

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

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**708.1. Purpose and Policy**

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

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

**708.2. Adoption, Amendment, Repeal**

708.2-1. This law was adopted by the Oneida Business Committee by resolution BC-07-26-17-J, and amended by resolution BC-09-14-22-A.

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 This law may be amended or repealed by the Oneida Business Committee and/or Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

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

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

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

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

### **708.3. Definitions**

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

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

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

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

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

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

#### **708.4. Scope**

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

#### **708.5. Jurisdiction**

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

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

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

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

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

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

(a) is without a parent or guardian;

(b) has been abandoned;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (c) An attorney contracted by the Department.

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

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

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

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

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



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

## **708.8. Guardian ad litem**

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

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

708.8-2. *Qualifications.*

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

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

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

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

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

#### **708.9. Advocate**

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

708.9-2. *Qualifications.*

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

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

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

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

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

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

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

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

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

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

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

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

### **708.12. Notice; General Terms**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) The child will cause injury to himself or herself or be subject to injury by others;
- (b) The child will be subject to injury by others, based on a determination that if another child in the home is not held that child will be subject to injury by others;
- (c) The parent, guardian or legal custodian of the child or other responsible adult is neglecting, refusing, unable or unavailable to provide adequate supervision and care, and that services to ensure the child's safety and well-being are not available or would be inadequate;

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

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

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

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

(b) A licensed foster home;

(c) A licensed group home;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

708.17-2. The petition shall include the following:

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

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

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

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

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

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

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

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



## **708.18. Consent Decree**

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

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

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

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

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

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

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

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

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

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

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

- (a) Address the parties present and determine that the plea of no contest or admission is made voluntarily with understanding of the nature of the acts alleged in the petition and the potential outcomes;
- (b) Establish whether any promises or threats were made to elicit the plea of no contest or admission; and
- (c) Make inquiries that establish a factual basis for the plea of no contest or admission.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Outpatient mental health treatment;

(2) Substance abuse treatment;

(3) Anger management;

(4) Individual or family counseling;

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

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

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

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

### **708.23. Permanency Plans**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **708.25. Trial Reunification**

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) the reasons for the proposed revocation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) That the child has been found to be in need of protection or services under this law and has been placed outside of his or her home pursuant to one (1) or more Court orders, or that the child has been found to be in need of protection or services and placement of the child in the home of a guardian under this section has been recommended by the Department at the dispositional hearing;
- (b) That the person nominated as the guardian of the child is a person with whom the child has been placed or in whose home placement of the child is recommended by the Department and that it is likely that the child will continue to be placed with that person for an extended period of time or until the child attains the age of eighteen (18) years;
- (c) That, if appointed, it is likely that the person would be willing and able to serve as the child's guardian for an extended period of time or until the child attains the age of eighteen (18) years;
- (d) That it is not in the best interests of the child that a petition to suspend or terminate parental rights be filed with respect to the child;
- (e) That the child's parents are neglecting, refusing or unable to carry out the duties of a guardian; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) Address the parties present and determine that the admission is made voluntarily with understanding of the nature of the acts alleged in the petition and the potential outcomes and possible dispositions by the Court;
- (b) Establish whether any promises or threats were made to elicit an admission; and
- (c) Make such inquiries to establish a factual basis for the admission.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (2) Order restraining a parent from contacting the minor child, the child's foster parent, the child's adoptive parent and/or the social services agency or agencies possessing information regarding the child;
- (3) Order that the biological parents' obligation to pay child support, except for arrearages, is hereby terminated; and
- (4) Order that any prior court order for custody, visitation, or contact, with the minor child is hereby terminated.

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

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

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

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

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

#### **708.41. Adoption**

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

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

- (a) The relationship between an adoptive parent and adopted child shall have all the same rights, responsibilities, and other legal consequences as the relationship between a biological child and parent;
- (b) The adopted child shall have an absolute right, absent a convincing and compelling reason to the contrary, to information and knowledge about his or her biological family and his or her Oneida heritage, if applicable. The adopted child may obtain adoption information from files maintained by the Court or Department;
- (c) Adoption shall not prevent an adopted child from inheriting from a biological parent in the same manner as any other biological child. The biological parents shall not be entitled

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

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

- (1) The right to communication;
- (2) The right to visitation;
- (3) The right or obligation to contribute to support or education;
- (4) The right to be consulted regarding the adopted child's religious affiliation, major medical treatment, marriage, or other matters of major importance in the child's life; and/or
- (5) Such other residual rights the Court may deem appropriate, considering the circumstances.

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

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

- (a) The relationship between an adoptive parent and adopted child shall have all the same rights, responsibilities, and other legal consequences as the relationship between a biological child and parent;
- (b) The relationship between the adopted child and all persons whose relationship to the adopted child is derived through the biological parents shall be completely altered and all the rights, duties, and other legal consequences of those relationships shall cease to exist;
- (c) The adopted child's biological family shall not be entitled to or have access to any information regarding said child;
- (d) The adopted child shall be entitled to information and knowledge regarding his or her culture and heritage; and
- (e) The adopted child shall be entitled to information regarding his or her biological family upon reaching the age of majority. The adopted child may obtain adoption information from files maintained by the Court or Department.

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

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

- (a) Both of the child's parents are deceased;
- (b) The parental rights of both of the child's parents with respect to the child have been suspended or terminated;
- (c) The parental rights of one of the child's parents with respect to the child have been suspended or terminated and the child's other parent is deceased; or
- (d) The person filing the petition for adoption is the spouse of the child's parent and either of the following applies:

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

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

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

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

### **708.43. Adoption Procedure**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**708.46. Appeals**

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

**708.47. Liability**

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

*End.*

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Adopted – BC-07-26-17-J  
Amended – BC-09-14-22-A