b) Either spouse if the other spouse is a parent of the child; or
1927 (c) An unmarried adult.

1928 708.42-3. If the person proposing to adopt the child cannot successfully clear a background check,
1929 and any convictions the person may possess have not been pardoned, forgiven, reversed, set aside
1930 or vacated, the Court may still deem the person eligible to adopt if the Court determines by clear
1931 and convincing evidence that the adoption would be in the best interests of the child.

1932
1933 **708.43. Adoption Procedure**

1934 708.43-1. *Petition for Adoption*. A person proposing to adopt, or the Department, shall initiate a
1935 proceeding for the adoption of a child by filing a petition with the Court. The petition shall include
1936 the following information:

- 1937 (a) The name, birth date, address, and tribal affiliation of the petitioner;
1938 (b) The name, birth date, address, and tribal affiliation of the child;
1939 (c) The names, birth dates, addresses, and tribal affiliation of the child's biological parents;
1940 (d) The name by which the child shall be known if the petition is granted;
1941 (e) The relationship of the petitioner to the child; and
1942 (f) A copy of the order suspending or terminating parental rights of the child's biological
1943 parent(s).

1944 708.43-2. Upon the filing of a petition for adoption, the Court shall schedule a hearing within
1945 sixty (60) days.

1946 708.43-3. When a petition for adoption is filed, the Court shall order an investigation to determine
1947 whether the child is a proper subject for adoption and whether the petitioner's home is suitable for
1948 the child.

- 1949 (a) The Court shall order one (1) of the following to conduct the investigation:
1950 (1) If the Department, or another agency or department, has guardianship of the
1951 child, the agency or department that has guardianship; or
1952 (2) If no agency or department has guardianship of the child and a relative,
1953 including a stepparent, has filed the petition for adoption, the Department.
1954 (b) If the Court orders the Department to conduct the investigation, the Department may
1955 contract with a third-party agency to conduct the investigation.

1956 708.43-4. The Department or other agency or department making the investigation shall file its
1957 report with the Court prior to the hearing on the petition and shall provide a copy of the report to
1958 the parties by first-class mail at least seven (7) days prior to the hearing.

1959 708.43-5. If the report of the investigation is unfavorable or if it discloses a situation which, in the
1960 opinion of the Court, raises a serious question as to the suitability of the proposed adoption, the
1961 Court may appoint a guardian ad litem for the child whose adoption is proposed.

1962 708.43-6. During the hearing the parties may agree to attend peacemaking to establish an
1963 agreement regarding residual rights of a birth parent, birth sibling, or other birth relative of the
1964 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.

2010

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-__-__-__-__

FINANCE ADMINISTRATION

Fiscal Impact Statement



MEMORANDUM

TO: Lawrence Barton, Chief Financial Officer
 FROM: RaLinda Ninham-Lamberies, Assistant Chief Financial Officer
 DATE: August 12, 2022
 RE: **Fiscal Impact of the Children's Code Amendment**

I. Estimated Fiscal Impact Summary

Law: Curfew Law		
Implementing Agency	Oneida Police Department Oneida Judiciary Oneida Law Office Oneida Indian Child Welfare Department Oneida Cultural Department	
Estimated time to comply	2-3 business days	
Estimated Impact	Current Fiscal Year	10 Year Estimate
Total Estimated Fiscal Impact	\$56,589.00-\$81,950.96	\$711,770.40 - \$1,030,770.00

II. Background

A. Legislative History

This law was adopted by the Oneida Business Committee by 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.

B. Summary of Content

The amendment addresses customary adoption to allow for a suspension of rights rather than a termination of rights to allow the adopting family to be eligible for Adoption Assistance from the State.

III. Methodology and Assumptions

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

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

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

IV. Executive Summary of Findings

- These amendments 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 court of competent jurisdiction.
- The amendments to revise the responsibilities and duties of the Indian Child Welfare department to include that they also may enter into a protective plan with a family.
- The amendments update the general notice provisions as specified within the law. If a method of service is not specified then the service shall be first-class mail to the recently verified last-know address of the party.
- The amendments provide 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.
- The amendments add a provision which provides that when access is granted by order of the Court to a guardian ad litem, the Indian Child Welfare Department shall make available for inspection or disclosure the contents of any record kept, regardless of the originating source.
- The amendments add a new provision which provides that the Indian Child Welfare 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 party and their counsel.
- The proposed amendments add a new option of where a child may be held in custody, which is a hospital, or other medical or mental facility.
- The amendments 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.
- The amendments provide that at the plea hearing the Indian Child Welfare Department may request placement of the child outside of the child’s home.

- The amendments eliminate the ability for the Indian Child Welfare Department's to request the Court to withhold identifying information from the child's parent, guardian, or legal custodian.
- The amendments remove the requirement to provide a copy of the dispositional order to the child if the child is age twelve (12) or older.
- The amendments clarifies that the wishes of the child should only be considered when the child has the capacity to express their wishes.
- The proposed amendments now allow for the suspension of parental rights in addition to the termination of parental rights.
- The amendment provides what needs to be proved to demonstrate that the child is in continuing need of protection or services which is grounds for suspension or termination of parental rights and the order for suspension or termination of parental rights shall be in writing.
- The amendment 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 the petitioner's home is suitable for the child.

V. Agency

The start-up, personnel, and documentation costs are between \$56,589.00 and \$81,950.96 with the assumptions of one case per week and no need for additional personnel. Actual results may be significantly more than the assumptions, thereby increasing the actual costs for the amendments. The amendments will become effective 10 days from adoption.

VI. Financial Impact

Oneida Police Department (OPD) response recognizes their responsibility to enforce the law in the same manner they enforce all federal, state, local, and tribal laws and ordinances. The fiscal impact of the amendments to the Children's Code for the OPD is indeterminate as the additional costs will be absorbed by the Police Department.

The Oneida Nation Family Court response recognizes the amendments will change some aspects of the child in need of protection of services (CHIPS), guardianship, termination of parental rights and adoptions cases. They have indicated there will be no additional start up, personnel, office, or documentation costs for the Oneida Family Court. They will be able to comply with the amendment within 2-3 business days.

Indian Child Welfare (ICW) is unable to estimate the frequency of the requests for their area as they have no historical data as a basis for estimation. Their response indicates no need for additional staff at this time, however they have **great concern** regarding the potential increased workload for the current ICW team and indicate additional staff

maybe necessary as they begin receiving requests. Estimated frequency for the fiscal impact statement is one request per week. Estimated fiscal impact will increase based on the actual number of requests received.

ICW estimates four hours of time per request for an ICW Case Manager/Social Worker at a current cost of \$197.57 for wages, fringe benefits and indirect costs. The estimated time for the ICW Paralegal per request is six to eight hours at a current cost of \$421.09 for wages, fringe benefits, and indirect costs. The amendment will also require an indeterminate increase in documentation costs for supplies and printing for each case.

The Oneida Law Office estimates the attorney time per case to implement the amendments is between eleven and fourteen hours. The estimated cost for each case for attorney wages, fringe benefits, and indirect cost is between \$469.59 to a \$957.32 per week.

Using an estimate of one case per week for 52 weeks in a calendar year, the total annual cost for the ICW department is \$32,170.32 and the total annual cost for the Oneida Law Office is a range of between \$24,418.68 and \$49,780.64.

The total annual cost is within a range of \$56,589.00 and \$81,950.96.

VII. Recommendation

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



Legislative Operating Committee
 September 7, 2022

Emergency Management Law Emergency Amendments

Submission Date: 7/6/22	Public Meeting: N/A
LOC Sponsor: Marie Summers	Emergency Enacted: N/A

Summary: *During the June 24, 2022, Storm Emergency Debrief session between the Oneida Business Committee and the Emergency Management Director it was identified that amendments would be needed to the Emergency Management law to address the composition of the Oneida Emergency Planning Committee. Some of the positions identified in the ONEPC Bylaws are direct reports to the Oneida Business Committee or General Manager, or are employees of the Nation’s Internal Audit Department, Finance Administration, Law Office, Business Committee Support Office, or Intergovernmental Affairs and Communications. Currently, section 105.15-3 of the Boards, Committees, and Commissions law provides that direct reports to the Oneida Business Committee or General Manager, or are employees of the Nation’s Internal Audit Department, Finance Administration, Law Office, Business Committee Support Office, or Intergovernmental Affairs and Communications are ineligible to serve on an appointed or elected boards, committee, or commission of the Nation. An exemption to this prohibition needs to be included for the Oneida Nation Emergency Planning Committee since it is essential that direct reports and employees of those designated areas participate on this committee.*

7/6/22 LOC: 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.

7/18/22: *Work Meeting.* Present: David P. Jordan, Clorissa N. Santiago, Lisa Summers, Brooke Doxtator, Mark Powless, Kaylynn Gresham. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to discuss a plan for addressing amendments to the Emergency Management law and the Oneida Nation Emergency Planning Committee Bylaws.

8/2/22: *Work Meeting.* Present: David P. Jordan, Clorissa N. Santiago, Lisa Summers, Brooke Doxtator, Mark Powless, Kaylynn Gresham. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to discuss policy issues that need to be addressed in the amendments to the Emergency Management law and the Oneida Nation Emergency Planning Committee bylaws amendments.

8/25/22: *Work Meeting.* Present: David P. Jordan, Clorissa N. Santiago, Lisa Summers, Brooke Doxtator, Mark Powless, Kaylynn Gresham, Carolyn Salutz, Grace Elliot. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to discuss the draft of proposed amendments to the Emergency Management law and accompanying resolution.


8/25/22: *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Marie Summers, Daniel Guzman King, Clorissa N. Santiago, Carolyn Salutz, Grace Elliot. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to discuss the draft of proposed amendments to the Emergency Management law.

8/30/22: *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Marie Summers, Daniel Guzman King, Kirby Metoxen, Clorissa N. Santiago, Rhiannon Metoxen, Kristal Hill, Grace Elliot, Kaylynn Gresham. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to review and discuss the draft of proposed amendments to the Emergency Management law.

Next Steps:

- Approve the Emergency Management law emergency amendments adoption packet and forward to the Oneida Business Committee for consideration.



TO: Oneida Business Committee
FROM: David P. Jordan, LOC Chairperson 
DATE: September 14, 2022
RE: Adoption of Emergency Amendments to the Emergency Management Law

Please find the following attached backup documentation for your consideration of the adoption of emergency amendments to the Emergency Management law:

1. Resolution: Emergency Amendments to the Emergency Management Law
2. Statement of Effect: Emergency Amendments to the Emergency Management Law
3. Emergency Management Law Emergency Amendments Legislative Analysis
4. Emergency Management Law Emergency Amendments Draft (Redline)
5. Emergency Management Law Emergency Amendments Draft (Clean)

Overview

Emergency amendments to the Emergency Management law are being sought to address the Nation's emergency response. The Emergency Management law provides for the development and execution of plans for the protection of residents, property, and the environment in an emergency or disaster; to provide for the direction of emergency management, response, and recovery on the Reservation; as well as coordination with other agencies, victims, businesses, and organizations; to establish the use of the National Incident Management System (NIMS); and to designate authority and responsibilities for public health preparedness. [3 O.C. 302.1-1].

On June 15, 2022, the Oneida Nation and surrounding areas experienced a severe thunderstorm, high winds and tornados affecting power, damaging homes and businesses, and impacting access through downed trees causing multiple buildings and much of the programs and services of the Nation to be negatively impacted through damage to buildings, lack of power and utilities, and inability of employees to come to work as a result of the same impact on their homes. The Oneida Business Committee declared an emergency resulting from the damages caused by the June 15, 2022, severe weather through the adoption of resolution BC-06-20-22-A, *Declaration of Emergency Resulting from the Damages Caused by the June 15, 2022, Severe Weather and Tornado*. On June 24, 2022, the Oneida Business Committee storm held an emergency debrief session with the Emergency Management Director, and in that meeting it was identified that amendments to the Emergency Management law would be needed to address the Oneida Nation Emergency Planning Committee, and the difficulties of composing this Team to meet the needs of the Nation for an emergency response. The Legislative Operating Committee added these amendments to its Active Files List on July 6, 2022, and determined that these amendments should be pursued on an emergency basis.

The Oneida Nation Emergency Planning Committee assists the Emergency Management Director in drafting and maintaining the Emergency Response Plan, and at the request of the Emergency

Management Director, the Oneida Nation Emergency Planning Committee shall provide assistance to the Emergency Management Director in the implementation of the provisions of this law or any plan issued thereunder. The Oneida Nation Emergency Planning Committee shall consist of representatives from entities and a community representative as identified in the Oneida Nation Emergency Planning Committee bylaws.

Some of the positions identified in the Bylaws are direct reports to the Oneida Business Committee or General Manager, or are employees of the Nation's Internal Audit Department, Finance Administration, Law Office, Business Committee Support Office, or Intergovernmental Affairs and Communications. Currently, section 105.15-3 of the Boards, Committees, and Commissions law provides that direct reports to the Oneida Business Committee or General Manager, or are employees of the Nation's Internal Audit Department, Finance Administration, Law Office, Business Committee Support Office, or Intergovernmental Affairs and Communications are ineligible to serve on an appointed or elected boards, committee, or commission of the Nation. Amendments to the Law are being sought to address the Oneida Nation Emergency Planning Committee since it is essential that direct reports and employees of those designated areas participate on this committee in order to achieve the best emergency response for the Nation.

The proposed emergency amendments to the Emergency Management law will:

- Eliminate the Oneida Nation Emergency Planning Committee and replace it with an Emergency Management Operations Team. [3 O.C. 302.5-1];
- Provide that members of the Emergency Management Operations Team shall attend meetings, or send a designee in their absence, and comply with any training requirements set forth by the Emergency Management Director. [3 O.C. 302.5-3];
- Require that within forty-eight (48) hours of an emergency, the Emergency Management Director shall prepare, or shall work in conjunction with the appropriate entity to prepare, an emergency briefing to be presented to the Oneida Business Committee regarding the status of the emergency, actions taken to address the emergency, and the activation of the Emergency Response Plan. [3 O.C. 302.8-4];
- Allow the Oneida Business Committee to direct the Emergency Management Director to provide additional emergency briefings to the Oneida Business Committee. [3 O.C. 302.8-4];
- Require that within thirty (30) days of an emergency subsiding, unless additional time is granted by the Oneida Business Committee, the Emergency Management Director shall prepare, or shall work in conjunction with the appropriate entity to prepare, a preliminary emergency assessment report to be presented to the Oneida Business Committee, any interested entity, and the public. [3 O.C. 302.8-5];
- Extend the amount of time for the Emergency Management Director to prepare and present an after-action report to the Oneida Business Committee, any interested entity, and the public, from sixty (60) days to ninety (90) days. [3 O.C. 302.8-6].

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 adoption of amendments to this Law are necessary for the preservation of the safety and general welfare of the Reservation population in order to ensure that the Nation can adequately respond to emergencies that occur by ensuring that there is an Emergency Management Operations Team that can assist the Emergency Management Director in drafting and maintaining the Emergency Response Plan., as well as assist the Emergency Management Director in the implementation of the provisions of this law or any plan issued thereunder.

The observance of the requirements under the Legislative Procedures Act for adoption of the emergency amendments to this Law would be contrary to public interest since the process and requirements of the Legislative Procedures Act cannot be completed in time to ensure that the Emergency Management Operations Team can be established and prepared to aid in the emergency response prior to the next emergency occurring within the Nation.

The adoption of the emergency amendments to the Emergency Management law will take effect immediately upon adoption by the Oneida Business Committee. The emergency amendment to the Emergency Management 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

Adopt the Resolution: Emergency Amendments to the Emergency Management Law

Oneida Nation

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

BC Resolution

Emergency Amendments to the Emergency Management Law

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- WHEREAS,** the Oneida Nation is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and
- WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Nation; and
- WHEREAS,** the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal Council; and
- WHEREAS,** the Emergency Management law (“the Law”) was adopted by the Oneida Business Committee through resolution BC-07-15-98-A and amended by resolutions BC-12-20-06-G, BC-05-13-09-F, and BC-03-10-21-A; and
- WHEREAS,** the purpose of the Law is to provide for the development and execution of plans for the protection of residents, property, and the environment in an emergency or disaster; provide for the direction of emergency management, response, and recovery on the Reservation, as well as coordination with other agencies, victims, businesses, and organizations; establish the use of the National Incident Management System; and designate authority and responsibilities for public health preparedness; and
- WHEREAS,** on June 15, 2022, the Oneida Nation and surrounding areas experienced a severe thunderstorm, high winds and tornados affecting power, damaging homes and businesses, and impacting access through downed trees causing multiple buildings and much of the programs and services of the Nation to be negatively impacted through damage to buildings, lack of power and utilities, and inability of employees to come to work as a result of the same impact on their homes; and
- WHEREAS,** the Oneida Business Committee declared an emergency resulting from the damages caused by the June 15, 2022, severe weather through the adoption of resolution BC-06-20-22-A, *Declaration of Emergency Resulting from the Damages Caused by the June 15, 2022, Severe Weather and Tornado*; and
- WHEREAS,** on June 24, 2022, the Oneida Business Committee held a storm emergency debrief session with the Emergency Management Director to review the Nation’s emergency response to the June 15, 2022, severe weather, and during this session it was identified that amendments to the Emergency Management law would be needed to address the Oneida Nation Emergency Planning Committee and its impact on the Nation’s emergency response; and
- WHEREAS,** the Oneida Nation Emergency Planning Committee consisted of representatives from entities and a community representative as identified in the Oneida Nation Emergency Planning Committee bylaws, and served the purpose of assisting the Emergency Management Director in drafting and maintaining the Emergency Response Plan, and providing assistance to the Emergency Management Director in the implementation of the provisions of this law or any plan issued thereunder; and

48
49 **WHEREAS,** some of the positions identified in the Oneida Nation Emergency Planning Committee
50 Bylaws were direct reports to the Oneida Business Committee or General Manager, or
51 were employees of the Nation's Internal Audit Department, Finance Administration, Law
52 Office, Business Committee Support Office, or Intergovernmental Affairs and
53 Communications; and
54

55 **WHEREAS,** section 105.15-3 of the Boards, Committees, and Commissions law provides that direct
56 reports to the Oneida Business Committee or General Manager, or are employees of the
57 Nation's Internal Audit Department, Finance Administration, Law Office, Business
58 Committee Support Office, or Intergovernmental Affairs and Communications are ineligible
59 to serve on an appointed or elected boards, committee, or commission of the Nation; and
60

61 **WHEREAS,** the Legislative Operating Committee determined that emergency amendments to the Law
62 should be sought to address the Oneida Nation Emergency Planning Committee since it is
63 essential that direct reports and employees of those designated areas participate on this
64 committee in order to achieve the best emergency response for the Nation; and
65

66 **WHEREAS,** the emergency amendments to the Law eliminate the Oneida Nation Emergency Planning
67 Committee and replace it with an Emergency Management Operations Team, clarifying
68 that this Team exists not as a board, committee, or commission of the Nation, but instead
69 as a network of different employee positions throughout the Nation that all have a
70 responsibility to aid in the Nation's response to emergencies; and
71

72 **WHEREAS,** the emergency amendments to the Law provide that members of the Emergency
73 Management Operations Team shall attend meetings, or send a designee in their absence,
74 and comply with any training requirements set forth by the Emergency Management
75 Director; and
76

77 **WHEREAS,** the emergency amendments to the Law require that within forty-eight (48) hours of an
78 emergency, the Emergency Management Director shall prepare, or shall work in
79 conjunction with the appropriate entity to prepare, an emergency briefing to be presented
80 to the Oneida Business Committee regarding the status of the emergency, actions taken
81 to address the emergency, and the activation of the Emergency Response Plan; and
82

83 **WHEREAS,** the emergency amendments to the Law allow the Oneida Business Committee to direct
84 the Emergency Management Director to provide additional emergency briefings to the
85 Oneida Business Committee; and
86

87 **WHEREAS,** the emergency amendments to the Law require that within thirty (30) days of an emergency
88 subsiding, unless additional time is granted by the Oneida Business Committee, the
89 Emergency Management Director shall prepare, or shall work in conjunction with the
90 appropriate entity to prepare, a preliminary emergency assessment report to be presented
91 to the Oneida Business Committee, any interested entity, and the public; and
92

93 **WHEREAS,** the emergency amendments to the Law extend the amount of time for the Emergency
94 Management Director to prepare and present an after-action report to the Oneida Business
95 Committee, any interested entity, and the public, from sixty (60) days to ninety (90) days ;
96 and
97

98 **WHEREAS,** the Legislative Procedures Act authorizes the Oneida Business Committee to enact
99 legislation on an emergency basis, to be in effect for a period of six (6) months, renewable
100 for an additional six (6) months; and
101

102 **WHEREAS,** emergency amendment of legislation is allowed when legislation is necessary for the
103 immediate preservation of the public health, safety, or general welfare of the Reservation
104 population, and the amendment of the legislation is required sooner than would be possible
105 under the Legislative Procedures Act; and
106

107 **WHEREAS,** the emergency adoption of amendments to this Law are necessary for the preservation of
108 the safety and general welfare of the Reservation population in order to ensure that the
109 Nation can adequately respond to emergencies that occur by ensuring that there is an
110 Emergency Management Operations Team that can assist the Emergency Management
111 Director in drafting and maintaining the Emergency Response Plan., as well as assist the
112 Emergency Management Director in the implementation of the provisions of this law or any
113 plan issued thereunder; and
114

115 **WHEREAS,** the observance of the requirements under the Legislative Procedures Act for adoption of
116 the emergency amendments to this Law would be contrary to public interest since the
117 process and requirements of the Legislative Procedures Act cannot be completed in time
118 to ensure that the Emergency Management Operations Team can be established and
119 prepared to aid in the emergency response prior to the next emergency occurring within
120 the Nation; and
121

122 **WHEREAS,** the Legislative Procedures Act does not require a public meeting or fiscal impact statement
123 when considering emergency legislation; and
124

125 **NOW THEREFORE BE IT RESOLVED,** the Oneida Business Committee hereby adopts the emergency
126 amendments to the Emergency Management law effective immediately.
127

128 **BE IT FURTHER RESOLVED,** the Oneida Nation Emergency Planning Committee is hereby dissolved,
129 and its bylaws repealed.
130

131 **BE IT FURTHER RESOLVED,** in accordance with section 302.5-1 of the Law, which provides that the
132 Emergency Management Director shall identify the representatives from entities of the Nation that comprise
133 the Emergency Management Operations Team, the Emergency Management Director shall collaborate
134 with the following positions to identify the appropriate representatives that will comprise the Emergency
135 Management Operations Team:

- 136 ▪ General Manager;
 - 137 ▪ Gaming General Manager;
 - 138 ▪ Retail General Manager;
 - 139 ▪ Chief Financial Officer; and
 - 140 ▪ A Non-Divisional Representative.
 - 141 ▪ The Oneida Business Committee shall identify an individual to represent the Non-Divisional
 - 142 areas.
- 143

144 **BE IT FURTHER RESOLVED,** the Emergency Management Director shall collaborate with the General
145 Manager, Gaming General Manager, Retail General Manager, Chief Financial Officer, and a Non-Divisional
146 representative to develop a draft standard operating procedure regarding the application and
147 communication of this Law, to be submitted to the November Oneida Business Committee work session
148 agenda for review and discussion.
149

150 **BE IT FINALLY RESOLVED,** all entities shall develop and/or update their Emergency Action Plan and
151 submit their Plans to the Emergency Management Director for review by the end of the Fiscal Year 2023
152 first quarter. The Emergency Management Director shall notify the Oneida Business Committee of any
153 entity that fails to meet this directive in their Fiscal Year 2023 Second Quarter Report.



Statement of Effect

Emergency Amendments to the Emergency Management Law

Summary

This resolution adopts emergency amendments to the Emergency Management law to improve the Nation's responses to emergencies.

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

Date: September 1, 2022

Analysis by the Legislative Reference Office

This resolution adopts emergency amendments to the Emergency Management law. The Emergency Management law provides for the development and execution of plans for the protection of residents, property, and the environment in an emergency or disaster; to provide for the direction of emergency management, response, and recovery on the Reservation; as well as coordination with other agencies, victims, businesses, and organizations; to establish the use of the National Incident Management System (NIMS); and to designate authority and responsibilities for public health preparedness. [3 O.C. 302.1-1]. The emergency amendments to the Emergency Management law will:

- Eliminate the Oneida Nation Emergency Planning Committee and replace it with an Emergency Management Operations Team. [3 O.C. 302.5-1];
- Provide that members of the Emergency Management Operations Team shall attend meetings, or send a designee in their absence, and comply with any training requirements set forth by the Emergency Management Director. [3 O.C. 302.5-3];
- Require that within forty-eight (48) hours of an emergency, the Emergency Management Director shall prepare, or shall work in conjunction with the appropriate entity to prepare, an emergency briefing to be presented to the Oneida Business Committee regarding the status of the emergency, actions taken to address the emergency, and the activation of the Emergency Response Plan. [3 O.C. 302.8-4];
- Allow the Oneida Business Committee to direct the Emergency Management Director to provide additional emergency briefings to the Oneida Business Committee. [3 O.C. 302.8-4];
- Require that within thirty (30) days of an emergency subsiding, unless additional time is granted by the Oneida Business Committee, the Emergency Management Director shall prepare, or shall work in conjunction with the appropriate entity to prepare, a preliminary emergency assessment report to be presented to the Oneida Business Committee, any interested entity, and the public. [3 O.C. 302.8-5];
- Extend the amount of time for the Emergency Management Director to prepare and present an after-action report to the Oneida Business Committee, any interested entity, and the public, from sixty (60) days to ninety (90) days. [3 O.C. 302.8-6].

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 resolution provides that the emergency amendments to the Emergency Management law are necessary for the preservation of the safety and general welfare of the Reservation population in order to ensure that the Nation can adequately respond to emergencies that occur by ensuring that there is an Emergency Management Operations Team that can assist the Emergency Management Director in drafting and maintaining the Emergency Response Plan., as well as assist the Emergency Management Director in the implementation of the provisions of this law or any plan issued thereunder.

Additionally, observance of the requirements under the LPA for adoption of the emergency amendments to the Emergency Management law would be contrary to public interest since the process and requirements of the LPA cannot be completed in time to ensure that the Emergency Management Operations Team can be established and prepared to aid in the emergency response prior to the next emergency occurring within the Nation.

The adoption of the emergency amendments to the Emergency Management law will take effect immediately upon adoption by the Oneida Business Committee. The emergency amendment to the Emergency Management 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)].

This resolution also contains additional directives which include:

- The Oneida Nation Emergency Planning Committee is hereby dissolved, and its bylaws repealed.
 - The Boards, Committees, and Commissions law provides that a board, committee, or commission of the Nation can be dissolved only by motion of the Oneida General Tribal Council or the Oneida Business Committee. [1 O.C. 105.17-2]. Within five (5) business days of the Oneida Business Committee taking official action to dissolve an entity, the Oneida Business Committee is required to provide the entity written notice of the dissolution. [1 O.C. 105.17-3]. The entity then has the responsibility to close out any open business of the entity and forward all materials and records to the Business Committee Support Office for proper storage and disposal within two (2) weeks of dissolution. [1 O.C. 105.17-4].
- In accordance with section 302.5-1 of the Emergency Management law, which provides that the Emergency Management Director shall identify the representatives from entities of the Nation that comprise the Emergency Management Operations Team, the Emergency Management Director shall collaborate with the following positions to identify the appropriate representatives that will comprise the Emergency Management Operations

Team: General Manager, Gaming General Manager, Retail General Manager, Chief Financial Officer, and a Non-Divisional Representative.

- The Emergency Management Director shall collaborate with the General Manager, Gaming General Manager, Retail General Manager, Chief Financial Officer, and a Non-Divisional representative to develop a draft standard operating procedure regarding the application and communication of this Law, to be submitted to the November Oneida Business Committee work session agenda for review and discussion.
- All entities shall develop and/or update their Emergency Action Plan and submit their Plans to the Emergency Management Director for review by the end of the Fiscal Year 2023 first quarter. The Emergency Management Director shall notify the Oneida Business Committee of any entity that fails to meet this directive in their Fiscal Year 2023 Second Quarter Report.
 - The Emergency Management law requires that all entities shall comply with reasonable requests from the Director relating to emergency planning, emergency operations, and federal mandate compliance. [3 O.C. 302.6-1]. It is a violation of the Emergency Management law for any person to not comply with, or willfully obstruct, hinder, or delay the implementation or enforcement of the provisions of this law or any plan issued thereunder, whether or not an emergency has been proclaimed. [3 O.C. 302.10-1]. An employee of the Nation who violates this law during their work hours or who refuses to follow the Emergency Response Plan may be subject to disciplinary action in accordance with the Nation's laws and policies governing employment. [3 O.C. 302.10-3].

Conclusion

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



EMERGENCY MANAGEMENT LAW EMERGENCY 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"> ▪ Eliminate the Oneida Nation Emergency Planning Committee and replace it with an Emergency Management Operations Team. <i>[3 O.C. 302.5-1]</i>; ▪ Provide that members of the Emergency Management Operations Team shall attend meetings, or send a designee in their absence, and comply with any training requirements set forth by the Emergency Management Director. <i>[3 O.C. 302.5-3]</i>; ▪ Require that within forty-eight (48) hours of an emergency, the Emergency Management Director shall prepare, or shall work in conjunction with the appropriate entity to prepare, an emergency briefing to be presented to the Oneida Business Committee regarding the status of the emergency, actions taken to address the emergency, and the activation of the Emergency Response Plan. <i>[3 O.C. 302.8-4]</i>; ▪ Allow the Oneida Business Committee to direct the Emergency Management Director to provide additional emergency briefings to the Oneida Business Committee. <i>[3 O.C. 302.8-4]</i>; ▪ Require that within thirty (30) days of an emergency subsiding, unless additional time is granted by the Oneida Business Committee, the Emergency Management Director shall prepare, or shall work in conjunction with the appropriate entity to prepare, a preliminary emergency assessment report to be presented to the Oneida Business Committee, any interested entity, and the public. <i>[3 O.C. 302.8-5]</i>; ▪ Extend the amount of time for the Emergency Management Director to prepare and present an after-action report to the Oneida Business Committee, any interested entity, and the public, from sixty (60) days to ninety (90) days. <i>[3 O.C. 302.8-6]</i>.
Purpose	To provide for the development and execution of plans for the protection of residents, property, and the environment in an emergency or disaster; to provide for the direction of emergency management, response, and recovery on the Reservation; as well as coordination with other agencies, victims, businesses, and organizations; to establish the use of the National Incident Management System (NIMS); and to designate authority and responsibilities for public health preparedness. <i>[3 O.C. 302.1-1]</i>
Affected Entities	Emergency Management Operations Team, Emergency Management Director, Oneida Business Committee
Public Meeting	A public meeting is not required for emergency legislation <i>[1 O.C. 109.8-1(b) and 109.9-5(a)]</i> .
Fiscal Impact	A fiscal impact statement is not required for emergency legislation <i>[1 O.C. 109.9-5(a)]</i> .
Expiration of Emergency Legislation	Emergency legislation expires six (6) months after adoption and may be renewed for an additional six (6) month period.

1 **SECTION 2. LEGISLATIVE DEVELOPMENT**

2 **A. *Background.*** The Emergency Management law (“the Law”) was first adopted by the Oneida Business
3 Committee on July 15, 1998,(formally known as the Emergency Management and Homeland Security
4 law) and most recently amended on March 10, 2021. The Law provides for the development and
5 execution of plans for the protection of residents, property, and the environment in an emergency or
6 disaster; to provide for the direction of emergency management, response, and recovery on the
7 Reservation; as well as coordination with other agencies, victims, businesses, and organizations; to
8 establish the use of the National Incident Management System (NIMS); and to designate authority and
9 responsibilities for public health preparedness. [3 O.C. 302.1-1].

10 **B. *Request for Emergency Amendments.*** On June 15, 2022, the Oneida Nation and surrounding areas
11 experienced a severe thunderstorm, high winds and tornados affecting power, damaging homes and
12 businesses, and impacting access through downed trees causing multiple buildings and much of the
13 programs and services of the Nation to be negatively impacted through damage to buildings, lack of
14 power and utilities, and inability of employees to come to work as a result of the same impact on their
15 homes. The Oneida Business Committee declared an emergency resulting from the damages caused by
16 the June 15, 2022, severe weather through the adoption of resolution BC-06-20-22-A, *Declaration of*
17 *Emergency Resulting from the Damages Caused by the June 15, 2022, Severe Weather and Tornado.*
18 On June 24, 2022, the Oneida Business Committee storm held an emergency debrief session with the
19 Emergency Management Director, and in that meeting it was identified that amendments to the
20 Emergency Management law would be needed to address the Oneida Nation Emergency Planning
21 Committee, and the difficulties of composing this Team to meet the needs of the Nation for an
22 emergency response. The Legislative Operating Committee added these amendments to its Active Files
23 List on July 6, 2022, and determined that these amendments should be pursued on an emergency basis.

24 ■ The Oneida Nation Emergency Planning Committee assists the Emergency Management Director
25 in drafting and maintaining the Emergency Response Plan, and at the request of the Emergency
26 Management Director, the Oneida Nation Emergency Planning Committee shall provide assistance
27 to the Emergency Management Director in the implementation of the provisions of this law or any
28 plan issued thereunder. The Oneida Nation Emergency Planning Committee shall consist of
29 representatives from entities and a community representative as identified in the Oneida Nation
30 Emergency Planning Committee bylaws.

31 ■ Some of the positions identified in the Bylaws are direct reports to the Oneida Business Committee
32 or General Manager, or are employees of the Nation’s Internal Audit Department, Finance
33 Administration, Law Office, Business Committee Support Office, or Intergovernmental Affairs and
34 Communications. Currently, section 105.15-3 of the Boards, Committees, and Commissions law
35 provides that direct reports to the Oneida Business Committee or General Manager, or are
36 employees of the Nation’s Internal Audit Department, Finance Administration, Law Office,
37 Business Committee Support Office, or Intergovernmental Affairs and Communications are
38 ineligible to serve on an appointed or elected boards, committee, or commission of the Nation.
39 Amendments to the Law are being sought to address the Oneida Nation Emergency Planning
40 Committee since it is essential that direct reports and employees of those designated areas
41 participate on this committee in order to achieve the best emergency response for the Nation.

45 **SECTION 3. CONSULTATION AND OUTREACH**

- 46 A. Representatives from the following departments or entities participated in the development of the
47 emergency amendments to this Law and legislative analysis:
48 ▪ Emergency Management Department;
49 ▪ General Manager; and
50 ▪ Government Administrative Office.
- 51 B. The Legislative Operating Committee has held the following work meetings specific to the proposed
52 emergency amendments to this Law:
53 ▪ July 18, 2022: Work Session with Governmental Administrative Office, General Manager, and
54 Emergency Management Department.
55 ▪ August 2, 2022: Work Session with Governmental Administrative Office, General Manager, and
56 Emergency Management Department.
57 ▪ August 25, 2022: Work Session with Governmental Administrative Office, General Manager, and
58 Emergency Management Department.
59 ▪ August 25, 2022: LOC work session.
60 ▪ August 30, 2022: LOC work session with the Emergency Management Department.

61

62 **SECTION 4. PROCESS**

- 63 A. These amendments are being considered on an emergency basis. The Oneida Business Committee may
64 temporarily enact emergency legislation where legislation is necessary for the immediate preservation
65 of public health, safety, or general welfare of the Reservation population and enactment or amendment
66 of legislation is required sooner than would be possible under this law. *[1 O.C. 109.9-5]*.
67 ▪ The emergency adoption of amendments to this Law are necessary for the preservation of the safety
68 and general welfare of the Reservation population in order to ensure that the Nation can adequately
69 respond to emergencies that occur by ensuring that there is an Emergency Management Operations
70 Team that can assist the Emergency Management Director in drafting and maintaining the
71 Emergency Response Plan., as well as assist the Emergency Management Director in the
72 implementation of the provisions of this law or any plan issued thereunder.
73 ▪ Observance of the requirements under the Legislative Procedures Act for adoption of the
74 emergency amendments to this Law would be contrary to public interest since the process and
75 requirements of the Legislative Procedures Act cannot be completed in time to ensure that the
76 Emergency Management Operations Team can be established and prepared to aid in the emergency
77 response prior to the next emergency occurring within the Nation.
- 78 B. The emergency amendments will expire six (6) months after adoption, with one (1) opportunity for a
79 six (6) month extension of the emergency amendments. *[1 O.C. 109.9-5(b)]*.
- 80 C. The Legislative Procedures Act does not require a public meeting or fiscal impact statement when
81 considering emergency legislation. *[1 O.C. 109.9-5(a)]*. However, a public meeting and fiscal impact
82 statement will eventually be required when considering permanent adoption of this Law.
- 83 D. The Legislative Operating Committee added these emergency amendments to the Active Files List on
84 July 6, 2022.

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

89 **A. *Emergency Management Operations Team.*** Previously the Law provided that there be an Oneida
90 Nation Emergency Planning Committee which consisted of representatives from entities and a
91 community representative as identified in the Oneida Nation Emergency Planning Committee bylaws
92 as approved by the Oneida Business. The proposed amendments to the Law eliminate the Oneida Nation
93 Emergency Planning Committee and replace it with an Emergency Management Operations Team. [3
94 *O.C. 302.5-1*]. The Emergency Management Operations Team consists of representatives from entities
95 as identified by the Emergency Management Director. *Id.* The purpose of the Emergency Management
96 Operations Team remains the same as the purpose of the Oneida Nation Emergency Planning
97 Committee, which is to assist the Emergency Management Director in drafting and maintaining the
98 Emergency Response Plan, as well as to assist the Emergency Management Director in the
99 implementation of any provision of the Law or any plan issued thereunder. [3 *O.C. 302.5-2*].
100 Additionally, a new provision added to the Law sets expectations for the Emergency Management
101 Operations Team by providing the requirement that members attend meetings, or send a designee in
102 their absence, and comply with any training requirements set forth by the Emergency Management
103 Director. [3 *O.C. 302.5-3*].

104 ▪ ***Effect.*** The proposed emergency amendments to the Law replace the Oneida Nation
105 Emergency Planning Committee with the Emergency Management Operations Team. This
106 revision demonstrates that the Nation is better suited with the Emergency Management
107 Operations Team which exists not as a board, committee, or commission of the Nation, but
108 instead as a network of different employee positions throughout the Nation that all have a
109 responsibility to aid in the Nation’s response to emergencies. This eliminates the previous
110 difficulty in composing this Team to meet the needs of the Nation for an emergency response
111 since a conflict with section 105.15-3 of the Boards, Committees, and Commissions law no
112 longer exists, and the direct reports and employees of those designated areas can now
113 participate on this Emergency Management Operations Team to achieve the best emergency
114 response for the Nation.

115 **B. *Emergency Briefings.*** A new provision was added to the Law which requires that within forty-eight
116 (48) hours of an emergency, the Emergency Management Director shall prepare, or shall work in
117 conjunction with the appropriate entity to prepare, an emergency briefing to be presented to the Oneida
118 Business Committee regarding the status of the emergency, actions taken to address the emergency,
119 and the activation of the Emergency Response Plan. [3 *O.C. 302.8-4*]. The Oneida Business Committee
120 may then direct the Director to provide additional emergency briefings. *Id.*

121 ▪ ***Effect.*** The new provision ensures that the Emergency Management Director is briefing the
122 Oneida Business Committee on the status of the emergency, actions taken to address the
123 emergency, and the activation of the Emergency Response Plan so that the Oneida Business
124 Committee stays informed on an emergency occurring within the Nation in an effort to make
125 better policy decisions and provide greater communication to the community.

126 **C. *Preliminary Emergency Assessment Report.*** A new provision was added to the Law which requires
127 that after an emergency has subsided, the Director shall prepare, or shall work in conjunction with the
128 appropriate entity to prepare, a preliminary emergency assessment report to be presented to the Oneida
129 Business Committee, any interested entity, and the public. [3 *O.C. 302.8-5*]. This report is required to
130 be presented to the parties no later than thirty (30) days after the emergency has subsided, unless an
131 extension is granted by the Oneida Business Committee.

- 132 ▪ **Effect.** The new provision to the Law ensures the Emergency Management Director is
133 providing the Oneida Business Committee, any interested entity, and the public with a
134 preliminary report that reviews the Nation’s response to an emergency, and identifies any areas
135 in which the response could have been improved. Providing this information in a preliminary
136 emergency assessment report allows the Nation to be best prepared in how to improve
137 emergency response, in case an additional emergency occurs before the full analysis of a
138 particular emergency response can be provided in the after-action report.

139 **D. *Extension of the Timeframe for an After-Action Report.*** Previously, the Law provided that after an
140 emergency has subsided, the Emergency Director shall prepare, or shall work in conjunction with the
141 appropriate entity to prepare, an after-action report to be presented to the Oneida Business Committee,
142 any interested entity, and the public no later than sixty (60) days after the emergency has subsided,
143 unless an extension is granted by the Oneida Business Committee. The amendments to the Law extend
144 the timeframe for when an after-action report is required to be presented from sixty (60) days to ninety
145 (90) days. [3 O.C. 302.8-6].

- 146 ▪ **Effect.** The amendments to the Law provide the Emergency Management Director additional
147 time to prepare an after-action report to be presented to the Oneida Business Committee, any
148 interested entity, and the public. The Emergency Management Director informed the
149 Legislative Operating Committee that sixty (60) days is not a sufficient time allowance to
150 complete this report, especially when there are times that information needs to be collected
151 from other agencies to be included in the report.

152 153 **SECTION 6. EXISTING LEGISLATION**

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

- 156 ▪ ***Legislative Procedures Act.*** The Legislative Procedures Act was adopted by the General Tribal
157 Council on January 7, 2013, for the purpose of providing a standard process for the adoption
158 of laws of the Nation which includes taking into account comments from members of the
159 Nation and input from agencies of the Nation. [1 O.C. 109.1-1, 109.1-2].
 - 160 ▪ The Legislative Procedures Act provides a process for the adoption of emergency
161 legislation when the legislation is necessary for the immediate preservation of the
162 public health, safety, or general welfare of the Reservation population and the
163 enactment or amendment of legislation is required sooner than would be possible under
164 this law. [1 O.C. 109.9-5].
 - 165 ▪ The Legislative Operating Committee is responsible for first reviewing the
166 emergency legislation and for forwarding the legislation to the Oneida
167 Business Committee for consideration. [1 O.C. 109.9-5(a)].
 - 168 ▪ The proposed emergency legislation is required to have a legislative analysis
169 completed and attached prior to being sent to the Oneida Business Committee
170 for consideration. [1 O.C. 109.9-5(a)].
 - 171 a. A legislative analysis is a plain language analysis describing the
172 important features of the legislation being considered and factual
173 information to enable the Legislative Operating Committee to make
174 informed decisions regarding legislation. A legislative analysis

175 includes a statement of the legislation’s terms and substance; intent of
176 the legislation; a description of the subject(s) involved, including any
177 conflicts with Oneida or other law, key issues, potential impacts of the
178 legislation and policy considerations. [1 O.C. 109.3-1(g)].

- 179 ▪ Emergency legislation does not require a fiscal impact statement to be
180 completed or a public comment period to be held. [1 O.C. 109.9-5(a)].
- 181 ▪ Upon the determination that an emergency exists the Oneida Business
182 Committee can adopt emergency legislation. The emergency legislation
183 becomes effective immediately upon its approval by the Oneida Business
184 Committee. [1 O.C. 109.9-5(b)].
- 185 ▪ Emergency legislation remains in effect for a period of up to six (6) months,
186 with an opportunity for a one-time emergency law extension of up to six (6)
187 months. [1 O.C. 109.9-5(b)].
- 188 ▪ Adoption of these proposed emergency amendments conform with the requirements of
189 the Legislative Procedures Act.

190

191 **SECTION 7. OTHER CONSIDERATIONS**

192 **A. *Deadline for Permanent Adoption of Legislation.*** The adoption of emergency amendments to the Law
193 expire six (6) months after adoption. The emergency legislation may be renewed for an additional six
194 (6) month period.

- 195 ▪ *Conclusion:* The Legislative Operating Committee will need to determine if the adoption of these
196 amendments is necessary on a permanent basis, and if so, develop the permanent amendments to
197 this Law within the next six (6) to twelve (12) months.

198 **B. *Fiscal Impact.*** A fiscal impact statement is not required for emergency legislation.

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

201

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

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|---|--|
| 302.1. Purpose and Policy | 302.6. Entity Cooperation |
| 302.2. Adoption, Amendment, Conflicts | 302.7. Public Health Emergencies |
| 302.3. Definitions | 302.8. Proclamation of an Emergency |
| 302.4. Emergency Management Department | 302.9. Emergency Core Decision Making Team |
| 302.5. Oneida Nation Emergency Planning Committee <u>Management</u>
<u>Operations Team</u> | 302.10. Enforcement and Penalties |

302.1. Purpose and Policy

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

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

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

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

302.2. Adoption, Amendment, Repeal

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

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

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

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

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

302.3. Definitions

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

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

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39 conditions, and including death.

40 (b) “Communicable disease” means any disease transmitted from one person or animal to
41 another directly by contact with excreta or other discharges from the body, or indirectly via
42 substances or inanimate objects that may cause a public health emergency.

43 (c) “Community/Public Health Officer” means an agent of the Comprehensive Health
44 Division, or his or her designee(s), who is responsible for taking the appropriate actions in
45 order to prevent a public health emergency from occurring on the Reservation.

46 (d) “Comprehensive Health Division” means the Oneida Comprehensive Health Division,
47 which is authorized to issue compulsory vaccinations, require isolation, and quarantine
48 individuals in order to protect the public health.

49 (e) “Director” means the Director of the Nation’s Emergency Management Department.

50 (f) “Emergency” means a situation that poses an immediate risk to health, life, safety,
51 property, or environment which requires urgent intervention to prevent further illness,
52 injury, death, or other worsening of the situation.

53 (g) “Emergency Management Network” means the entities, volunteers, consultants,
54 contractors, outside agencies, and any other resources the Nation may use to facilitate inter-
55 agency collaboration, identify and share resources, and better prepare for local incidents
56 and large-scale disasters.

57 (h) “Emergency Response Plan” means the plan established to coordinate mitigation,
58 preparedness, response, and recovery activities for all emergency or disaster situations
59 within the Reservation.

60 (i) “Entity” means any agency, board, committee, commission, or department of the
61 Nation.

62 (j) “Fair Market Value” means the everyday cost of a product in an ordinary market,
63 absent of a disaster.

64 (k) “Isolation” means the separation of persons or animals presumably or actually infected
65 with a communicable disease, or that are disease carriers, for the usual period of
66 communicability of that disease in such places and under such conditions as will prevent
67 the direct or indirect transmission of an infectious agent to susceptible people or to those
68 who may spread the agent to others.

69 (l) “Nation” means the Oneida Nation.

70 (m) “National Incident Management System” or “NIMS” means the system mandated by
71 Homeland Security Presidential Directive 5 (HSPD 5) issued on February 28, 2003, that
72 provides a consistent nationwide approach for federal, state, local, and tribal governments
73 to work effectively and efficiently together to prepare for, prevent, respond to, and recover
74 from domestic incidents, regardless of cause, size, or complexity.

75 ~~(n) “Oneida Nation Emergency Planning Committee” means the committee that assists the~~
76 ~~Director in the implementation of this law.~~

77 ~~(o)~~ (n) “Proclaim” means to announce officially and publicly.

78 ~~(p)~~ (o) “Public Health Emergency” means the occurrence or imminent threat of an illness
79 or health condition which:

80 (1) is a quarantinable disease, or is believed to be caused by bioterrorism or a
81 biological agent; and

82 (2) poses a high probability of any of the following:

83 (A) a large number of deaths or serious or long-term disability among

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84 humans; or
85 (B) widespread exposure to a biological, chemical, or radiological agent
86 that creates a significant risk of substantial future harm to a large number of
87 people.

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

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

97 (sr) “Trial Court” means the Trial Court of the Oneida Nation Judiciary, which is the
98 judicial system that was established by Oneida General Tribal Council resolution GTC-01-
99 07-13-B, and then later authorized to administer the judicial authorities and responsibilities
100 of the Nation by Oneida General Tribal Council resolution GTC-03-19-17-A.

101 (ts) “Vital resources” means food, water, equipment, sand, wood, or other materials
102 obtained for the protection of life, property, and/or the environment during a proclaimed
103 emergency.
104

105 **302.4. Emergency Management Department**

106 302.4-1. The Emergency Management Department shall be responsible for planning and
107 coordinating the response to a disaster or emergency that occurs within the boundaries of the
108 Reservation.

109 302.4-2. *Authority of the Director.* The Director shall be responsible for coordinating and
110 planning the operational response to an emergency and is hereby empowered to:

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

128 302.4-3. *Action when an Emergency is Proclaimed.* In addition, in the event of a proclamation of
129 an emergency on the Reservation, the Director is hereby empowered:

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(a) to obtain vital resources and to bind the Nation for the fair market value thereof, upon approval of the Emergency Management purchasing agent, who is identified in the Emergency Response Plan. If a person or business refuses to provide the resource(s) required, the Director may commandeer resources for public use and bind the Nation for the fair market value thereof. In the event the purchasing agent is unavailable, the chain of command, as approved by the Oneida Business Committee, shall be followed.

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

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

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

302.5. ~~Oneida Nation Emergency Planning Committee~~ Management Operations Team

302.5-1. ~~The Oneida Nation~~ Establishment and Composition. There is hereby established an Emergency ~~Planning Committee~~ Management Operations Team which shall consist of representatives from entities ~~and a community representative of the Nation~~ as identified ~~in the Oneida Nation Emergency Planning Committee bylaws as approved by the Oneida Business Committee.~~ Director.

302.5-2. Purpose. ~~The Oneida Nation~~ Emergency ~~Planning Committee~~ Management Operations Team shall meet as necessary ~~to, as determined by the Director, for the following purposes:~~

(a) assist the Director in drafting and maintaining the Emergency Response Plan; and

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

302.5-3. *Expectations.* Members of the Emergency Management Operations Team shall attend meetings, or send a designee in their absence, and comply with any training requirements set forth by the Director.

302.6. Entity Cooperation

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

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

302.7. Public Health Emergencies

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

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

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

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176 302.7-4. *Authority of the Community/Public Health Officer.* The Community/Public Health
177 Officer shall act as necessary to protect the public including, but not limited to, the following
178 actions:

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

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

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

186 302.7-5. *Quarantine and Isolation.* The Community/Public Health Officer shall immediately
187 quarantine, isolate, and/or take other communicable disease control measures upon an individual
188 if the Community/Public Health Officer receives a diagnostic report from a physician or a written
189 or verbal notification from an individual or his or her parent or caretaker that gives the
190 Community/Public Health Officer a reasonable belief that the individual has a communicable
191 disease that is likely to cause a public health emergency.

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

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

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

202 302.7-6. *Action when a Public Health Emergency is Proclaimed.* In addition, when a public health
203 emergency is proclaimed, the Community/Public Health Officer may do all of the following, as
204 necessary:

205 (a) organize the vaccination of individuals;

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

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

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

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

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

215 302.7-7. The Oneida Police Department shall take enforcement action when necessary and work
216 with the Community/Public Health Officer to execute the Community/Public Health Officer's
217 orders and properly guard any place if quarantine, isolation, or other restrictions on communicable
218 disease are violated or intent to violate becomes apparent.

219 302.7-8. Expenses for necessary medical care, food, and other articles needed for an infected
220 individual shall be charged against the individual or whoever is liable for the individual's care and
221 support.

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302.8. Proclamation of an Emergency

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

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

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

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

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

302.8-4. *Emergency Briefings.* Within forty-eight (48) hours of an emergency, the Director shall prepare, or shall work in conjunction with the appropriate entity to prepare, an emergency briefing to be presented to the Oneida Business Committee regarding the status of the emergency, actions taken to address the emergency, and the activation of the Emergency Response Plan. The Oneida Business Committee may direct the Director to provide additional emergency briefings.

~~302.8-5.~~ *After-Action Preliminary Emergency Assessment Report.* After an emergency has subsided, the Director shall prepare, or shall work in conjunction with the appropriate entity to prepare, an after-action preliminary emergency assessment report to be presented to the Oneida Business Committee, any interested entity, and the public. This report shall be presented to the required parties no later than ~~sixty (60)~~ thirty (30) days after the emergency has subsided, unless an extension is granted by the Oneida Business Committee.

302.8-6. After-Action Report. After an emergency has subsided, the Director shall prepare, or shall work in conjunction with the appropriate entity to prepare, an after-action report to be presented to the Oneida Business Committee, any interested entity, and the public. This report shall be presented to the required parties no later than ninety (90) days after the emergency has subsided, unless an extension is granted by the Oneida Business Committee.

~~302.8-7.~~ ~~302.8-5.~~ During a proclaimed emergency, the Conservation Department shall be responsible for the care, disposal, and sheltering of all abandoned domestic animals and livestock. The Conservation Department may delegate this responsibility to a contracted agency.

302.9. Emergency Core Decision Making Team

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

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

(a) Notwithstanding any requirements of the Legislative Procedures Act, declare exceptions to the Nation's laws during the emergency period which will be of immediate

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268 impact for the purposes of protecting the health, safety, and general welfare of the Nation's
 269 community, members, and employees; and

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

275 302.9-3. *Declarations.* All declarations made by the Emergency Core Decision Making Team
 276 shall:

- 277 (a) be written on the Nation's letterhead;
- 278 (b) provide the date the declaration was issued;
- 279 (c) contain a clear statement of the directives;
- 280 (d) provide the date the directive shall go into effect;
- 281 (e) be signed by the Oneida Business Committee Chairperson, or Vice Chairperson in the
 282 Chairperson's absence; and
- 283 (f) be posted on the Nation's website.

284 302.9-4. *Duration of Authority for Exceptions Declared by the Emergency Core Decision Making*
 285 *Team.* Any declaration made under the authority granted in this section shall be effective upon
 286 the date declared by the Emergency Core Decision Making Team and shall be effective for the
 287 duration of any proclaimed emergency, or for a shorter time period if identified.

288 302.9-5. *Notification to the Oneida Business Committee.* Within twenty-four (24) hours of a
 289 declaration being made, the Emergency Core Decision Making Team shall provide notification of
 290 the declaration to the Oneida Business Committee.

291 302.9-6. The Oneida Business Committee may modify, extend, or repeal any declaration or
 292 emergency action taken by the Emergency Core Decision Making Team.

294 **302.10. Enforcement and Penalties**

295 302.10-1. It shall be a violation of this law for any person to not comply with or willfully obstruct,
 296 hinder, or delay the implementation or enforcement of the provisions of this law or any plan issued
 297 thereunder, whether or not an emergency has been proclaimed.

298 302.10-2. *Citations.* An Oneida Police Department officer may issue a citation to any person who
 299 violates a provision of this law.

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

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

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

305 302.10-3. *Disciplinary Action.* An employee of the Nation who violates this law during their work
 306 hours or who refuses to follow the Emergency Response Plan may be subject to disciplinary action
 307 in accordance with the Nation's laws and policies governing employment.

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

311 *End.*

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- 314 Adopted - BC-07-15-98-A
- 315 Amended - BC-12-20-06-G
- 316 Emergency Amended – BC-04-30-09-A (Influenza A (H1N1))
- 317 Amended - BC-05-13-09-F
- 318 Emergency Amended – BC-03-17-20-E (COVID-19)
- 319 Extension of Emergency – BC-08-26-20-A
- 320 Amended – BC-03-10-21-A
- 321 Emergency Amended – BC- - - -

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Matters that are concerning immediate attention

EMERGENCY MANAGEMENT

- 302.1. Purpose and Policy
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- 302.4. Emergency Management Department
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- 302.6. Entity Cooperation
- 302.7. Public Health Emergencies
- 302.8. Proclamation of an Emergency
- 302.9. Emergency Core Decision Making Team
- 302.10. Enforcement and Penalties

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302.1. Purpose and Policy

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

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

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

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

302.2. Adoption, Amendment, Repeal

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

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

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

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

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

302.3. Definitions

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

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

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

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

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

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

95 (r) “Trial Court” means the Trial Court of the Oneida Nation Judiciary, which is the
96 judicial system that was established by Oneida General Tribal Council resolution GTC-01-
97 07-13-B, and then later authorized to administer the judicial authorities and responsibilities
98 of the Nation by Oneida General Tribal Council resolution GTC-03-19-17-A.

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

102

103 **302.4. Emergency Management Department**

104 302.4-1. The Emergency Management Department shall be responsible for planning and
105 coordinating the response to a disaster or emergency that occurs within the boundaries of the
106 Reservation.

107 302.4-2. *Authority of the Director.* The Director shall be responsible for coordinating and
108 planning the operational response to an emergency and is hereby empowered to:

109 (a) organize and coordinate efforts of the emergency management network of the Nation;
110 (b) implement the Emergency Response Plan as adopted by the Oneida Business
111 Committee;

112 (c) facilitate coordination and cooperation between entities and resolve questions that may
113 arise among them;

114 (d) incorporate the HSPD 5 which requires all federal, state, local, and tribal governments
115 to administer the best practices contained in the NIMS;

116 (e) coordinate the development and implementation of the NIMS within the Nation;

117 (f) ensure that the following occurs:

118 (1) an Emergency Response Plan is developed and maintained, and includes
119 training provisions for applicable personnel;

120 (2) emergency resources, equipment, and communications systems are developed,
121 procured, supplied, inventoried, and accounted for;

122 (g) establish the line of authority as recorded in the Emergency Response Plan as adopted
123 by the Oneida Business Committee; and

124 (h) enter into mutual aid and service agreements with tribal, local, state, and federal
125 governments, subject to Oneida Business Committee approval.

126 302.4-3. *Action when an Emergency is Proclaimed.* In addition, in the event of a proclamation of
127 an emergency on the Reservation, the Director is hereby empowered:

128 (a) to obtain vital resources and to bind the Nation for the fair market value thereof, upon
129 approval of the Emergency Management purchasing agent, who is identified in the

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130 Emergency Response Plan. If a person or business refuses to provide the resource(s)
131 required, the Director may commandeer resources for public use and bind the Nation for
132 the fair market value thereof. In the event the purchasing agent is unavailable, the chain of
133 command, as approved by the Oneida Business Committee, shall be followed.

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

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

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

141

142 **302.5. Emergency Management Operations Team**

143 302.5-1. *Establishment and Composition.* There is hereby established an Emergency Management
144 Operations Team which shall consist of representatives from entities of the Nation as identified by
145 the Director.

146 302.5-2. *Purpose.* The Emergency Management Operations Team shall meet as necessary, as
147 determined by the Director, for the following purposes:

148 (a) assist the Director in drafting and maintaining the Emergency Response Plan; and

149 (b) assist the Director in the implementation of the provisions of this law or any plan issued
150 thereunder.

151 302.5-3. *Expectations.* Members of the Emergency Management Operations Team shall attend
152 meetings, or send a designee in their absence, and comply with any training requirements set forth
153 by the Director.

154

155 **302.6. Entity Cooperation**

156 302.6-1. All entities shall comply with reasonable requests from the Director relating to
157 emergency planning, emergency operations, and federal mandate compliance.

158 302.6-2. The Nation may implement more strict policies or requirements than those issued by the
159 Community/Public Health Officer.

160

161 **302.7. Public Health Emergencies**

162 302.7-1. In order to prevent a public health emergency, the Director and the Community/Public
163 Health Officer shall take action to limit the spread of any communicable disease, in accordance
164 with this law.

165 302.7-2. *Investigation of Communicable Disease.* If the Community/Public Health Officer
166 suspects or is informed of the existence of any communicable disease, the Community/Public
167 Health Officer shall investigate and make or cause examinations to be made, as are deemed
168 necessary.

169 302.7-3. *Quarantinable Diseases.* The Community/Public Health Officer shall provide a list of
170 quarantinable diseases specified in a resolution to be adopted by the Oneida Business Committee.

171 302.7-4. *Authority of the Community/Public Health Officer.* The Community/Public Health
172 Officer shall act as necessary to protect the public including, but not limited to, the following
173 actions:

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

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- 176 (b) Quarantine, isolate, or take other communicable disease control measures upon an
177 individual(s); and
178 (c) Issue any mandate, order, and/or require restrictions which may limit the spread of any
179 communicable disease to any individual, business, or the general population of the
180 Reservation.

181 302.7-5. *Quarantine and Isolation.* The Community/Public Health Officer shall immediately
182 quarantine, isolate, and/or take other communicable disease control measures upon an individual
183 if the Community/Public Health Officer receives a diagnostic report from a physician or a written
184 or verbal notification from an individual or his or her parent or caretaker that gives the
185 Community/Public Health Officer a reasonable belief that the individual has a communicable
186 disease that is likely to cause a public health emergency.

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

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

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

197 302.7-6. *Action when a Public Health Emergency is Proclaimed.* In addition, when a public health
198 emergency is proclaimed, the Community/Public Health Officer may do all of the following, as
199 necessary:

200 (a) organize the vaccination of individuals;

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

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

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

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

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

210 302.7-7. The Oneida Police Department shall take enforcement action when necessary and work
211 with the Community/Public Health Officer to execute the Community/Public Health Officer's
212 orders and properly guard any place if quarantine, isolation, or other restrictions on communicable
213 disease are violated or intent to violate becomes apparent.

214 302.7-8. Expenses for necessary medical care, food, and other articles needed for an infected
215 individual shall be charged against the individual or whoever is liable for the individual's care and
216 support.

217

218 **302.8. Proclamation of an Emergency**

219 302.8-1. *Proclamation of an Emergency.* The Oneida Business Committee shall be responsible
220 for proclaiming or ratifying the existence of an emergency and for requesting a gubernatorial or
221 presidential declaration.

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

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

228 302.8-2. No proclamation of an emergency by the Oneida Business Committee or the Director
229 may last for longer than sixty (60) days, unless the proclamation of emergency is extended by the
230 Oneida Business Committee.

231 302.8-3. *Management Network.* The emergency management network of the Reservation shall
232 be as specified in the Emergency Response Plan, as adopted by the Oneida Business Committee.

233 302.8-4. *Emergency Briefings.* Within forty-eight (48) hours of an emergency, the Director shall
234 prepare, or shall work in conjunction with the appropriate entity to prepare, an emergency briefing
235 to be presented to the Oneida Business Committee regarding the status of the emergency, actions
236 taken to address the emergency, and the activation of the Emergency Response Plan. The Oneida
237 Business Committee may direct the Director to provide additional emergency briefings.

238 302.8-5. *Preliminary Emergency Assessment Report.* After an emergency has subsided, the
239 Director shall prepare, or shall work in conjunction with the appropriate entity to prepare, a
240 preliminary emergency assessment report to be presented to the Oneida Business Committee, any
241 interested entity, and the public. This report shall be presented to the required parties no later than
242 thirty (30) days after the emergency has subsided, unless an extension is granted by the Oneida
243 Business Committee.

244 302.8-6. *After-Action Report.* After an emergency has subsided, the Director shall prepare, or
245 shall work in conjunction with the appropriate entity to prepare, an after-action report to be
246 presented to the Oneida Business Committee, any interested entity, and the public. This report
247 shall be presented to the required parties no later than ninety (90) days after the emergency has
248 subsided, unless an extension is granted by the Oneida Business Committee.

249 302.8-7. During a proclaimed emergency, the Conservation Department shall be responsible for
250 the care, disposal, and sheltering of all abandoned domestic animals and livestock. The
251 Conservation Department may delegate this responsibility to a contracted agency.

252 **302.9. Emergency Core Decision Making Team**

253 302.9-1. *Emergency Core Decision Making Team.* Upon the proclamation of an emergency under
254 this law, the Oneida Business Committee may establish an Emergency Core Decision Making
255 Team through the adoption of a motion. The motion shall identify the positions of the Nation which
256 shall make up the members of the Emergency Core Decision Making Team based on the type and
257 severity of emergency the Nation is experiencing.

258 302.9-2. *Delegation of Authority.* The Emergency Core Decision Making Team shall have
259 emergency authority to take the following actions:

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

265 (b) Notwithstanding any requirements in any policy, procedure, regulation, or standard
266 operating procedures, declare exceptions to any policy, procedure, regulation, or standard
267 operating procedure during the emergency period which will be of immediate impact for

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268 the purposes of protecting the health, safety, and general welfare of the Nation's
269 community, members, and employees.

270 302.9-3. *Declarations.* All declarations made by the Emergency Core Decision Making Team
271 shall:

- 272 (a) be written on the Nation's letterhead;
- 273 (b) provide the date the declaration was issued;
- 274 (c) contain a clear statement of the directives;
- 275 (d) provide the date the directive shall go into effect;
- 276 (e) be signed by the Oneida Business Committee Chairperson, or Vice Chairperson in the
277 Chairperson's absence; and
- 278 (f) be posted on the Nation's website.

279 302.9-4. *Duration of Authority for Exceptions Declared by the Emergency Core Decision Making*
280 *Team.* Any declaration made under the authority granted in this section shall be effective upon
281 the date declared by the Emergency Core Decision Making Team and shall be effective for the
282 duration of any proclaimed emergency, or for a shorter time period if identified.

283 302.9-5. *Notification to the Oneida Business Committee.* Within twenty-four (24) hours of a
284 declaration being made, the Emergency Core Decision Making Team shall provide notification of
285 the declaration to the Oneida Business Committee.

286 302.9-6. The Oneida Business Committee may modify, extend, or repeal any declaration or
287 emergency action taken by the Emergency Core Decision Making Team.

288

289 **302.10. Enforcement and Penalties**

290 302.10-1. It shall be a violation of this law for any person to not comply with or willfully obstruct,
291 hinder, or delay the implementation or enforcement of the provisions of this law or any plan issued
292 thereunder, whether or not an emergency has been proclaimed.

293 302.10-2. *Citations.* An Oneida Police Department officer may issue a citation to any person who
294 violates a provision of this law.

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

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

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

300 302.10-3. *Disciplinary Action.* An employee of the Nation who violates this law during their work
301 hours or who refuses to follow the Emergency Response Plan may be subject to disciplinary action
302 in accordance with the Nation's laws and policies governing employment.

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

306

307 *End.*

308

309 Adopted - BC-07-15-98-A

310 Amended - BC-12-20-06-G

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

312 Amended - BC-05-13-09-F

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

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

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315 Amended – BC-03-10-21-A
316 Emergency Amended – BC-__-__-__-__



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



AGENDA REQUEST FORM

- 1) Request Date: August 17, 2022
- 2) Contact Person(s): Carl Artman
Dept: Law
Phone Number: x4473/414.339.3330 Email: cartman@oneidanation.org
- 3) Agenda Title: Oneida Life Insurance Plan Plus (OLIPP)
- 4) Detailed description of the item and the reason/justification it is being brought before the LOC:
Epic manages OLIPP currently. Epic contract ends on 09/30/22 and it is ending this service offering after this year. Oneida Trust and Enrollment Committee concludes it will save \$250,000 annually by managin OLIPP. This Law must be in place by 09/30/22 for a smooth transition on 10/01/22.

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

- 1) Draft OLIPP Law 3) _____
- 2) Cover Memo 4) _____

- 5) Please list any laws, policies or resolutions that might be affected:

- 6) Please list all other departments or person(s) you have brought your concern to:
Oneida Trust Enrollment Department
- 7) Do you consider this request urgent? Yes No
If yes, please indicate why:
Program must be tranistioned to Oneida Trust and Enrollemnt by Oct. 1, 2022

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

Signature of Requester:
Carl Artman *Carl Artman* Digitally signed by Carl Artman
Date: 2022.08.18 00:14:21 -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



MEMORANDUM

TO: Oneida Business Committee Legislative Operating Committee

FROM: Carl J. Artman, Staff Attorney *Carl Artman* Aug. 17, 2022

DATE: August 17, 2022

SUBJECT: Proposed Oneida Life Insurance Policy Plus Law

The Oneida Life Insurance Plan Plus (OLIPP) Law, if adopted into law, codifies a goal announced by the General Tribal Council (“GTC”) through GTC Resolution No. 01-17-09-B and built into its current form by the Oneida Trust Enrollment Office. This same office will manage the OLIPP process instead of outsourcing it to a third party, thereby saving the Nation approximately \$250,000 per year. The law will expedite the payment of the OLIPP funds to designated beneficiaries and consolidate all aspect of OLIPP within the Nation’s internal infrastructure.

History:

The GTC sought to support tribal members financial assistance in exigent circumstances, including creation of a “burial fund” to assist with a family member’s funeral expenses. The GTC directed the Oneida Trust Committee to research and recommend methods to accomplish this goal. GTC Resolution No. 06/30/90-A and Addendum. The Oneida Trust Committee determined a life insurance plan was the only viable and fiscally feasible option for all tribal members. GTC Resolution No. 01-17-09-B. It proposed the Oneida Life Insurance Plan Plus which would consist of \$15,000 of life insurance benefits directly payable to the tribal member’s designated beneficiaries. *Id.* OLIPP would replace the Oneida Burial Fund. The GTC agreed and ordered its implementation by Fiscal Year 2010. *Id.*

The Nation contracted with Epic to manage OLIPP. Epic collected relevant information regarding the decedent and beneficiaries and distributed OLIPP funds. Epic will cease this service offering and terminate its current contracts for this service, including with Oneida Nation, on September 30, 2022. The Oneida Trust and Enrollment Committee (“OTEC”) determined the Oneida Trust and Enrollment Office could manage OLIPP in-house, yielding a cost savings to the Nation and expediting payments to the beneficiaries.

Summary of the Proposed Law:

Page 2

The proposed OLIPP Law retains the \$15,000 benefits payment to the designated beneficiaries. OLIPP remains open to all enrolled Oneida Nation members. The law will require participating tribal members to keep up-to-date designated beneficiaries' forms on file at the Oneida Trust and Enrollment Office. The law creates a 180-day grace period tolled from the effective date of the law during which tribal members will be urged to complete and submit their designated beneficiary forms online or in-person, if they have not already completed this task. Beneficiary forms on file prior to the passage of this law remain valid and effective. The Oneida Trust and Enrollment Office cannot distribute OLIPP funds to any one not selected as a beneficiary by the decedent.

The Oneida Trust and Enrollment Office must be notified within one year of the decedent's passing. Claims made more than one year after the decedent's death will not be processed. The proposed law outlines the beneficiary claim process. It starts with the submission of an official death certificate or other official government report of the decedent's death. The Oneida Trust and Enrollment Office will ensure a designated beneficiary form has been filed by the decedent and process the OLIPP payments thereafter to the selected beneficiaries. Beneficiaries found to have criminally and intentionally cause the death of the decedent will not be entitled to any benefits under the law.

The Oneida Trust and Enrollment Office drafted a standard operating procedure that delves into additional procedural details. The proposed law was written in accordance with the Oneida Nation General Welfare Law and must meet the general tests outlined in that law. I.R.S. Rev. Proc. 2014-35, section 5.02(2)(e)(iv) lists funeral, burial, and expenses related to a death as Safe Harbor program for which need is presumed. Life insurance is not normally subject to taxation.

Emergency Amendment:

The Oneida Trust and Enrollment Office requests this proposed law be considered under the Emergency Law procedures in the Legislative Procedures Act, 1 O.C. 109.-5. Time is of the essence. The Oneida Trust and Enrollment Office seeks to commence the in-house management and oversight of OLIPP immediately after the Epic contract terminates on September 30, 2022. A smooth transition will ensure uninterrupted service the tribal members participating in OLIPP and the beneficiaries that will emerge in the next fiscal year and beyond.

Title 10. Property and Land – Chapter 1002
Oneida Life Insurance Plan
ONEIDA NAME
English Translation of Oneida Name

1002.1. Purpose and Policy

613.1-1. *Purpose.* The General Tribal Council (GTC), through GTC Resolution No. 01-17-09-B, approved the concept of the Oneida Life Insurance Plan Plus (OLIPP) to replace the Oneida Burial Fund. The GTC directed implementation of a benefit that pays fifteen thousand dollars (\$15,000.00) directly to the designated beneficiary or beneficiaries of the deceased Oneida Nation member. The payment of death benefits through OLIPP to designated beneficiaries of a deceased Oneida Nation member is an exercise of self-governance crucial to the Oneida Nation's sovereignty, and health and welfare of the community. This law is in accordance with the Oneida General Welfare Law, 10 O.C. 1001. The purposes of this Law are:

- (a) To provide a death benefit for all eligible enrolled Oneida Nation members in accordance with the directions of the Oneida General Tribal Council;
- (b) To comply with Oneida General Welfare Law; and
- (c) To delegate oversight and management of OLIPP to Oneida Trust Enrollment Department.

1002.1-2. *Policy.* It is the policy of the Nation to care for its members and their families even after their death. The Nation seeks to internalize the OLIPP process to ensure equitable and expedient distribution to designated beneficiaries.

1002.1-3. The Oneida Business Committee intends for OLIPP to adhere to the mandates of the Oneida General Welfare Law, the Tribal General Welfare Exclusion Act codified at 26 U.S.C. §139E, and I.R.S Rev. Proc. 2014-35.

1002.2. Adoption, Amendment, Repeal

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

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

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

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

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

1002.3. Definitions

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

- (a) Oneida Life Insurance Plan (OLIPP) means the GTC-approved replacement to the death benefit program, in the amount of fifteen thousand and 00/100 (\$15,000.00).
- (b) "Nation" means the Oneida Nation.
- (c) "Tribal member" means an enrolled member of the Oneida Nation.

- 42 (d) “Designated Beneficiary” means any person(s) designated by the tribal member,
 43 through the approved beneficiary designation form, to receive all or a portion of the
 44 decedent’s OLIPP benefit.
 45 (e) “Decedent” means a person who is deceased.
 46

47 **1002.4. OLIPP Qualification and Distribution.**

48 1002.4-1. *Qualification.* All tribal members qualify for OLIPP death benefits to be distributed
 49 to beneficiary.

- 50 (a) Newly enrolled members will be covered the date their enrollment application is
 51 approved by Oneida Trust Enrollment Committee (OTEC) and Oneida Business
 52 Committee (OBC).
 53 (b) Members that have relinquished their membership will not be covered from the date
 54 their relinquishment request is approved by OTEC and OBC.

55 1002.4-2. *Designation of Beneficiary.* A Tribal member shall complete the OTEC-approved
 56 beneficiary designation form and submit it to OTEC, either online or in person at the Oneida Trust
 57 Enrollment Office, prior to their death to secure OLIPP benefits for their beneficiary.

- 58 (a) OLIPP beneficiary designation form submitted prior to the effective date of this law
 59 remains valid.
 60 (b) OLIPP benefits cannot be paid or claimed if decedent did not designate a beneficiary
 61 through the beneficiary designation form.
 62 (c) This section shall not be enforced during the initial one hundred eighty (180) days
 63 after the effective date of this law, thereby creating a one hundred eighty (180) day grace
 64 period to permit tribal members to complete and submit designated beneficiary forms.

65 1002.4-3. *Notice of Death.* Oneida Trust Enrollments Department must be notified within one
 66 year of the tribal member’s death to distribute the OLIPP benefits to the beneficiary. OLIPP claims
 67 made beyond the first anniversary of the decedent’s death shall not be processed for distribution.
 68

69 **1002.5. Beneficiary Claim Process.**

70 1002.5-1. *Evidence as to Passing or Status.* In proceedings under this law, the following rules
 71 relating to determination of death and status are applicable:

- 72 (a) A certified or authenticated copy of a death certificate purporting to be issued by an
 73 official or agency of the place where the death purportedly occurred is prima facie
 74 proof of the fact, place, date and time of death, and the identity of the decedent;
 75 (b) A certified or authenticated copy of any record or report of a governmental agency,
 76 domestic or foreign, of a decedent’s death; and
 77 (c) A person who is absent for a continuous period of seven (7) years, during which
 78 they have not been heard from, and whose absence is not satisfactorily explained
 79 after diligent search or inquiry is presumed to be dead. Their death is presumed to
 80 have occurred at the end of the period unless there is sufficient evidence for
 81 determining that death occurred earlier.

82 1002.5-2. *Effect of Homicide on Beneficiary Designation.*

- 83 (a) A designated beneficiary who criminally and intentionally causes the death of the
 84 decedent is not entitled to any benefits passing under this law.
 85

86 **1002.5. Presumption of Need; General Test for General Welfare Exclusion**

87 1002.5-1. I.R.S. Rev. Proc. 2014-35, section 5.02(2)(e)(iv) lists funeral, burial, and expenses
 88 related to a death as Safe Harbor program for which need is presumed.

89 1002.5-2. OLIPP meets the requirements of the General Test as defined in the Oneida General

90 Welfare Law; General Criteria as defined in I.R.S. Rev. Proc. 2014-35, section 5.01(1); and the
91 requirements of the Tribal General Welfare Exclusion Act of 2014, 26 U.S.C. §139E(b).

92 (a) OLIPP permitted distributions are provided to the members pursuant to this law, as
93 approved by the Oneida Business Committee, and in accordance with Oneida General
94 Welfare law.

95 (b) OLIPP, through this law and standard operating procedures developed forthwith, has
96 guidelines specifying how adult members qualify for the benefits herein in this law.

97 (c) OLIPP is available to any tribal member following the procedures and requirements
98 herein.

99 (d) The distribution of benefits does not discriminate in favor of members of the governing
100 body of the Nation, are not compensation, and are not lavish or extravagant.

101

102 **1002.6. Budget**

103 1004.6-1. OLIPP is contingent on the Nation's funding of the program.

104

105

106 *End.*

107

108 Adopted-BC-XX-XX-XX-X.

109

DRAFT

IX. STANDING ITEMS

A. ARPA FRF and Tribal Contribution Savings Submissions

1. Consider the tribal member request regarding the Student Relief Fund (00:22:00)

Sponsor: Lauren Carr, Tribal Member

Motion by Jennifer Webster to direct the General Manager to bring back a report to the September BC Work Session for consideration of Tribal Contribution Savings to fill this gap, seconded by Marie Cornelius. Motion carried:

Ayes:	Marie Cornelius, Daniel Guzman King, David P. Jordan, Lisa Liggins, Brandon Stevens, Jennifer Webster
Opposed:	Kirby Metoxen
Not Present:	Tina Danforth

Motion by Lisa Liggins to direct the Legislative Operating Committee to consider adding the Higher Education policy to their active files list and to consider adding Rule Making Authority to said policy, seconded by Kirby Metoxen. Motion carried:

Ayes:	Marie Cornelius, Daniel Guzman King, David P. Jordan, Lisa Liggins, Kirby Metoxen, Brandon Stevens, Jennifer Webster
Not Present:	Tina Danforth

Item XIII.A.1. was addressed next.

X. TRAVEL REPORTS

A. Approve the travel report - Chairman Tehassi Hill and Councilman Kirby Metoxen - Midwest Alliance of Sovereign Tribes (MAST) Summer meeting - New Buffalo, MI - August 9-12, 2022 (01:14:08)

Sponsor: Tehassi Hill, Chairman

Motion by Lisa Liggins to approve the travel report from Chairman Tehassi Hill and Councilman Kirby Metoxen for the Midwest Alliance of Sovereign Tribes (MAST) Summer meeting in New Buffalo, MI - August 9-12, 2022, and direct Intergovernmental Affairs and Communications to draft a letter of support for H.R. 3597, RESPECT Act, seconded by Marie Cornelius. Motion carried:

Ayes:	Marie Cornelius, Daniel Guzman King, David P. Jordan, Lisa Liggins, Kirby Metoxen, Brandon Stevens, Jennifer Webster
Not Present:	Tina Danforth

Title 9. Education – Chapter 901
TRUST SCHOLARSHIP FUND POLICY

Kayaʔtakenhásla ahutawyahtá'na
it is helpful they'll go on to school

901.1. Statement of Purpose
901.2. Adoption, Amendment, Conflicts
901.3. Definitions
901.4. Eligibility, Qualifications and Selection
901.5. Guidelines

901.6. Appeal
901.7. Budgetary and Reporting Responsibilities
901.8. Management
901.9. Policy Review

901.1. Statement of Purpose

901.1-1. The primary purpose of the Oneida Trust Scholarship Fund is to establish a trust resource for providing financial aid scholarships to assist eligible enrolled Oneida Tribal members in securing higher educational opportunities based on established criteria. This Fund is intended to provide assistance for higher education financial needs not being met by Tribal contribution.

901.1-2. The General Tribal Council delegated the responsibility of developing a plan for the unused Individual Indian Monies held within the Bureau of Indian Affairs to the Oneida Trust/Enrollment Committee. That plan became the Oneida Trust Scholarship Fund.

901.1-3. The Oneida Trust/Enrollment Committee recognizes that protection of the Oneida Tribe's future depends on the continued effort to assist tribal members in attaining their goal of higher education. It is essential that financial assistance be considered in the overall plan to attain the highest degree of education possible.

901.1-4. The Oneida Trust/Enrollment Committee respectfully requests that all recipients of the Oneida Trust Scholarship Fund keep in mind the prospect of returning to the Oneida Tribe to share their acquired knowledge, experience, and education.

901.2. Adoption, Amendment, Conflicts

901.2-1. This policy was adopted by the Oneida Business Committee Resolution BC-3-21-01-C and amended by BC-6-21-06-Q and BC-12-30-09-A.

901.2-2. This policy may be amended pursuant to the procedures set out in Tribal law.

901.2-3. Should a provision of this policy or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this policy which are considered to have legal force without the invalid portions.

901.2-4. In the event of a conflict between a provision of this policy and a provision of another law, ordinance, policy, regulation, rule, resolution, or motion, the provisions of this policy shall control. Provided that, nothing in this policy is intended to repeal or modify any existing law, ordinance, policy, regulation, rule, resolution or motion.

901.2-5. This policy is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

901.3. Definitions

901.3-1. This section shall govern the definitions of words and phrases used within this policy. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Applicant" means the person applying for a scholarship who has a high school diploma or its equivalency.

(a) "Business days" means Monday through Friday, except those days recognized as

holidays by the Tribe.

(b) “Committee” means the Oneida Trust Committee, which is also known as the Oneida Trust/Enrollment Committee.

(c) “Department” means the Oneida Higher Education Department.

(d) “Fund” means the Oneida Trust Scholarship Fund.

(e) “Scholarship” means a monetary gift from the Oneida Trust Scholarship Fund awarded to a student.

(f) “Unique needs” means funding needs not met by Tribal contribution that are within the applicant’s academic plan.

901.4. Eligibility, Qualifications and Selection

901.4-1. Eligibility shall consist of the following:

(a) Enrolled member of the Oneida Tribe of Indians of Wisconsin.

(b) Applicants shall be seeking post-secondary acceptance/opportunities through required pre-requisite accredited classes, post-graduate preparation preparatory/examinations, or related preparatory courses.

(c) Applications completed after the class/term/exam ends are not eligible.

(d) The funding shall be dependent on the student being in good standing with the Department.

901.4-2. Students who are in default with previous student loans shall not be eligible to receive the scholarship until all accounts have been remedied with proper documentation.

901.4-3. Scholarships shall be for the amount approved by the Committee, dependent upon the guidelines in Section 901.5.

901.4-4. Scholarships shall be processed in the order the Department receives a completed application and shall be subject to the availability of funds.

901.5. Guidelines

901.5-1. The following guidelines are established to assist with determination of whether to award a scholarship:

(a) Expenditures of the Fund shall provide financial resources to the Department for student financial assistance under Section 901.4.1(b) for unique needs and shall not to be used for offsetting Tribal contribution.

(b) Applicants seeking college entrance requirements in the form of required credits, post-graduate entrance exams fees and related preparatory courses, or pre-requisite classes can receive a lifetime scholarship up to \$3,000. Applicants who received assistance prior to the effective date of this provision shall have that amount applied against the lifetime amount¹.

(c) Students shall abide by the Department’s established guidelines.

(d) Individual students may not receive funding a subsequent time for the same pre-requisite classes, post-graduate preparatory/examination fees, or related preparatory course they have previously received funding for.

(e) The final decision to make an award is the responsibility of the Department.

(f) Any funds unexpended shall revert to the Committee Education Endowment Fund annually.

¹For example, if a person was awarded \$1,200 in 2005, that person would be eligible for \$1,800 in additional assistance.

901.6. Appeal

901.6-1. In the event an applicant wishes to appeal the Department's decision regarding the award of a scholarship, the following procedures shall be followed:

- (a) Any applicant that has been denied funding may file an appeal, either personally or through a representative, for reconsideration of funding.
- (b) An appeal shall be filed with the Higher Education Manager. The appeal shall be in written form and provided to the Higher Education Manager within ten (10) business days of receipt of notification of denial.
 - (1) The Higher Education Manager shall make a determination within five (5) business days of receipt of the appeal. The determination shall be sent by registered mail (return receipt requested) or delivered in person to the applicant.
- (c) Any applicant denied funding after an appeal to the Higher Education Manager may appeal the Higher Education Manager's determination to the Area Manager for Education and Training. The appeal shall be in written form and provided to the Area Manager within ten (10) business days of receipt of notification of denial. The Area Manager shall make a determination within five (5) business days of receipt of the appeal.

901.7. Budgetary and Reporting Responsibilities

901.7-1. Expenditures are based on the Fund's annual disbursement.

901.7-2. The annual disbursement shall be evaluated by the Committee during the month of January. The amount shall be derived from the Fund's portfolio per the investment policy, which is designed to maintain the principal as perpetual. The scholarship contribution shall be paid to the Department in April.

- (a) Semi-annual reports shall be provided to the Committee by the Department by October 1 and April 1 of each year.
- (b) Information shall be detailed in order to allow the Committee to prepare semi-annual reports to the Oneida General Tribal Council on expenditures of the Fund.
- (c) Semi-annual reports shall include information on awards from the Department to the Committee and the report shall consist of the scholarship amount awarded, and the school, major, and status of the students who received a scholarship. None of the students' identifying information shall be included in the report.

901.7-3. The Department shall:

- (a) Provide notification to the General Tribal Membership through the Tribal newspaper and Department brochures that the scholarship is available.
- (b) Provide the Oneida community and interested individuals with a brief outline of the scholarship's policies and procedures.
- (c) Utilize and develop internal systems which will assure there are standard scholarship application forms which contain a statement stressing the contents of Section 901.1, standardize a student signature sheet to indicate the student understands and agrees to the eligibility rules of the scholarship and develop other internal controls as needed.
- (d) Maintain records on the Higher Education AS400 Financial aid data base system.
- (e) Maintain minutes of all meetings that provide disposition of all requests.

901.8. Management

901.8-1. Management and authority of the Fund, including the drawdown of funds for scholarship allocation, is the responsibility of the Committee.

901.8-2. Management of the scholarships allocated from the fund shall be delegated to the Department. No administrative charges for the Department shall be authorized from the Fund.

901.8-3. Management shall include establishing internal guidelines and creating standardized forms.

901.9. Policy Review

901.9-1. In order to ensure that the limited resources of the Fund are expended consistent with this policy and to ensure this policy meets the needs of the students, the Department and the Committee shall jointly review and update this policy as requested by either party, and upon approval of the Oneida Business Committee. Any changes shall be in writing, requiring official action by the Committee, and shall not be on a case by case basis.

901.9-2. In the event a conflict arises as to the guidelines set forth in Section 901.5 of this policy and the guidelines for the scholarship as stated in the Department's current handbook, the Department's handbook shall take precedence. All other provisions of this policy shall supersede the Department's handbook.

End.

Approved - BC-3-21-01-C

Amended - BC-6-21-06-Q

Amended-BC-12-30-09-A

Amended-BC-12-11-13-E



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



AGENDA REQUEST FORM

- 1) Request Date: 08/30/2022
- 2) Contact Person(s): Todd VanDen Heuvel
 Dept: HRD
 Phone Number: 920-496-7358 Email: tvandenh@oneidation.org
- 3) Agenda Title: Drug and Alcohol Free Workplace (DAFWP) law change
- 4) Detailed description of the item and the reason/justification it is being brought before the LOC:
With a pending petition to remove THC from pre-employment (Benton
petition), HRD has been directed to work with the Law office on proposed
amendments to meet the petition. Attached are proposed amendment
changes for discussion with the LOC.

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

- 1) proposed amendments to Law 3) _____
- 2) _____ 4) _____
- 5) Please list any laws, policies or resolutions that might be affected:
Chapter 202: Drug and Alcohol Free Workplace
- 6) Please list all other departments or person(s) you have brought your concern to:
Law Office (Carl Artman and Peggy Van Gheem), HRD
- 7) Do you consider this request urgent? Yes No
 If yes, please indicate why:

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

Signature of Requester:
Todd VanDen Heuvel

Date: 2022.08.30 14:07:30 -05'00'

Please send this form and all supporting materials to:

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

Drug and Alcohol Free Workplace Law recommended amendments:

Delete Sections 202.8-4 and 202.8-5 and replace with the following:

202.8-4. External applicant shall participate in pre-employment drug testing. A negative drug test result is required for employment eligibility. A confirmed positive marijuana test result shall be waived for an external applicant if the following criteria are met:

- a. External applicants for Gaming positions. An external applicant receiving a confirmed positive test result for marijuana may qualify for employment if the position mandates a background check in accordance with 5 O.C. 501.10, licensing in accordance with 5 O.C. 501.11, and the position does not require a commercial driver's license or job-related driving.
- b. External applicants for Non-Gaming positions. A positive marijuana test result will be waived for external applicants for Non-Gaming positions.
 1. An external applicant for a Non-Gaming Position who receives a confirmed positive test result for marijuana shall not qualify for employment if:
 - i. The position requires a commercial driver's license or job-related driving;
 - ii. The position is within Oneida Comprehensive Health Division; or
 - iii. The position is within Oneida Police Department; or

202.8-5. Each Employee shall participate in reasonable suspicion and follow-up testing upon the request of an appropriate authority. A negative test result is required for unimpeded employment eligibility.

Drug and Alcohol Free Workplace Law recommended amendments:

Delete Sections 202.8-4 and 202.8-5 and replace with the following:

202.8-4. External applicant shall participate in pre-employment drug testing. A negative drug test result is required for employment eligibility. A confirmed positive marijuana test result shall be waived for an external applicant if the following criteria are met:

- a. External applicants for Gaming positions. An external applicant receiving a confirmed positive test result for marijuana may qualify for employment if the position mandates a background check in accordance with 5 O.C. 501.10, licensing in accordance with 5 O.C. 501.11, and the position does not require a commercial driver’s license or job-related driving.
- b. External applicants for Non-Gaming positions. A positive marijuana test result will be waived for external applicants for Non-Gaming positions.
 - 1. An external applicant for a Non-Gaming Position who receives a confirmed positive test result for marijuana shall not qualify for employment if:
 - i. The position requires a commercial driver’s license or job-related driving;
 - ii. The position is within Oneida Comprehensive Health Division;
 - iii. The position is within Oneida Police Department, or
 - iv. Department obtained an exemption from this section of the Law, thereby requiring external applicant to test negative on all pre-employment drug tests prior to employment.
- c. A department may apply to HRD for a department-wide exemption from the waiver of a positive marijuana test in a pre-employment drug testing as permitted in the Law.
 - 1. Department manager must submit a request for exemption to the HRD director.
 - 2. HRD director will review the application and balance it against the needs of the Nation, procedural consistency, and if the department manager submitted detailed extraordinary, exigent, and substantive reasons to be exempt from the Law.
 - 3. A succeeding department manager may seek to withdraw an approved application if the reason for the initial exemption no longer exists.

202.8-5. Each Employee shall participate in reasonable suspicion and follow-up testing upon the request of an appropriate authority. A negative test result is required for unimpeded employment eligibility.

Commented [CA1]: “Internal applicant” deleted since this amendment would cover only external applicants. An internal applicant remains covered through the eponymous definition, “employee” definition, and a close reading of the ambiguously drafted 202.8-3 – 5.

Commented [CA2]: I deleted the follow-up testing requirement because I am not it applies to applicants. I read the law to limit the follow up tests to Employees. Does an appropriate “authority” exist in a pre-employment scenario?

Commented [PAVG3]: I suggest “is not qualified for” or “shall not qualify for” rather than “may not.”

Commented [PAVG4]: Besides police officers, are there other employees who regularly or occasionally carry firearms? Internal Security? Conservation?

Commented [PAVG5]: Maybe:
 Department manager must submit application for exemption to the Executive HR Director or designee.
 And at beginning of next sentence:
 Executive HR Director or designee will review the application and . . .

Commented [PAVG6]: Do we want involvement by the supervisor of the department manager, to ensure a broader perspective?

Drug and Alcohol Free Workplace Law recommended amendments:

Delete Sections 202.8-4 and 202.8-5 and replace with the following:

202.8-4. ~~Each~~ External ~~and Internal~~ ~~a~~ Applicant [CA1] shall participate in pre-employment ~~drug~~ testing [CA2] ~~and, if required, follow up testing upon request of an appropriate authority.~~ A negative ~~drug~~ test result is required for employment eligibility. ~~A confirmed positive marijuana test result shall be~~ forwaived for an all prohibited drugs except marijuana is required for pre-employment testing external applicant if the following criteria are met:

- a. ~~External~~ ~~a~~ Applicants for Gaming positions. An ~~e~~ External ~~a~~ Applicant ~~or Internal Applicant~~ receiving a confirmed positive test result for marijuana may qualify for employment if the position mandates a background check in accordance with 5 O.C. 501.10, licensing in accordance with 5 O.C. 501.11, and the position does not require a commercial driver's license or job-related driving.
- b. ~~External~~ ~~A~~ Applicants for Non-Gaming positions. There is a presumption that ~~a~~ ~~A~~ ~~confirmed~~ ~~positive~~ ~~marijuana~~ ~~test~~ ~~result~~ ~~will~~ ~~be~~ ~~waived~~ ~~for~~ ~~external~~ ~~applicants~~ ~~for~~ ~~Non-Gaming~~ ~~positions.~~
 1. ~~An~~ ~~e~~ External ~~a~~ Applicant for a Non-Gaming Position who ~~or Internal Applicant receiving~~ receives a confirmed positive test result for marijuana ~~may~~ ~~shall~~ ~~not~~ qualify for [PAVG3] employment if:
 - b. ~~—~~
 - i. ~~The~~ ~~position~~ ~~does~~ ~~not~~ ~~require~~ ~~s~~ a commercial driver's license or job-related driving; ~~and~~
 1. ~~—~~
 - ii. ~~The~~ ~~position~~ ~~is~~ ~~not~~ ~~within~~ ~~the~~ Oneida Comprehensive Health Division; ~~and~~
 2. iii. ~~The~~ ~~position~~ ~~is~~ ~~within~~ ~~Oneida~~ ~~Police~~ ~~Department~~ [PAVG4]; ~~or~~
 3. ~~The~~ ~~position~~ ~~does~~ ~~not~~ ~~entail~~ ~~duties~~ ~~as~~ ~~a~~ ~~first~~ ~~responder~~ [CAS]; ~~and~~
 - iv. ~~Department~~ ~~obtained~~ ~~an~~ ~~exemption~~ ~~from~~ ~~this~~ ~~section~~ ~~of~~ ~~the~~ ~~Law~~, ~~thereby~~ ~~requiring~~ ~~external~~ ~~applicant~~ ~~to~~ ~~test~~ ~~negative~~ ~~on~~ ~~all~~ ~~pre-employment~~ ~~drug~~ ~~tests~~ ~~prior~~ ~~to~~ ~~employment.~~
- c. A department may apply to HRD for a department-wide exemption from the waiver of a positive marijuana test in a pre-employment drug testing as permitted in the Law.
 1. Department manager must submit a request for exemption to the HRD director [PAVG6] [PAVG7].
 2. HRD director will review the application and balance it against the needs of the Nation, procedural consistency, and if the department manager submitted detailed extraordinary, exigent, and substantive reasons to be exempt from the Law [PAVG8].

- ~~4.~~ 3. A succeeding department manager may seek to withdraw an approved application if the reason for the initial exemption no longer exists.

202.8-5. Each Employee shall participate in reasonable suspicion and follow-up testing upon the request of an appropriate authority. A negative test result is required for unimpeded employment eligibility.

Title 2. Employment – Chapter 202

DRUG AND ALCOHOL FREE WORKPLACE

<p>202.1. Purpose and Policy</p> <p>202.2. Adoption, Amendment, Repeal</p> <p>202.3. Definitions</p> <p>202.4. Application</p> <p>202.5. Shared Responsibility</p> <p>202.6. Prohibited Behavior</p> <p>202.7. Reasonable Suspicion</p> <p>202.8. Drug and Alcohol Testing</p>	<p>202.9. Refusal to Test</p> <p>202.10. Reasonable Suspicion Testing Waiting Period</p> <p>202.11. Consequences for Prohibited Behavior</p> <p>202.12. Re-hire</p> <p>202.13. Other Potential Consequences</p> <p>202.14. Confidentiality</p> <p>202.15. Communication</p>
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202.1. Purpose and Policy

202.1-1. *Purpose.* The Nation is committed to protecting the safety, health and well-being of all employees, and other individuals in the workplace. The Nation recognizes that alcohol abuse and drug use pose a significant health and safety threat to our customers and other employees. The Nation also recognizes that alcohol and drug abuse and addiction are treatable illnesses. The Nation realizes that early intervention and support may improve the success of rehabilitation.

202.1-2. *Policy.* It is the policy of the Nation to establish a drug and alcohol-free workplace program that balances respect for individuals with the need to maintain an alcohol and drug-free environment. The Nation encourages employees to voluntarily seek help for their personal drug and alcohol-related problems.

202.2. Adoption, Amendment, Repeal

202.2-1. This law was adopted by the Oneida Business Committee by resolution BC-10-25-95-A and amended by BC-10-20-99-A, BC-12-05-07-B, BC-12-11-13-F and BC-04-12-17-C.

202.2-2. This law may be amended or repealed by the Oneida Business Committee and/or the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

202.2-3. 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.

202.2-4. 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.

202.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

202.3. Definitions

202.3-1. This section shall govern the definitions of words or phrases as used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) “Appropriate authority” means the Human Resources Department hiring representative, immediate supervisor, EHN, MRO, and/or ONEAP who requests the drug and/or alcohol testing for reasons of pre-employment, reasonable suspicion, and/or follow-up testing.

(b) “Business day” means Monday through Friday from 8:00am-4:30pm, excluding holidays recognized by the Nation.

(c) “Confirmed positive test result” means a lab-confirmed drug test that is verified by the MRO that exceeds the cut-off levels established by this law (levels established by the United States Department of Health and Human Services), confirmed saliva testing, confirmed evidential breath alcohol test results of 0.02 or greater; and/or refusal to test.

(d) “EHN” means the Oneida Employee Health Nursing Department.

- (e) “Employee” means any individual who is employed by the Nation and is subject to the direction and control of the Nation with respect to the material details of the work performed, or who has the status of an employee under the usual common law rules applicable to determining the employer-employee relationship. “Employee” includes, but is not limited to; an individual employed by any program or enterprise of the Nation, but does not include elected or appointed officials, or individuals employed by a Tribally Chartered Corporation. For purposes of this law, individuals employed under an employment contract as a limited term employee are employees of the Nation, not consultants.
- (f) “External applicant” means a person who is applying for a position and not currently employed by the Nation.
- (g) “HRD” means the Human Resources Department and/or representatives performing Human Resources functions applicable to this law.
- (h) “Internal applicant” means a person who is applying for a position who is currently employed by the Nation, this includes those employed under a temporary status.
- (i) “MRO” means Medical Review Officer who is a licensed physician who is responsible for receiving and reviewing laboratory test results generated by an employer’s drug testing program and evaluating medical explanations for certain drug test results.
- (j) “Nation” means the Oneida Nation.
- (k) “NHTSA” means the National Highway Traffic Safety Administration.
- (l) “ONEAP” means the Oneida Nation Employee Assistance Program which is a professional counseling program staffed by clinical social workers licensed by the State of Wisconsin which offers services to the Nation’s employees and family members.
- (m) “Prohibited drug(s)” means marijuana, cocaine, opiates, amphetamines, phencyclidine (PCP), hallucinogens, methaqualone, barbiturates, narcotics, and any other substance included in Schedules I through V, as defined by Section 812 of Title 21 of the United States Code. This also includes prescription medication or over-the-counter medicine used in an unauthorized or unlawful manner.
- (n) “Return-to-Work Agreement” means an agreement, developed by an ONEAP counselor and signed by the employee and the ONEAP counselor, and the referring supervisor, which sets out the actions the employee needs to complete in order to return to work and remain employed.
- (o) “SAMHSA” means the United States Department of Health and Human Services, Substance Abuse and Mental Health Services Administration.
- (p) “Supervisor” means the immediate supervisor, or person who has taken on the role of supervisor due to an absence that is responsible for performance review, corrective action, and day-to-day assignments of duties.
- (q) “Work-related accident” means an unexpected event involving an employee that occurs in the employee’s working environment or during an activity related to work, that:
- (1) results in an injury to the employee or another person that may require medical intervention by a police officer or emergency medical technician, or treatment at a medical facility,
 - (2) results in death of the employee or another person, or
 - (3) involves any property damage.

202.4. Application

202.4-1. This law applies to all applicants for employment, whether external or internal, and all employees during working hours, when on-call, and when operating a vehicle owned by the Nation or a vehicle rented by the Nation.

202.4-2. An employee is prohibited from the use of prohibited drugs and alcohol during working hours, when on-call, and when operating a vehicle owned by the Nation or a vehicle rented by the Nation.

202.4-3. An employee is prohibited from the use of intoxicants while on official business travel while the conference or meeting is in session.

202.4-4. An employee is not exempted from this law if they travel to another state, territory or country where the use of certain drugs is legal.

202.5. Shared Responsibility

202.5-1. A safe and productive drug and alcohol free workplace is achieved through cooperation and shared responsibility between the employer and an employee.

202.5-2. *Employee.* It is the employee's responsibility to:

- (a) Be free from the effects of prohibited drugs, and/or alcohol during working hours, and/or when scheduled to be on-call.
- (b) Refrain from the unlawful manufacture, distribution, dispensation or possession of any prohibited drugs while working.
- (c) Comply with drug and alcohol testing if directed to do so upon the request of an appropriate authority.
- (d) Confidentially report suspicious behavior of an employee immediately to the supervisor of the employee in question.
- (e) Cooperate with the requests made by EHN and the MRO. The employee shall return the call of the MRO within twenty-four (24) hours of the call being made to the employee. An employee who fails to cooperate and does not contact the MRO within twenty-four (24) hours of receiving contact shall not receive back pay for any time between the date the MRO placed the call until the time the employee does return the call of the MRO.
- (f) Sign a consent form to be tested for alcohol and drugs when requested by an appropriate authority.
- (g) Provide the appropriate information to EHN in the event a medical condition prevents the employee from properly completing drug and alcohol testing so alternative drug and alcohol testing measures can be taken by EHN.

202.5-3. *Supervisor.* It is the supervisor's responsibility to:

- (a) Be familiar with this law and any related policies and procedures.
- (b) Investigate reported suspicious behaviors while maintaining the confidentiality of the person who reported the suspicious behavior.
- (c) Promptly intervene with an employee who is believed to be under the influence of prohibited drugs and/or alcohol.
- (d) Monitor the employee under the influence of prescription and/or over-the-counter medications that could compromise the safety of the employee, fellow employees, or the public.
- (e) Send the employee through the contracted transportation service for reasonable suspicion drug and alcohol testing.

- (f) Take appropriate action as outlined by this law.
- (g) Sign the Return-to-Work Agreement along with the employee and ONEAP counselor that was developed by ONEAP.
- (h) Send a copy of the consent to submit to drug and alcohol testing form signed by the employee to EHN.

202.5-4. *Supervisor and Employee.* A supervisor or an employee that fails to adhere to the responsibilities of the supervisor or employee under this law may be subject to disciplinary action or other consequences as explained in section 202.13.

202.5-5. *Off-duty Use of Prohibited Drugs or Alcohol.* Off-duty use of prohibited drugs or alcohol may result in continued impairment during on-duty hours, which shall then constitute a violation of this law. It is the employee's responsibility to understand the consequences of off-duty use, and take steps to avoid the possibility of on-duty impairment. An employee who is called in for emergency or unplanned work, excluding those on-call, and has been using prohibited drugs or drinking alcoholic beverages prior to such a call, shall inform the employee's supervisor they cannot report, and shall continue to decline to report until the effects of the prohibited drugs or alcohol have left the employee's system. Such refusal to report shall not be viewed as improper, and disciplinary action shall not arise from such refusal.

202.5-6. *Use of Controlled Substances That May Affect Safety or Performance.* An employee who is taking or is under the influence of any controlled substances during working hours, including prescription medication or over the counter medication, which may affect the employee's job performance or safety of the employee, fellow employees, public, or assets of the Nation have the following obligations:

- (a) The employee shall notify the employee's immediate supervisor about the use of the substance and possible work-related effects prior to commencing work.
- (b) Upon request, the employee may be required to obtain a written statement of any work restrictions or impact on performance or safety relating to the legal substances from the employee's physician or pharmacist.
- (c) An employee shall not sell or share his or her prescribed medications with any other person, and shall not take medications that are prescribed to another person.
- (d) It may be necessary for the employee's supervisor, area manager or EHN to consult with the employee's personal physician, pharmacist or an MRO, with the employee's approval or written authorization, to determine if the medication might impact the employee's ability to perform the employee's job, or pose a hazard to other employees or to the general public.
- (e) The employee's duties may be temporarily modified for up to one hundred eighty (180) days. Any modification of duties shall result in the appropriate modification of pay as established by the Human Resources Department.

202.6. Prohibited Behavior

202.6-1. An applicant or employee of the Nation is in violation of this law if he or she:

- (a) Uses, possesses, and/or sells prohibited drugs, or is under the influence of prohibited drugs or alcohol while on duty. Notwithstanding section 202.11, any employee who is caught using, possessing or selling prohibited drugs shall be immediately terminated from employment with the Nation.

- (b) Fails to inform his or her supervisor of being under the influence of prescription medication and/or over-the-counter medication(s) which may affect the employee's job performance or safety of the employee, fellow employees, public, or assets of the Nation.
- (c) Uses unauthorized prescription drugs or intentionally misuses and/or abuses prescription medications.
- (d) Refuses to test.
- (e) Has a confirmed positive test result after completing a drug and/or alcohol test through EHN or a medical facility, or has a confirmatory test come back as positive.

202.7. Reasonable Suspicion

202.7-1. Establishing reasonable suspicion begins when the supervisor becomes aware either by personal observation and/or secondary reported observation that an employee may be under the influence of drugs and/or alcohol: this may include seeing or receiving a report that the employee has taken or possess prohibited drugs or prescription medication that is not specifically prescribed to that employee. In order to make a reasonable suspicion determination, the supervisor shall evaluate the following:

- (a) Specific observations concerning appearance, behavior, speech, or body odors of the employee consistent with possible drug use or alcohol misuse.
- (b) The observations may include indications of the chronic and withdrawal effects of prohibited drugs or alcohol.

202.7-2. The supervisor shall document his or her observations and discuss the matter with the employee. During this discussion, the supervisor may ask the employee for proof of a prescription. The employee shall comply with this request. If after a discussion with the employee, the supervisor continues to suspect the employee may currently still be under the influence or reasonable suspicion is otherwise established, the supervisor shall refer the employee for reasonable suspicion drug and alcohol testing.

202.7-3. A supervisor's decision made in regard to the reasonable suspicion drug and alcohol testing of an employee is final. An employee shall not appeal or challenge a supervisor's determination for reasonable suspicion drug and alcohol testing.

202.8. Drug and Alcohol Testing

202.8-1. Drug and alcohol tests are forensic in nature, meaning they are performed to formalize conditions of employment as described in this law. To ensure the accuracy and fairness of this law, all drug and alcohol testing shall be conducted according to SAMHSA guidelines for Federal Workplace Drug Testing Programs.

202.8-2. EHN or its designee shall use Federal Drug Administration approved urine tests and NHTSA certified evidential breath testing devices or NHTSA certified saliva-screening devices, operated by technicians whose training terminology, procedures, methods, equipment, forms, and quality assurance comply with best practices.

- (a) Confirmation drug testing done on urine specimens shall be conducted by a laboratory which is certified by the U.S. Department of Health and Human Services using its confirmation methods and established cut-off levels. Laboratory-confirmed results shall undergo the verification process by a MRO.
- (b) Confirmation breath alcohol testing shall be performed using an NHTSA certified evidential breath testing device.

(c) Confirmation drug testing done by saliva testing shall be performed using an NHTSA certified saliva test.

202.8-3. If an employee is involved in a work-related accident, he or she shall immediately inform his or her supervisor of the accident.

202.8-4. Each employee, as a condition of employment, shall participate in pre-employment, reasonable suspicion, and follow-up testing upon the request of an appropriate authority.

202.8-5. A negative test result is required for employment eligibility.

202.8-6. *Dilution of Test Results.* In cases where a drug test result is diluted, a positive dilute of the test result requires that the applicant or employee shall be given a confirmed positive test result, while a negative dilute of the test result requires retesting. EHN shall notify the applicant or employee of the required retesting.

(a) If the re-test results in a negative-dilute, the applicant or employee shall be given a negative test result.

(b) If the re-test results in a positive-dilute, then the applicant or employee shall be given a positive test result.

202.9. Refusal to Test

202.9-1. Refusal to test is prohibited behavior as defined in section 202.6. Refusal to test carries the same consequences as a confirmed positive test result. Examples of refusal to test include, but are not limited to:

(a) Substituting, adulterating (falsifying), or diluting the specimen.

(b) Refusal to sign the required forms.

(c) Refusal to cooperate in the testing process in such a way that prevents completion of accurate testing and as directed by the collector.

(d) Failing to remain at the testing site until the testing process is complete.

(e) Providing an insufficient sample of urine or breath.

(f) Failing to test or to re-test.

(g) Failing to appear within two (2) hours after an order or request is made for testing or re-testing.

(h) Behaving in a confrontational or discourteous manner that disrupts the collection process.

202.10. Reasonable Suspicion Testing Waiting Period

202.10-1. This section applies only to current employees who meet the reasonable suspicion standard. It does not apply to applicants of the Nation.

202.10-2 During drug and alcohol testing for reasonable suspicion, an employee shall be immediately removed from duty without pay at the time of initiation of the reasonable suspicion drug and alcohol testing and specimen collection until the employer is notified by EHN of negative results on both the drug and alcohol tests, or MRO-verified negative test results.

202.10-3. When confirmation of test results are made available to the employer, the supervisor shall notify the employee by telephone and by certified mail using the contact information provided by the employee. The notice to the employee shall identify a reinstatement date if the test was confirmed negative, or applicable consequences if the test was confirmed positive. If the employee is reinstated, back pay shall be provided in accordance with the Back Pay law. However, if the employee fails to return to work on the assigned reinstatement date as instructed in

the notice from the supervisor, the supervisor shall discipline the employee in accordance with the Nation's laws, rules and policies governing employment, unless an extension is granted in writing by the supervisor along with the reason for the extension. An employee who is ultimately terminated for failure to return to work on his or her assigned reinstatement date shall not be eligible for employment for one (1) year after the date of termination.

202.11. Consequences for Prohibited Behavior

202.11-1. Either an internal applicant or an external applicant may decline the position at any time before being directed to EHN or other designated testing site for the applicant's drug and alcohol testing.

202.11-2. *External Applicant.* If an external applicant fails to show at the testing site within the time allotted, or on the date of the scheduled test, or has engaged in prohibited behavior as listed at section 202.6 that has been documented, the employment offer shall be withdrawn. An external applicant shall not be eligible for hiring consideration for one hundred eighty (180) days from the date of the urine drug screening test.

202.11-3. *Internal Applicant.* If an internal applicant fails to show at the testing site within the time allotted, or on the date of the scheduled test, or has engaged in prohibited behavior as listed at section 202.6, the employment offer shall be withdrawn. The applicant shall be removed from duty and subject to respective consequences of this law. The applicant shall not be eligible for hiring consideration in a different position for one hundred eighty (180) days from the date of the urine drug screening test.

202.11-4. *Employee.* If an employee has engaged in prohibited behavior as listed in section 202.6-1, and/or fails to cooperate by not responding to contact from the MRO within ten (10) business days (which shall be deemed thereafter as a definite positive test), the employee shall be removed from duty and subject to the respective consequences of this law.

202.11-5. *Consequences.*

(a) *First Violation.*

(1) Any employee who engages in prohibited behavior as defined in section 202.6 for the first time shall be removed from duty without pay and shall receive a mandatory referral to ONEAP for an assessment. The ONEAP shall also determine if the employee shall be subject to return-to-duty/follow-up testing. If follow-up testing is required, the testing shall be at the employee's expense.

(2) The employee shall sign a Return-to-Work Agreement and submit the agreement to his or her supervisor within ten (10) days or the employee shall be terminated and ineligible for re-hire for one (1) year.

(A) When the supervisor signs the Return-to-Work Agreement the employee shall be placed back on the work schedule by the next regularly scheduled workday.

(3) Failure to comply with the signed Return-to-Work Agreement shall result in the employee being terminated and ineligible for re-hire for one (1) year.

(b) *Second Violation.*

(1) Any employee who engages in prohibited behavior as defined in section 202.6 a second time within his or her lifetime of employment with the Nation shall be removed from duty without pay and shall receive a mandatory referral to ONEAP for an assessment.

(2) The employee shall sign a Return-to-Work Agreement and submit it to the employee's supervisor for signature within ten (10) days or the employee shall be terminated and ineligible for re-hire for one (1) year. After a second violation the employee shall not be placed back on the work schedule until:

(A) The employee receives approval from the ONEAP that they have demonstrated sufficient progress in a treatment program that would indicate the employee is drug and alcohol free within thirty (30) days of the employee being removed from duty; and

(B) The employee completes a return-to-duty drug screening and alcohol test at a SAMHSA-certified facility at their own expense, which shall be negative within thirty (30) days of the employee being removed from duty;

(C) The ONEAP notifies the supervisor of the employee's eligibility to return to work.

(3) As a condition of continuing employment, the employee shall participate in follow-up testing with continued negative results as directed by the ONEAP and listed in the Return-to-Work Agreement. All follow-up testing shall be at the employee's expense.

(4) Failure to comply with the Return-to-Work agreement or follow up testing shall result in the employee being terminated and ineligible for re-hire for one (1) year.

(c) *Third Violation.*

(1) Any employee who engages in prohibited behavior as defined in section 202.6 a third time in his or her lifetime of employment with the Nation shall be terminated. The employee shall not be eligible for employment unless he or she receives a forgiveness pursuant to the Pardon and Forgiveness law. An employee that receives forgiveness shall not be eligible for re-hire for one (1) year after the date of termination.

202.12. Re-hire

202.12-1. A former employee that was terminated due to violations of this law shall provide, along with the former employee's application for employment, the following:

(a) Proof of completion of a certified Alcohol and Other Drug Abuse program; and

(b) A negative drug screening and alcohol test at a SAMHSA-certified facility completed within the last thirty (30) days. This drug screening and alcohol test shall be done at the former employee's own expense.

202.13. Other Potential Consequences

202.13-1. The violation of this law may result in consequences to the employee beyond any discipline or corrective action that may be taken. Other potential consequences include the following:

(a) *Disqualification of Unemployment Benefits.* An employee who is terminated as a result of a violation of this law may be ineligible for unemployment benefits.

(b) *Reduction of Workers Compensation Benefits.* An employee who incurs an injury in a work-related accident that occurred while engaged in a violation of this law may have any workers compensation benefits reduced.

(c) *Criminal Penalties.* An employee whose conduct violates state or federal criminal laws may be referred to appropriate law enforcement for criminal prosecution.

(d) *Liability for Accidents.* An employee whose conduct in violation of this law causes an accident may be held personally responsible for losses associated with the accident, and the employee may be required to pay for those losses.

202.14. Confidentiality

202.14-1. Information related to the application of this law is confidential. Access to this information is limited to those who have a legitimate “need to know” in compliance with relevant laws and personnel policies and procedures.

202.14-2. All drug and alcohol testing information shall be maintained at EHN in confidential records which are separate from the employee’s clinical and personnel files. The employee may request a copy of the employee’s records. The records may be requested by a third party in accordance with the Oneida Nation’s laws, rules and policies governing employment.

202.15. Communication

202.15-1. HRD shall communicate this law to all employees to ensure all employees are aware of their role in supporting this law:

(a) All employees shall be given information on how to access this law.

(b) This law shall be reviewed in new employee orientation and other means, as deemed appropriate by HRD.

(c) All employees shall sign an acknowledgment form stating they have received a copy of this law, have read and understand it, and agree to follow this law.

End.

See GTC-01-31-94-B

Adopted – BC-08-17-94

Emergency Amended - BC-04-20-95-C

Adopted - BC-10-25-95-A (repealed previous versions)

Amended - BC-10-20-99-A

Amended - BC-12-05-07-B

Amended - BC-12-11-13-F

Emergency Amended - BC-10-26-16-D

Amended - BC-04-12-17-C



Travel Report for the 2022 Annual Indian Law CLE

*Carolyn Salutz, Legislative Staff Attorney
Legislative Reference Office
August 18-August 19, 2022*

The Indian Law Section of the State Bar of Wisconsin held its annual Indian Law continuing legal education conference in the Wisconsin Dells. Approximately fifty Indian law practitioners attended, including attorneys and judges from Lac Courte Oreilles Band of Lake Superior Chippewa, St. Croix Chippewa Indians of Wisconsin, Menominee Indian Tribe of Wisconsin, Oneida Nation, Ho-Chunk Nation, Forest County Potawatomi Community, and Bad River Band of Lake Superior Chippewa. Attendees also included attorneys from the Wisconsin Department of Natural Resources, Great Lakes Indian Fish & Wildlife Commission, Earthjustice, Judicare Legal Aid, and Wisconsin Department of Justice.

I attended all seven sessions and all seven sessions were interesting and well-presented. A copy of the agenda is attached below on pages three and four. Topics included: Case Law Update, Mining Operations Impacting Tribes, Tribal Actions to Protect Wisconsin Wolves, A Focus on Tribal Courts, Wisconsin Tribal Gaming Developments, Addressing Drugs and Addiction on Reservations, and Ethics – Who is your Client?

Day 1: Case Law Update, Mining Operations Impacting Tribes, Tribal Actions to Protect Wisconsin Wolves, A Focus on Tribal Courts.

The case law update provided a good review of recent and relevant Indian law cases on a national and federal level and in Wisconsin courts. I did not expect to be so interested in mining, especially the portion presented by Doug Cox of Menominee Land Management. He talked about Menominee's efforts to stop the Back 40 Mine – a mine whose proposed development would have dug within 150 feet of the Menominee River and disturb numerous cultural heritage sites along the riverbank. Menominee tribal council issued a resolution in opposition to all activities that threaten the tribe and they were successful in stopping the mine through a federal lawsuit but also largely because of intensive community opposition and joining forces with Michigan tribes. Even so, we learned the fight to stop the Back 40 mine is not over.

The Wisconsin wolf hunt presentation focused on the efforts in federal court and Wisconsin court to stop the February 2022 hunt. Presenter Jessica Blome helped litigate the injunction in Wisconsin courts and Mary Rock helped litigate the injunction in the federal district court; both injunctions were granted. Presenter Ann McCammon-Soltis presented on the importance of the wolf to tribal nations, focusing on the six Wisconsin Ojibwe tribes and her agency's efforts to advocate for and protect and manage Wisconsin's wolf population.

Oneida Family Court Judge Dequaine presented on the importance of, and need for, guardian ad litem. Menominee Judge Altmann presented on various issues with law enforcement on their

reservation, including working relationship between tribal and county police, drug dogs, and verifying tribal membership for people who are pulled over.

Day 2: A Focus on Tribal Courts, Wisconsin Tribal Gaming Developments, Addressing Drugs and Addiction on Reservations, and Ethics – Who is your Client?

Wisconsin Tribal gaming developments focused mainly on actions the tribes took during the pandemic to close their facilities and negotiate payments with the State. I learned a little more about Oneida's efforts to offer online sports betting throughout the reservation; that this has been a point of contention with the State and is still being negotiated.

During Addressing Drugs and Addiction on Reservation we heard from a NADGI (Native American Drug and Gang Initiative) Commander about NADGI's collaboration with other State and federal agencies to cut off drug flow into reservations – particularly Mexican cartels – who are targeting reservations. Assistant Attorney General Chad Verbeten presented although his presentation was purely prosecution focused, with alarming but incomplete statistics, and possibly a little out of place at an Indian law conference. Finally, Philomena Kebec presented on her needle sharing initiative and the need for more compassionate and less punitive services; especially when native communities have been, and are being, targeted by drug companies and cartels and it is the members who are being prosecuted and whose lives are being torn apart by addiction.

The last session on ethics discussed issues surrounding the lawyer-client relationship and how it can be a minefield for tribal attorneys, especially for in-house counsel who might, in addition to representing the tribal council, might also represent different departments, divisions, or commissions. Thankfully my attorney-client relationship is clear – I represent the Legislative Operating Committee – but it was a reminder all the same.



Indian Law
Section

2022 Annual Indian Law CLE

Thursday and Friday, August 18-19
The Wilderness Resort, Wisconsin Dells, WI
Thursday, August 18, 2022

- 7:30-8:00** **Registration and Breakfast**
- 8:00-8:30** **Welcome**
Martina Gast, Indian Law Section Chair, Pipestone Law, Madison
- 8:30-10:00** **BIA (invited) and Case Law Update**
Steven Slack, Student Liaison, Indigenous Law Students Association, Madison
Dennis Puzz, Attorney, Forest County Potawatomi Community, Crandon
- 10:00-10:15** **Break**
- 10:15-11:45** **Mining Operations Impacting Tribes**
Doug Cox, Director of Land Management, Menominee Indian Tribe of Wisconsin
Jeff Crawford, Attorney General, Forest County Potawatomi Community, Milwaukee
Rob Lee, Staff Attorney, Midwest Environmental Advocates, Madison
- 12:00-1:30** **Lunch**
Recognition of Attorney Jo Swamp (Ret.) and Attorney Kim Vele (Ret.) by Aaron Loomis, Deputy Attorney General, Forest County Potawatomi Community
- 1:30 – 2:45** **Tribal Actions to Protect Wisconsin Wolves**
Jessica Blome, Shareholder, Greenfire Law PC, Berkeley, CA
Ann McCammon-Soltis, Director – Division of Intergovernmental Affairs, Great Lakes Indian Fish & Wildlife Commission, Odanah
Mary Rock, Senior Associate Attorney, Earthjustice, Chicago
- 2:45-3:00** **Break**
- 3:00-4:45** **A Focus on Tribal Courts**
Hon. Cori Altmann, Lower Court Judge, Menominee Nation Judiciary, Keshena
Hon. Rodney Dequaine, Presiding Family Court Judge, Oneida Nation Judiciary, Green Bay
Paul Stenzel, Of Counsel, Hansen & Hildebrand, S.C., Milwaukee
- 5:00 – 6:00** **Reception (Food/Open Bar)**



**Indian Law
Section
Friday, August 19, 2022**

- 8:00-8:30 Registration and Breakfast**
- 8:30-9:30 Wisconsin Tribal Gaming Developments**
Krystal John, Staff Attorney, Oneida Nation Law Office, Oneida
Erik Shircel, Tribal Attorney, Ho-Chunk Nation Department of Justice, Black River Falls
Jeffrey Simmons, Chief Legal Counsel, Wisconsin Department of Administration
- 9:30-10:30 Addressing Drugs and Addiction on Reservations**
Bryan Kastelic, NADGI Task Force Commander, Wisconsin Department of Justice;
Division of Criminal Investigation, Madison
Philomena Kebec, Bad River Band of Lake Superior – Tribe of Chippewa Indians,
Odanah
Chad Verbeten, Assistant Attorney General, Wisconsin Department of Justice; Altoona
- 10:30-10:45 Break**
- 10:45-11:45 Ethics – Who is your client?**
Douglas Huck, Attorney, Forest County Potawatomi Community, Crandon
Aviva Kaiser, Ethics Council, State Bar of Wisconsin, Madison
- 11:45-12:00 Closing Remarks**

Wisconsin Indian Law Conference 2022

August 18th - 19th

Grace Elliott Report

As the Conference opened, I was sitting at the table with attorneys from the Ho Chunk Nation DOJ and was able to ask them questions about their Traffic Code. They explained that the Ho Chunk Nation is uniquely situated on various trust parcels, has five (5) Officers total, and they do not use the Traffic Code in their Court due to lack of application. I met Chief Judge Lowe and was able to ask her opinion on the Traffic Code. Judge Lowe advised not to adopt WI Statute like Ho Chunk did and advised to make it work with what the officers find useful. Due to the unique landscape of Ho Chunk it can easily understood that a tailored Traffic Code rather than a broad adoption of WI Statute could be preferable.

The Case Law update was informative. The recap of key cases is significant because it works to prevent blind spots that can occur in an area of law that is as fast moving as Indian Law and to affirm and/or inform my preliminary interpretation of that case law.

Later that day I was able to speak briefly with attorney Samantha Skenandore. I had sent an email to Samantha in June to inquire about Business Codes. After I had reached out I met with Jeff House and found out that Samantha was their attorney. It was fortunate to finally make contact at the conference. I mostly was only able to confirm with her that Nevada incorporation was positive due to case law and not specifically due to the way the code/statute is drafted. We briefly discussed that a successful code is more than code and can include supports such as an accessible website and working regulation. I continue to research all these aspects.

An attorney from Menominee spoke on Tribal Courts and during the question answer part she spoke quite a bit on how their traffic code works including the relationships between the county, Tribal and conservation officers.

I made connections with many attorneys in the Indian law field that I hope to continue to build relationships with and learned more about various aspects of Indian law. The conference was well organized and the level of participation from attendees was high. I hope to attend again next year.

September 2022

September 2022

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October 2022

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SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Aug 28	29	30	31	Sep 1 1:00pm Layoff Policy Amendments work meeting 1:00pm Layoff Policy Amendments work meeting	2 12:15pm PUBLIC MEETING: Oneida Nation Assistance Fund Law (BC_Conf_Room) - LOC	3
4	5 8:00am Labor Day	6 9:00am LRO Staff Meeting (Legislative Reference Office) - Clorissa N. Santiago	7 9:00am LOC Meeting (BC_Conf_Room) - LOC	8	9	10
11	12 9:00am LRO Staff Meeting (Legislative Reference Office) - Clorissa N. Santiago	13	14	15 11:00am LOC Work Session (Microsoft Teams Meeting) - Clorissa N. Santiago	16	17
18	19 9:00am LRO Staff Meeting (Legislative Reference Office) - Clorissa N. Santiago	20	21 9:00am LOC Meeting (BC_Conf_Room) - LOC	22	23	24
25	26 9:00am LRO Staff Meeting (Legislative Reference Office) - Clorissa N. Santiago	27	28	29 9:30am LOC Work Session (Microsoft Teams Meeting) - Clorissa N. Santiago	30	Oct 1