

CHILD WELFARE LAW

SECTION	INDEX	PAGE
<u>ARTICLE I</u>	GENERALLY	1
1.1	PURPOSE	1
1.2	DEFINITIONS	1
	A. Abandoned Child	
	B. Abused Child	
	C. Adjournment	
1.2	DEFINITIONS	2
	D. Child & Family Services	
	E. Council	
	F. Court	
	G. Custodian	
	H. Extended Family	
	I. Foster Care	
1.2	DEFINITIONS	3
	J. Guardian	
	K. Indian Child	
	L. Mental Illness	
	M. Mental Retardation	
	N. Minimal Care	
1.2	DEFINITIONS	4
	O. Minor	
	P. Nation	
	Q. Neglected Child	
	R. Parent	
	S. Permanent Neglect	
	T. Probably Cause	
1.2	DEFINITIONS	5
	U. Protective Custody	
	V. Shelter Care	
1.3	JURISDICTION	5
1.4	SEPARABILITY	5
1.5	CODIFICATION	5
1.6	EFFECTIVE DATE	5

8.6	PRELIMINARY DETERMINATION	31
8.7	FURTHER INVESTIGATION	32
8.8	FINAL DETERMINATION	32
8.9	NOTIFICATION OF DECISION; OPPORTUNITY TO CORRECT	33
8.10	ISSUANCE OF LICENSE	33
8.11	INSPECTIONS	33
8.12	EMERGENCY LICENSE REVOCATION	34
8.13	REVOCATION HEARINGS	34
8.14	LICENSE REVOCATION; DECISION	35
8.15	REVOCATION ABSENT HEARING	35
8.16	NON-EMERGENCY LICENSE REVOCATION	35-36
8.17	COORDINATION WITH COURT	36

## CHILD WELFARE LAW

### Article 1. Generally

#### Section 1.1. Purpose.

The purpose of this law is to (i) define the policy under which the Nation shall address issues relating to the welfare of Indian children and (ii) establish legal standards and procedures applicable within and outside of the Nation for the safety and well-being of Indian children.

#### Section 1.2. Definitions.

For purposes of this law, the term --

(a) "Abandoned child" shall mean an Indian Child whose Parent or Guardian is not identifiable, or if known, has made no reasonable effort to care for or arrange substitute care for the child for a period of one (1) year or more.

(b) "Abused child" shall mean an Indian Child who has suffered, or is likely in the immediate future to suffer, serious physical or emotional harm as a result of a Parent, Guardian or Custodian inflicting or failing to make reasonable efforts to prevent the infliction of physical or emotional harm upon the child, including, but not limited to, excessive corporal punishment or an act of sexual abuse or molestation.

(c) "Adjournment in contemplation of dismissal" shall mean a course of remedial action designed to avoid final court

adjudication when such adjournment is in the best interest of the child involved.

(d) "Child and Family Services" shall mean the Nation Child and Family Services Department, which is the official agency responsible for representing the Nation in child welfare matters.

(e) "Council" shall mean the Nation Council established pursuant to Section I of the Nation Constitution of 1848, as amended.

(f) "Court" shall mean the Nation Peacemakers Court established pursuant to Section IV of the Nation Constitution of 1848, as amended.

(g) "Custodian" shall mean a person or agency, other than a Parent or Guardian, to whom the physical care, control and custody of an Indian child has been granted by either an order of a court of competent jurisdiction or by the Parent of such child.

(h) "Extended family member" shall mean a person who has reached the age of eighteen (18) and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or step-parent.

(i) "Foster care" shall mean the temporary care of an Indian child by a certified child care provider where the child's Parent or Guardian cannot have the child returned upon demand, but where parental rights have not been terminated.

(j) "Guardian" shall mean a person or agency to whom the legal care, control and custody of an Indian child has been granted by an order of a court of competent jurisdiction.

(k) "Indian child" shall mean any unmarried person who is either under the age of eighteen (18) or is under the age of twenty-one (21) and has entered foster care prior to his/her eighteenth birthday and remains in care, and who is (i) an enrolled member of an Indian nation or tribe, or (ii) eligible for membership in an Indian nation or tribe and is the biological child of a member of an Indian nation or tribe,

(l) "Mental Illness" shall mean affliction with a mental disease or mental condition which is manifested by a disorder or disturbance in behavior, feeling, thinking, or judgment to such an extent that if the child were placed in or returned to the custody of the Parent, the child would be in danger of becoming a "neglected child."

(m) "Mental Retardation" shall mean subaverage intellectual functioning which originates during the developmental period and is associated with impairment in adaptive behavior to such an extent that if the child were placed in or returned to the custody of the Parent, the child would be in danger of becoming a "neglected child."

(n) "Minimal care" shall mean provision of food, clothing, shelter, medical care, education, safety and day-to-day supervision adequate to sustain a quality of life that is the prevailing standard in the community.

(o) "Minor" shall mean a person under eighteen (18) years of age.

(p) "Nation" shall mean the Seneca Nation of Indians, a sovereign nation;

(q) "Neglected child" shall mean an Indian child (i) whose Parent, Guardian or Custodian fails to provide the minimal care for said child, (ii) who has special physical or mental conditions which said child's Parent, Guardian or Custodian neglects or refuses to provide a reasonable level of special care, or (iii) whose Parent, Guardian or Custodian is unable to discharge his or her responsibilities to and for said child because of incarceration, hospitalization, or other physical or mental incapacity, provided, that said child shall not be deemed neglected if the sole reason for failing to provide adequate care for the child is the indigence of the Parent, Guardian or Custodian.

(r) "Parent" shall mean the biological parent of an Indian child or any person who has lawfully adopted said child, provided, that an unwed father of an Indian child where paternity has not been established or acknowledged shall not be deemed a Parent, and further provided, that any person who has had the parent-child relationship lawfully terminated shall not be deemed a Parent.

(s) "Permanent neglect" shall mean failure to provide minimal care of an Indian child for a period of more than 12 months.

(t) "Probable cause" shall mean such facts and circumstances as would convince a reasonable person.

(u) "Protective Custody" shall mean the emergency temporary removal and care of an Indian child that is necessary in order to safeguard said child from further harm.

(v) "Shelter care" shall mean the temporary care of an Indian child in a protective custody situation that is designated by the Court or Child and Family Services, pending a final disposition.

Section 1.3. Jurisdiction.

The Court shall have jurisdiction over all matters involving Indian children set forth under this law.

Section 1.4. Separability.

If any provision of this law or its application to any person or circumstances is held invalid, the remainder of the provisions of this law or the application of the provision to other persons or circumstances shall not be affected.

Section 1.5. Codification.

The provisions of this law may be codified so as to facilitate accessibility.

Section 1.6 Effective Date.

The effective date of this law shall be the date of enactment (April 11, 1994).

Article 2. Abuse, Neglect and Abandonment

Section 2.1. Reporting Obligation; Mandated Reporters; Penalty.

(a) A mandated reporter shall report any suspected abuse, neglect, or abandonment of an Indian child to the Child Abuse and Maltreatment Hotline, maintained by the New York State Department of Social Services, and also to the Nation Department of Child and Family Services.

(b) The following individuals are mandated reporters: (i) physicians and dentists, (ii) nurses, (iii) physician assistants, (iv) police officers, (v) day care personnel, (vi) Nation Education Department personnel who work directly with children, including Head Start and Daycare personnel, (vii) mental health care providers, (viii) social workers, (ix) welfare case managers, (x) community aides, (xi) foster and house parents, (xii) Nation Recreation Department personnel and (xiii) other child care specialists, including babysitters.

(c) Any mandated reporter who shall not make a report of abuse, neglect, or abandonment shall be guilty of a violation and the Court may impose a maximum fine of \$1000.00 and a minimum fine of \$100.00.

Section 2.2. Contents of Report.

The report shall contain as much of the following information as is known to the person making the report: the name, address, and age of the child, the name and address of the alleged



perpetrator of the abuse, the nature and extent of the abuse, and any other pertinent information.

Section 2.3. Immunity for Good Faith Reports; Penalty.

(a) Any person who in good faith makes a report of abuse, neglect or abandonment or who testifies in any judicial proceeding arising from such report shall be immune from any civil liability because of such report or testimony.

(b) As a penalty for making a report in bad faith, the Court may impose a maximum fine of \$1000.00 and a minimum fine of \$100.00.

Section 2.4. Investigation of Reports.

(a) After a report is received by the Nation, it shall be investigated according to procedures established by Child and Family Services.

(b) If an investigation reveals that there is probable cause to believe that abuse, neglect, or abandonment of an Indian child has occurred, the procedures outlined in Sections 3 and 4 of this law shall be initiated.

Section 2.5. Recordkeeping.

Child and Family Services shall keep appropriate documentation on all child abuse and neglect case work for a period not less than five (5) years or as the Court may determine.

Section 2.6. Confidentiality.

All records described in Section 2.5 shall be confidential, provided, that the Court shall have access to the any files for proceedings arising under law.

Article 3. Involuntary Placement

Section 3.1. Taking a Child into Protective Custody.

(a) Any physician, nurse, physician's assistant or nurse practitioner, police officer, social worker or case manager who has probable cause to believe that an Indian child will suffer physical or emotional harm if not immediately removed from the circumstances causing the harm must take said child into protective custody.

(b) In the event an Indian child must be taken into protective custody, the person taking said child into protective custody must (i) provide for appropriate shelter care consistent with placement preference (ii) notify immediately the Nation Police and the New York State Child Abuse and Maltreatment Hotline and (iii) make a good faith effort to notify the Parents or Guardian of the child.

(c) An Indian child shall not be kept in protective custody without a Court order for more than forty-eight (48) hours, except if on a weekend or holiday.

Section 3.2. Application to Court.

(a) Any physician, nurse, physician's assistant or nurse practitioner, police officer, social worker or case manager who

takes an Indian child into protective custody without a court hearing shall (i) immediately notify the Court and make a good faith effort to notify the Parents or Guardian of the child and (ii) within twenty-four (24) hours submit to the Court a petition under Section 4.1 of this law.

(b) If the Indian child is taken into custody on a weekend or holiday, the individual taking the child into custody shall have twenty-four (24) hours from the start of a working week to file a petition in Court.

#### Article 4. Court Procedure

##### Section 4.1. Petitions.

(a) Any person may submit to the Court a petition alleging an Indian child to be abused, neglected or abandoned.

(b) A petition filed under this law shall include (i) the name, address, and telephone number of the petitioner, the Indian child and, if known, the child's Parents, Guardian, or Custodian; (ii) the reason(s) why the petitioner believes the child is abused, neglected, or abandoned; (iii) evidence supporting the allegations contained in the petition, including but limited to affidavits or written statements from social workers, other child care professionals, or members of the community.

##### Section 4.2. Initial Hearing.

(a) Upon receiving a petition, the Court shall immediately schedule an initial hearing which shall be held (i) if the child is

in protective custody, within forty-eight (48) hours from the time of placement and (ii) if the child is not in protective custody, within seventy-two (72) hours.

(b) The Court shall make all reasonable attempts to notify, by telephone or other means, the child and the child's Parent or Guardian of the time and place of the initial hearing, and of the right of the Parent, Guardian, and child (i) to obtain counsel at their own expense, (ii) to be present at the hearing, and (iii) to receive a copy of the Petition and any supporting papers, and to testify, present documentary evidence, call witnesses, and ask questions of all witnesses.

(c) The initial hearing shall be conducted informally and shall be closed to the public. If the Court determines that there is probable cause to believe that the child has been abused, neglected or abandoned, the Court may temporarily order such disposition as is appropriate under Section 4.7(d) of this law, pending a fact-finding hearing. If the Court determines that probable cause does not exist, it shall dismiss the case.

#### Section 4.3. Social Study.

(a) The Court shall order a social study with respect to those petitions that are not dismissed after the initial hearing, provided, that such study shall be undertaken before the initial hearing, if possible, but before the fact-finding hearing.

(b) The social study shall be conducted by Child and Family Services, which shall establish guidelines and procedures for conducting such study.

(c) In cases of alleged abuse or neglect, the Court may order that a physician examine the child prior to the initial hearing or the fact-finding hearing.

Section 4.4. Guardians Ad Litem.

(a) Appointment. In its discretion, the Court may appoint a Guardian ad litem to represent an Indian child in any proceeding under Articles 3 and 4 of this law.

(b) Qualifications. A Guardian ad litem shall be at least twenty-one (21) years of age, be of high moral character and integrity, and not have any special interest in the case that would prevent the Guardian from representing the best interests of the child in an objective way, provided, that a relative of the child is not automatically precluded from serving as a Guardian ad litem in said child's case. The Court shall maintain a list of persons eligible to serve as Guardians ad litem. The Court may appoint the Guardian ad litem at the initial hearing held pursuant to Section 4.2 of this law, or at any other appropriate point during the proceedings, including before a petition is filed.

(c) Duties. The Guardian ad litem shall meet and become acquainted with the child as soon as feasible after appointment. The Guardian shall, except where the best interests of the child indicate otherwise, attend all Court proceedings in the case, be

present at interviews between the child and law enforcement officials, social workers, and other personnel who need to speak with the child in connection with the case, visit the child in any foster home or other Court ordered placement for the purpose of determining whether the placement is in the best interests of the child, and determine the views of the child with respect to placement and communicate those views to the Court. The Guardian ad litem shall perform such other duties as the Court shall order are in the best interests of the child.

(d) Records. The Guardian ad litem has the right to review all pertinent case files and records regarding the child and family, unless consent is required by law.

(e) Term. The Guardian ad litem shall continue to serve until discharged by the Court and shall be compensated \$50.00 per Court session or as otherwise determined by the Council.

(f) Notice. Guardians ad litem shall be notified of any Court proceeding involving the child in accordance with section 4.7(b) of this law.

#### Section 4.5. Adjournment in Contemplation of Dismissal.

(a) If Child and Family Services determined that it is in the best interests of the child to continue placement of a child with a Parent, Guardian or Custodian on a conditional basis and without an immediate fact-finding hearing, Child and Family Services may recommend to the Court, during the initial court hearing, that the Court grant an adjournment in contemplation of dismissal subject to

the Parent, Guardian, Custodian and/or child observing specified conditions of behavior, including but not limited to counselling, treatment and supervision during the period of adjournment.

(b) Upon such recommendation and with the voluntary consent of the Parent, Guardian or Custodian, the Court may defer a fact finding hearing and grant an adjournment in contemplation of dismissal with a six (6) month period of supervision by Child and Family Services. The Court shall specify the conditions of the adjournment in contemplation of dismissal, including counseling, treatment, supervision, and other obligations to be observed by the child and by the Parent, Guardian or Custodian.

(c) Upon successful completion of the provisions of the adjournment in contemplation of dismissal, the Petition shall be dismissed without a fact-finding hearing. If the conditions of the dismissal are not observed, the original Petition shall be reactivated.

#### Section 4.6. Fact-Finding Hearing.

(a) Time. The fact-finding hearing shall be held as soon after the initial hearing is held or immediately following receipt of a social study or such other Court-ordered evidence that may be necessary for the Court to make its determination. In all cases, the fact-finding hearing shall be held within 30 days of the filing of the petition, unless the Court grants a request for postponement. Only one such request shall be granted.

(b) ~~notice~~ The Court shall serve a copy of the Petition and any Supporting Papers together with prior written notice of the date, time, and place of the hearing upon the Indian child, any person authorized to represent the child, and the Parent, Guardian or Custodian of the child. ~~Notice shall be served in person or by certified mail, return receipt requested, or by other order by alternate service in accordance with the Nation's Civil Procedure Rules. The notice shall also specify that the Indian child and any other party served with notice has a right to retain counsel at his or her own expense, be present, testify, present documentary evidence, call witnesses, and ask questions of all witnesses.~~

(c) Default. Jurisdiction will attach upon the appearance of a party at an initial hearing, or upon proof of service of the Petition and notice of a fact-finding hearing. If a party so served with notice fails to appear at the time set by the Court or any adjourned date, or dispositional hearing, such party shall be in default, and the Court may proceed with testimony and make decisions binding on the party in that party's absence. It shall be the obligation of any party once served with notice to thereafter keep the Court advised of any change in that party's address and telephone number to facilitate service of subsequent pleadings and notices by ordinary mail in accordance with the Nation's Civil Procedure Rules.

(d) Procedures. At the discretion of the Court, the Indian child may be physically present at the fact-finding hearing. Hearings shall be closed to the general public. The Court may



require the testimony of a physician or child care expert based upon an examination of the child. The child or his authorized representative, and the Parent, Guardian or Custodian may summon or produce such witnesses and relevant evidence as they may desire, and may be represented by counsel at his or her own expense. The Court may call such witnesses as it deems necessary.

(e) Order. If the Court shall find, after the fact-finding hearing, that there is clear and convincing evidence that the Indian child has been abused, neglected, or abandoned, the Court shall determine the proper disposition of the child under Section 4.7(d) of this law. Otherwise, the petition shall be dismissed.

#### Section 4.7. Dispositional Hearings

(a) When held. A dispositional hearing shall be conducted as soon as practicable after the conclusion of the fact-finding hearing. Adequate time between the hearings, not to exceed 15 working days, shall be allowed to permit the Court to consider the dispositional alternatives that are in the best interests of the Indian child.

~~Notice to the parties. The court may, at its discretion, require notice to the parties of the date of the dispositional hearing.~~

~~Dispositional hearing.~~

(b) Rights of the parties. All rights available at the fact-finding hearing shall be provided at the dispositional hearing. If the dispositional hearing is scheduled for a separate proceeding at a later date than the fact-finding hearing, the notice requirements of this law shall apply. The Indian child shall be physically

present at the dispositional hearing if over ten (10) years of age unless the Court determines that the child would likely suffer severe emotional harm as a result of such presence. Otherwise the presence of the child shall be in the discretion of the Court. The Court in its discretion may confer with the child with only the Guardian ad litem present in order to determine the child's desires concerning disposition.

(c) Evidence. At the dispositional hearing the Court shall hear evidence and the parties shall have the right to introduce evidence on the matter of proper disposition. The Court shall consider all relevant reports submitted at the hearing in making a disposition, including any reports prepared by the child and his or her representative.

(d) Disposition.

(1) Standard for Disposition. The Court shall make such disposition as is in the best interests of the Indian child, which shall include consideration of the child's continued relationship with the Nation.

(2) Order of preference. The Court shall order one of the following dispositions, listed in suggested order of preference:

(i) to the custody of the Parent or Guardian with supportive service to the family unit so that it may remain intact;

(ii) to the temporary custody of a person related by blood, marriage or clan to the child within or outside of Nation territory;

(iii) to the temporary custody of an approved Indian foster care home provider;

(iv) to the custody of the Nation for placement at approved shelter care within the Nation; or

(v) to the custody of a non-Indian foster care home or institution within or outside the Nation, provided, that such home or institution shall not also be used for delinquent children, except that the Court may request that the child be placed in a state or county operated facility which is also used for delinquent children where such placement is the least restrictive available alternative, or where the facility would provide education or treatment that is appropriate for the child's special needs and is not available in a less restrictive setting. Placement must be in reasonable proximity to the Parent or Guardian whenever possible.

(3) In any order of disposition, the Court may prescribe such counseling, treatment, standards or conduct, and visitation provisions for the Parent or Guardian as the Court deems necessary to protect the best interests of the child.

(4) Determining and changing placements. In determining the most appropriate placement of the child under subsection (2), the Court shall consider the ability of the prospective Custodian to provide minimal care and take into consideration the wishes of the child. In the event of an emergency, Child and Family Services shall be authorized to change the placement within or outside of the Nation and must notify the Court within seventy-two (72) hours

of such change. The Court, in its discretion or upon motion, may conduct a hearing to consider a change in placement. In deciding whether to hold a hearing or change placement, the Court shall consider the best interests of the child.

(5) Efforts to re-unite the family. Prior to any placements under subsection 2(ii)-(v) above, Child and Family Services shall make diligent efforts to prevent or eliminate the need for removal of the Indian child from his home, or, if the child has already been removed from home, to make it possible for the child to return home. At the dispositional hearing, the Court shall determine whether such efforts have been made, and if they have not, shall order the Child and Family Services to take reasonable corrective action.

(6) Visitation. Supervised or unsupervised visitation between the Parent(s) and the Indian child will occur at least bi-weekly, unless otherwise ordered by the Court.

#### Section 4.8. Confidentiality.

(a) All hearings held pursuant to this law shall be (i) conducted in closed and private chambers; (ii) the names all children involved shall not be published; and (iii) a record of all proceedings shall be made and preserved with the Court.

(b) All Court records concerning children under this law, including social, medical, and psychological reports, shall be kept confidential and shall be open for inspection only upon Court order and then only to the following persons or agencies:

- (i) the child;
- (ii) the child's representative;
- (iii) the child's Parent, Guardian or Custodian and their representatives;
- (iv) the Child and Family Services Department; and
- (v) any other person having a legitimate interest in the case and in performance of their duties, as determined by the Court.

Section 4.9. Case Plan.

(a) For each child placed outside his home pursuant to either Section 3.1 or Section 5.1, Child and Family Services shall develop a case plan.

(b) The case plan shall be in writing and shall include the following: (i) a description of the type of home or institution where the child is to be placed; (ii) a discussion of the why the placement is appropriate; (iii) a description of the efforts the Child and Family Services will make to carry out any court orders with respect to the child; (iv) a plan for assuring that the child receives proper care and that services will be provided to the child, the Parents, and the foster parents to improve the conditions in the Parents' home and to facilitate either return of the child to his own home or to adoption, guardianship or permanent custody. The plan shall be updated in a timely manner, and the updates shall include a discussion of the services provided thus far under the plan. A Court hearing will take place every 3 to 6

months to review client compliance or non-compliance with the treatment plan.

Section 4.10. Sealing of Records.

Records of Indian children involved in proceedings under this law shall be physically sealed when the child reaches the age of eighteen (18) years. Upon reaching the age of eighteen (18) years any child involved in proceedings under this law may petition the Court to have such Court records destroyed. In any case, the Court may order such record, except those dealing with termination of the Parent/child relationship to be destroyed 10 years after the child reaches the age of eighteen (18) years.

Section 4.11. Petition for Return of Removed Child.

(a) The Indian child, the child's authorized representative or Parent or Guardian may petition the Court for return of an abused, neglected, or abandoned child to the Parent or Guardian at any time. The petition shall be in writing, but need not be in any particular form.

(b) The Court shall return the child if a preponderance of the evidence indicates that the child would not be in danger of being abused, neglected or abandoned upon return to the Parent or Guardian.

(c) Upon receipt of a petition for return of a child, the Court shall order a social study. If after consideration of the petition and social study, the Court determines that the child

might safely be returned to the Parent or Guardian, the Court shall order and hold a hearing on the matter, following the procedure set forth above.

Section 4.12. Periodic Review of Removed Child.

(a) Whether or not a petition for return is filed, the Court shall hold a hearing within ninety (90) days to determine if the facts underlying the original removal still exist. Subsequent hearings shall be held every six months. For children who have been in the same placement for three years or more, the Court in its discretion may extend the review period to one year.

(b) The Court shall return the child if a preponderance of the evidence indicates that the child would not be in danger of being abused, neglected or abandoned upon return to the Parent or Guardian.

(c) At the hearing, if the Court determines that the child should not be returned to the Parent or Guardian, the Court shall establish a timetable by which the child may be returned home or placed for adoption or legal guardianship.

Article 5. Voluntary Placements

Section 5.1. Voluntary Placements.

(a) A Parent or Custodian may, on a voluntary basis, transfer care, custody and control of their Indian child to the Nation, as a ward of the Nation, and placement under the direction of Child and Family Services, provided, that Child and Family Services

reserves the right to refuse to accept a voluntary placement when it is not deemed to be in the best interests of the child. Such transfer shall be by means of a written voluntary placement agreement between the Parent or Custodian and Child and Family Services. The child shall then be placed, under the direction of Child and Family Services, according to the preferences set forth in Section 4.7(d).

(b) If the agreement states that the child shall be returned by a certain date or after the occurrence of a certain event, the child shall be returned at that time, provided, that if a petition has been filed under this law and the Court has made a finding that the return of the child would likely not result in the abuse, neglect, or abandonment of the child. If the agreement does not specify a time upon which the child is to be returned, Child and Family Services must return the child upon 20 days' written notice from the Parent or Guardian, provided, that if a petition has been filed under this law and the Court has made a finding that the return of the child would likely not result in the abuse, neglect, or abandonment of the child.

(c) Prior to signing the agreement, the Parent or Guardian shall be informed that he or she has the right to supportive services, to visit the child, and to have the child returned subject to the provisions of this section.

(d) No child shall remain in voluntary placement for more than six months without a finding by the Court that the placement is appropriate. Unless the Court finds that this would not be in



the best interests of the child, the Parent or Guardian shall retain the right to return of the child.

Article 6. Termination of Parental Rights

Section 6.1. Termination of Parental Rights-Legal Effect.

Parental rights termination ends permanently the legal relationship between the Parent and child and frees the child for adoption. It shall not affect the child's enrollment or eligibility for enrollment with the Nation.

Section 6.2. Filing a Petition.

(a) A Parent may voluntarily file a petition for the termination of the parent-child relationship.

(b) A Parent may file a petition for the termination of the parent-child relationship between the other Parent and the child for the purpose of adoption.

(c) A Guardian, any other person having a legitimate interest in the child, or the Nation, may file a petition for the termination of the parent-child relationship with respect to either or both Parents.

Section 6.3. Grounds for Termination of Parental Rights.

Parental rights may only be terminated upon the basis of the voluntary consent of a Parent, abandonment, mental illness or mental retardation, permanent neglect, severe abuse or repeated abuse.

Section 6.4. Contents of the Petition.

The petition for termination of the parent-child relationship shall include:

- (a) The name and place of residence of the petitioner;
- (b) The name, sex, date, and place of birth, and residence of the Indian child;
- (c) The relationship of the petitioner to the child, if any;
- (d) The names, addresses, dates of birth of the Parents, if known;
- (e) Where the child's Parent is a Minor, the name and address of the child's grandparents, if known;
- (f) If applicable, the names and addresses of the person having Guardianship of the child; and
- (g) The grounds upon which termination of the parent-child relationship should be based.

Section 6.5. Home Study Prior to Hearing.

When the Court receives a petition it shall request a home study to be submitted in writing prior to the hearing from Child and Family Services. Such report shall be submitted to the Court ten (10) days prior to the hearing.

Section 6.6. Notice.

(a) After a petition has been filed and the home study completed, the Court shall set the time and place for a hearing. The Court shall cause notice to be given by hand delivery of a

summons to the petitioner, the Indian child, the Parents and/or Guardian, and such other persons as the Court determines are necessary for the proper adjudication of the matter. Notice shall provide the date, time and place of hearing. Notice to the child and Parent shall specify that each shall have the right to retain counsel at their own expense, to be present; and to testify, present documentary evidence, call witnesses, and ask questions of all witnesses.

(b) Where, after diligent attempts have been made to serve the summons by hand have been unsuccessful, alternative service may be accomplished by as set forth under the Nation Peacemakers Court Civil Procedure Rules.

(c) In the case of a voluntary petition of a Parent, the Parent may waive, in writing, notice and appearance in Court, provided the Court is assured that the Parent understands the meaning and consequences of the termination action, provided, that where the Parent is a Minor, waiver shall not be effective.

Section 6.7. Hearing.

In the Court's discretion, the Indian child may be physically present at the hearing which shall be closed to the public. The Court may require the testimony of a physician or child care expert based on examination of the child. The petitioner, the child, the child's authorized representative, and the Parent and/or Guardian or the Court may summon or produce such witnesses or evidence as they may desire.

Section 6.8. Order.

The Court shall terminate the rights of the Parent and/or Guardian if the Court shall find after hearing that there is clear and convincing evidence that:

(a) (i) the child has continuously or repeatedly been abused, neglected, or abandoned for a period of one year or more and

(ii) the services available cannot adequately reduce the likelihood of further abuse, neglect or abandonment or there is no other way to protect the child from the risk of serious physical injury, or

(b) The Parent whose rights are to be terminated consents to the termination.

Article 7. Adoption

Section 7.1. Adoption Proceeding.

The Court shall have authority to authorize the adoption of Indian children by suitable persons.

Section 7.2. Case Study.

(a) In all adoption proceedings of a Seneca child, a case study will be required requesting Child and Family Services involvement in finding and evaluation of a prospective adoptive home for a child.

(b) The case summary will include, but not be limited to: (1) demographics of the family and child; (2) history of the child,

including behavioral problems, social issues, placement history, and family problems; (3) medical history of family and child; (4) psychological evaluations; and (5) family background, including traditional or non-traditional family, family connection to the tribe, why the Parents want or do not want the child adopted by a Indian family.

(c) In proceedings occurring in the Court, Child and Family Services shall (i) conduct the case study and make placement recommendations and (ii) petition the Court for finalized adoption.

#### Section 7.3. Adoptions outside of the Peacemakers Court.

(a) In all proceedings involving the adoption of a Seneca Indian child other than in the Peacemakers Court, Child and Family Services must be notified. Child and Family Services shall have authority to seek removal of the proceeding to the Peacemakers Court, to conduct a home study and, if removal is not sought, to monitor all proceedings.

(b) No person shall voluntarily surrender a Seneca child to a non-Indian family for adoption without the consent of the Nation. Child and Family Services shall establish guidelines for the Nation to give or withhold its consent to such adoptions.

#### Section 7.4. Adoption Preference.

(a) Once an Indian child is freed for adoption through the adjudication of permanent neglect, abandonment, or voluntary

surrender the following order of preference will be followed when looking for an adoptive home:

(1) to a person(s) related by blood, marriage or clan to the child within or outside of Nation territory;

(2) to an unrelated member of the Nation within or outside of Nation territory;

(3) to a member of another Indian nation or tribe within the Nation;

(4) to a member of another Indian nation or tribe outside the Nation;

(5) to a non-Indian within the Nation; or

(6) to a non-Indian outside the Nation.

(b) Child and Family Services will explore all possibilities of placement for the child and shall develop a plan for placement.

(c) Home studies must be completed for all prospective adoptive families.

(d) Once a suitable family is found for the child, Child and Family Services will notify the Court and request a hearing. Between placement and the time that final order of adoption is issued, which shall not exceed six months, Child and Family Services will monitor the case to aid in a successful transition.

#### Section 7.5. Adoption with a Non-Indian Family.

Non-Indian adoptive Parents shall insure that the Seneca child retains a connection to the Nation and the Seneca culture.

Section 7.6. Independent Living.

If a child who is fourteen (14) years or over does not wish to be adopted, an independent living goal can be established, with guardianship appointed, in order to allow the Indian child to remain in the community.

Section 7.7 Enrollment of Seneca Children After Adoption.

The Clerk of the Nation shall, upon receiving written certification from Child and Family Services that a child who is enrolled or eligible in the Nation has been adopted, issue the child a new enrollment number not associated with the biological Parents of the child.

Section 7.8. Relinquishment of Jurisdiction.

(a) Child and Family Services must approve all requests to relinquish jurisdiction over a Seneca child to an outside court system.

(b) Child and Family Services shall obtain all necessary information and, if, upon consultation with the Nation Department of Justice, it is determined to be in the best interests of the child, it shall notify the outside Court system of the decision of the Nation to relinquish jurisdiction over the Seneca child.

## Article 8. Foster Homes

### Section 8.1. Nation Licensing.

(a) The Nation Foster Home licensing Program ("FHLP") is designated the sole licensing authority for Indian and non-Indian foster homes used for placement of Indian foster children within the Nation.

(b) The FHLP shall license non-Indian foster homes only if it appears that there are insufficient Indian foster homes within the Nation to accommodate all Indian children in need of foster care.

### Section 8.2 Placement of Children.

All Indian children to be placed in foster homes shall be placed in foster homes licensed by the FHLP.

### Section 8.3. Licensing Criteria.

In determining whether to license a foster home, the FHLP's primary consideration shall be the ability of the foster parents to provide minimal care and a loving and stable environment for the foster children.

### Section 8.4. License Application.

(a) The heads of household for all prospective foster homes must file an application for license with the FHLP. This requirement applies to unlicensed homes where children have already been placed. The term "head of household" includes all persons eighteen (18) years of age or older who will assist with the care



of the foster children, and includes both Parents in any two-parent household.

(b) The application shall be in a form prescribed by the FHLP. It shall include three character references for each head of household and releases of information executed by the heads of household for use by the FHLP in obtaining information pertinent to the application from the Indian Health Service, Bureau of Indian Affairs, the Court and other relevant agencies. All information shall be used solely to evaluate the fitness of the petitioners as foster parents and shall not be released to any outside individual or agency.

Section 8.5. Initial Home Visit.

Upon receipt of a complete application, Child and Family Services shall visit the home for the purpose of interviewing the heads of household and evaluating the physical condition of the home.

Section 8.6. Preliminary Determination.

Upon completion of the home visit, Child and Family Services shall preliminarily determine whether, based on the information obtained from the application and the home visit, the prospective foster home should be licensed.

Section 8.7. Further Investigation.

If the preliminary determination is positive, Child and Family Services shall contact the character references and other appropriate sources to obtain further information pertinent to the suitability of the foster home. Such information shall include, but not be limited to, the following: whether the prospective foster parents suffer from physical or emotional disorders or have a history of drug or alcohol abuse and whether they have been previously prosecuted for offenses that could pose a threat to the well-being of children placed in the home.

Section 8.8. Final Determination.

(a) After completion of the investigation, Child and Family Services shall make a final determination as to whether the home should be licensed. In making this determination Child and Family Services shall decide whether the prospective foster parents could provide minimal care and a loving and stable environment for foster children. Child and Family Services shall also decide how many children the home will be licensed to accept and the ages of those children.

(b) A home study must be completed for all foster parents, whether licensed or not. For licensed homes, a yearly home study update will be completed by Child and Family Services.

Section 8.12. Emergency License Revocation.

If Child and Family Services receives information, either during a regularly scheduled inspection or from any other source, that conditions exist at any licensed foster home that could pose an immediate threat to the physical or emotional health or safety of any foster child, Child and Family Services shall investigate the situation. If Child and Family Services finds probable cause to believe that a situation exists that could pose an immediate threat to the physical or emotional health or safety of any foster child, Child and Family Services shall immediately revoke the license of that foster home. As soon as practicable, Child and Family Services shall notify at least one of the foster parents either orally or in writing that the license has been revoked.

Section 8.13. Revocation Hearings.

Promptly after Child and Family Services revokes the license, it shall inform the foster parents in writing that they have the right to request a hearing within five days of receiving the notice. The notice shall inform the foster parents that the issue to be addressed at the hearing is whether the license shall be permanently revoked, shall state the reasons for the temporary revocation and shall inform the foster parents that they have the right to present testimony on their own behalf and to be represented by counsel at their own expense.

Section 8.14. License Revocation; Decision.

Appeal of a license revocation shall be to the Court. The Court shall schedule a hearing within five days of the request for hearing. Within five days of the hearing, the Court shall render a decision and inform the foster parents in writing. In its discretion, the Court can reinstate the license contingent on fulfillment of certain conditions.

Section 8.15. Revocation Absent Hearing.

If, after the expiration of the five day period following the notice, no hearing has been requested, the license shall be revoked.

Section 8.16. Non-emergency License Revocation.

If Child and Family Services receives information, either during a regularly scheduled inspection or from any other source, that conditions exist at any licensed foster home that do not pose an immediate threat to the physical or emotional health and safety of any foster child, but which could cause such a threat in the future or could adversely affect the ability of the foster parents to provide minimal care and a loving and stable environment for the foster children, Child and Family Services shall investigate the situation. If there is found probable cause to believe that a situation exists that could pose a threat to the physical or emotional health or safety of any foster child, or adversely affect the ability of the foster parents to provide a loving, safe,

healthy, and stable environment for foster children, Child and Family Services shall notify the foster parents in writing that it is considering license revocation. The notice shall state the reasons that revocation is being considered, and shall otherwise conform to the notice described in Section 4.6(b) of this Law. The hearing and the decision shall be in accord with the procedures described in Section 4.4.

Section 8.17. Coordination with Court.

When Child and Family Services revokes a license, either on an emergency or non-emergency basis, they shall immediately (i) remove the foster children from the home and make other arrangements for them in accordance with the order of preference established in Section 4.7(d)(2) of this Law and (ii) inform the Court that the children have been removed and placed in a different home, and the Court shall make such further orders concerning the child's placement as are appropriate under articles 3 and 4 of this law.