

Actions Between Parents Law

SENECA NATION

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1. Purpose. The purpose of this law is to provide meaningful standards regarding the establishment of paternity, legal custody, placement, and access in terms of actions between parents. This law also provides for access with the child for adult family members of the child in certain situations. However, any allegations of child abuse or neglect shall be reported under the Seneca Nation's Child Welfare Law, or other applicable law of the jurisdiction where the child resides.

2. Definitions.
 - a. "Access" shall mean the right to visit the child.
 - b. "Adult" shall mean a person of eighteen (18) years of age or older, or a person who has been emancipated by an order of a court of competent jurisdiction.
 - c. "Best interests of the child" shall mean all factors that contribute to the child's health and well-being including, but not limited to:
 - i. Having a full, meaningful, and loving relationship with both parents and extended family
 - ii. The emotional ties and relationships between the child and their parents, siblings, and other caregivers and household members;
 - iii. The ability to provide for the child's basic needs including food, clothing, shelter, medical care, and dental care;
 - iv. The protection of the child from abuse and neglect;
 - v. The presence of domestic violence in the home, in front of the child, or involving the child;
 - vi. The mental and physical states of the parties involved, to the extent it affects caregiving of the child;
 - vii. Special needs of the child;
 - viii. The commitment of the parent to connect the child to Seneca culture, Seneca community, and immediate and extended family members, if the child is a member or eligible for enrollment;
 - ix. The preference of the child;
 - x. Any other factor that may be relevant to the determination as provided by evidence on the record.
 - d. "Child" shall mean a person younger than eighteen (18) years of age who has not been emancipated by a court of competent jurisdiction.
 - e. "Child abuse" shall mean intentional conduct involving the child or is committed in the presence of the child, that results in serious physical or emotional injury to the child, including but not limited to:
 - i. Serious bodily injury, which shall include lacerations; fractured or broken bones; burns; internal injuries; severe or frequent bruising; any bodily injury which causes a serious disfigurement or protracted loss or impairment of the function of a body part, sense or organ; and any other bodily injury which creates a substantial risk of death;

- ii. Child sexual assault, which includes sexual assault, sexual contact, sexual molestation, sexual exploitation or prostitution of the child or involving the child, and;
 - iii. Psychological or intellectual damage, as evidenced by a substantial and observable change in behavior, emotional response or cognition that is abnormal for the child's age and development.
- f. "Child neglect" shall mean the failure, refusal, or inability of the caregiver to provide for the child's basic needs, including, food, clothing, shelter, and medical and dental care, that seriously endangers- the physical health of the child.
- g. "DNA test" shall mean a genetic marker test of the deoxyribonucleic acid between two or more individuals.
- h. "Eligible for enrollment" shall mean a person who is not an enrolled Nation member, but who otherwise meets the substantive enrollment qualifications of the Nation.
- i. "Family" shall mean any person related to the child through blood, marriage, adoption or clan.
- j. "Father" shall mean a man whose paternity has been established through any of the following:
 - i. Signing the birth certificate;
 - ii. Signing a valid acknowledgement of paternity;
 - iii. A valid DNA test verifying paternity;
 - iv. An adoption order by a court of competent jurisdiction; and/or
 - v. A court order by a court of competent jurisdiction adjudicating him as the father.
- k. "Guardian" shall mean an adult, other than a parent of the child, who was granted legal custody over the child by order of a court of competent jurisdiction. Hereinafter, "guardian" shall refer to a singular guardian of the child or a pair of guardians of the child.
- l. "Guardian ad litem" shall mean an adult appointed by the Court to protect the interests of a child throughout the duration of the case.
- m. "Legal custody" shall mean the authority to make significant long-term decisions on behalf of the child. One parent may have sole legal custody, or both parents may share joint legal custody.
- n. "Native nation" shall mean any Indian Nation recognized by the government of the United States of America or any First Nation recognized by the government of Canada.
- o. "Mother" shall mean the biological mother of the child or the adoptive mother with an adoption order by a court of competent jurisdiction.
- p. "Nation" shall mean the Seneca Nation of Indians.
- q. "Nation member" shall mean a person enrolled with the Nation.
- r. "Physical placement" shall mean where a child live and who is responsible for their daily care. One parent may have sole physical placement, or both parents may share joint physical placement.
- s. "Parent" shall mean the "Mother" or "Father" as defined under this section.

- t. "Putative father" shall mean the possible biological father to the child whose paternity has not yet been established.
 - u. "Residence" shall mean the residence where the person lives. The child's residence is the same as their parents'. In the event the parents do not live together, the child's residence is with the parent with physical placement over fifty percent of the time.
3. Jurisdiction of the Court. The Court shall have jurisdiction over the following:
- a. Any child who resides on territory and:
 - i. Is a Nation member or eligible for enrollment in the Nation;
 - ii. Is enrolled or eligible for enrollment with any Native nation;
 - iii. Is the child of a Nation member;
 - b. Any child who is a Nation member is or is eligible for enrollment in the Nation who resides off-territory, with the consent of parents; and
 - c. Any proceeding involving legal custody or physical placement of the child, or access with the child transferred to the Court from another jurisdiction pursuant to federal, state or law of another Native nation.
4. Rule of Comity. Where a court of another jurisdiction has subject matter jurisdiction and personal jurisdiction over the child and initiated a proceeding regarding legal custody or physical placement of the child, or access with the child prior to a proceeding initiated in Peacemakers' Court, the Court shall dismiss suit under the rule of comity. The Court may also recognize or domesticate final orders from another jurisdiction if that court had proper subject matter jurisdiction and personal jurisdiction over the child at the time of filing of the proceeding.
5. Notice.
- a. Timing. The Court shall provide persons entitled to notice with notice of all hearings at least seven (7) days prior to the hearing, except for emergency hearings.
 - b. Persons Entitled to Notice. Notice must be provided for any of the actions in this law to the following persons:
 - i. The parents or legal guardians of the child subject to the proceedings within this Law;
 - ii. Appointed guardians ad litem;
 - iii. Known putative fathers in proceedings for any of the actions in this law provided the mother has signed a written statement or made an oral statement in court naming him as a putative father of the child;
 - iv. The child if the child is fourteen (14) years of age or older and of suitable maturity.

- c. Alternative Service. Where personal service cannot be made under the Seneca Nation Peacemakers' Court and Surrogate's Court Civil Procedure Rules under §5-103 to the parent or guardian, the Court may approve service by electronic mail or social media account a party attests that they have communicated with the parent or guardian in the recent past, in addition to completing one of the other means of alternate service in §5-103(h).

6. Guardian ad Litem.

- a. Appointment. For every action under this law, a guardian ad litem shall be appointed for the child and present the child's position before the court. The guardian ad litem may substitute the child's position for the best interests of the child if the child lacks the capacity to make a judgement or the child's positions are likely to result in a substantial risk of imminent and serious harm to the child.
- b. Responsibilities. The guardian ad litem shall:
 - i. Have access to the child and meet with the child as soon as practicable after appointment;
 - ii. Meet with the child a minimum of three (3) times before the hearing, except for emergency hearings;
 - iii. Visit the parent's residence to assess whether the parent's residence is safe and the child has or would have adequate space, bedding, and supplies;
 - iv. Review evidence and records submitted to the Court;
 - v. Interview:
 - 1. The parent or guardian;
 - 2. Nation Family Support Services' case workers or case managers regarding the history of the parent's prior indicated child welfare cases or open child welfare investigations; and
 - 3. any other person who may have relevant information.
 - vi. Provide a written or oral report to the Court on their findings, conclusions, and recommendations, citing supporting facts and evidence, based on the position of the child or the best interests of the child where the child lacks the capacity to make a judgement or the child's position is likely to result in a substantial risk of imminent and serious harm to the child;
 - vii. Recommend evaluations, assessments, services, or treatment of the child, as appropriate;
 - viii. Submit motions or petitions on behalf of the child; and
 - ix. Follow any other duties as directed by Court.

- c. Qualifications. The guardian ad litem shall be at least twenty-one (21) years of age and must pass a criminal background check including submitting fingerprints for criminal records check of the National Crime Information Databases (“NCID”) and a child abuse and neglect registry check. A person may not practice as guardian ad litem if they were convicted of a felony involving:
 - i. Child abuse or neglect;
 - ii. Spousal abuse;
 - iii. Crime against children including child pornography;
 - iv. Crime involving violence, including rape, sexual assault or homicide, but not including physical assault or battery conviction older than five years.
 - v. Any felony conviction within the last five years involving physical assault, battery or any drug-related offense.
- d. Training. The Court shall provide mandatory training for guardians ad litem including on interviewing the child, child development, trauma-informed care, ethics of guardian ad litem representation, and cultural sensitivity.

7. Mediation.

- a. Order for Mediation. The Court may order the parties to attend mediation for an agreement in whole or in part for any issue at any stage of the case on its own motion or by the motion of any party with agreement from the parties. The Court shall not order mediation where there is evidence one party may be a danger to the health and safety of the other party.
- b. Mediators. The Court may appoint a mediator, or the parties may hire a private mediator at the expense of the parties. The parties shall provide the mediator’s name and date of the mediations with the Court Clerk.
- c. Qualifications. A mediator shall have at least twenty-five (25) hours of mediator training, including training on domestic violence. A Judge may serve as a mediator if the Judge has the required training, is not an appointed Judge on this case, and does not have a conflict with the parties, unless the conflict is waived by the parties.

- e. Agreement. Any agreement that resolves the issues of legal custody and physical placement of a child or access with a child that is reached as a result of the mediation shall be prepared in writing and reviewed by the parties prior to being stipulated to the Court. The Court may reject the agreement if it is not in the best interests of the child in a written order.

8. Establishment of Paternity.

- a. Who May Petition. A mother, guardian, or a putative father may petition to establish paternity alone or in conjunction with a petition for legal custody, physical placement, access with the child, and/or child support.
- b. Timeframe.
 - i. The respondent shall have thirty (30) days after the petition is served, excluding the day of service, to file an answer or motion of dismissal. In the event the thirtieth day falls on a weekend or holiday, the time shall be extended to the following day.
 - ii. A counterclaim shall be answered within twenty (20) days, excluding the day of service.
 - iii. The Court shall hold a hearing to establish paternity of the child with all parties within thirty (30) days after the time to respond to the petition has elapsed. Any party may request an extension up to thirty (30) days.
- c. Standard of Hearing. The Court shall adjudicate the putative father as the father of the child in the event:
 - i. The mother and the putative father agree the putative father is the father of the child;
 - ii. The putative father submitted to a Court-ordered DNA test and the DNA test verified the putative father is the father of the child; or
 - iii. The putative father held himself out to be the father of the child for a period of five years or more by a preponderance of the evidence.
- d. Disestablishment of Legal Fatherhood. Where a putative father or mother wishes to establish paternity of a putative father for a child that has a legal father, the legal father must be disestablished prior to allowing the paternity to be established for the putative father. This is a two-step process which places conditions on when a DNA test may be ordered for the putative father and allows the disestablishment to be conditioned upon the results of the putative father's DNA test.
 - i. The Court may order a DNA test for the establishment of paternity of a putative father if the child has a legally established father in the event:
 - 1. The putative father or mother can establish the best interests of the child would be served in disestablishing the legal fatherhood of the legal

father and establishing the putative father as the father of the child by a preponderance of the evidence; or

2. The legal father agrees to a paternity test for the putative father.
 - ii. The Court may not order a DNA test for the establishment of paternity for a putative father where the legal father opposes being disestablished as the legal father of the child and he can show he has a long-standing, extensive, and loving parent-child relationship by a preponderance of the evidence.
 - iii. In the event the DNA test shows the putative father is the biological father of the child, the Court may order the disestablishment of legal fatherhood for the respondent father of the child and establish the putative father as the legal father of the child. However, if the DNA test does not prove the putative father is the biological father of the child, the Court shall not disestablish the legal father of the child.
9. Legal Custody, Physical Placement, and Access Petitions.
- a. Who May Petition. A parent or putative father may petition for legal custody and physical placement of the child or access with the child against the other parent of the child. A putative father must establish paternity under Section 8 of this law before proceeding with a petition under this section.
 - b. Timeframe.
 - i. The respondent shall have thirty (30) days after the petition is served, excluding the day of service, to file an answer or motion of dismissal. In the event the thirtieth day falls on a weekend or holiday, the time shall be extended to the following day.
 - ii. A counterclaim shall be answered within twenty (20) days, excluding the day of service.
 - iii. The Court shall hold a hearing for legal custody and physical placement of the child, or access with the child with all parties within thirty (30) days after the time to respond to the petition has elapsed. Any party may request an extension up to thirty (30) days.

- c. Standard of Hearing for Legal Custody. The Court will presume the best interests of the child include joint legal custody of the child unless a parent can show sole legal custody by one parent is in the best interests of the child by a preponderance of the evidence. The Court may designate each parent have a sphere of influence for which they are responsible based on physical placement time or subject matter for decisions related to education, non-emergency medical care, religion or extra-curricular activities where it is in the child's best interests to maintain joint legal custody and the parents cannot agree on one or more subject areas.
- d. Standard of Hearing for Physical Placement. The Court shall order the sole or joint physical placement of the child in the best interests of the child by a preponderance of the evidence. The Court shall also consider the following in the determination of best interests of the child:
 - i. The location of the parents' residences and the distance between the residences;
 - ii. Whether the parent's residence is safe and the child would have adequate space, bedding, and supplies;
 - iii. The history of where the child has resided and the makeup of the household in which the child has resided in;
 - iv. The child's adjustment to the home, school, and community;
 - v. The schedules of the parties;
 - vi. The availability of childcare services;
 - vii. The cooperation and communication between the parents; and
 - viii. Any other factor that may be relevant to the determination as provided by evidence on the record.
- e. Standard for Hearing for Access with the Child.
 - i. Presumption. The Court will presume access by the parent without sole physical placement is in the best interests of the child unless the parent with sole physical placement can show access by the other parent is not within the best interests of the child by clear and convincing evidence. However, the Court will also presume that access is not within the best interests of the child if the parent has been charged or convicted of the following crimes, unless the charges were dismissed or the parent was found not guilty:
 - 1. Murder, manslaughter, or had aided, abetted, attempted, conspired or solicited murder of a child in the care of the parent, or the other parent of a child of the parent;
 - 2. Felony assault against a child in the care of the parent that resulted in serious bodily injury;
 - 3. Felony sexual assault against a child of the parent; or
 - 4. Felony sexual assault against the other parent and parenthood of the child was the result of the sexual assault.

- ii. Restrictions. The Court may order such restrictions on access including supervised access or public access with the child where there is credible evidence of behavior of the parent that affected the child's health, safety, or well-being while the child was in their care. The Court shall accept testimony from the parties of people who could supervise access.
- iii. Schedule. The parties shall provide testimony regarding:
 - 1. Their work schedules;
 - 2. The child's school schedule;
 - 3. The schedule of the child's extracurricular activities;
 - 4. The resources of the parents to transport the child and have a safe space for access with the child;
 - 5. Whether the family attends religious gatherings or ceremonies; and
 - 6. Any other evidence of the schedules of the parties.

f. Final Orders.

- i. Written Orders. The Court shall issue a written order with a reasoned decision supported by a preponderance of the evidence on issues disputed by the parties. Where the parties have entered into an agreement on any issue, the Court may approve the agreement unless the agreement is not within the best interests of the child.
- ii. Legal Custody. An order for legal custody must include whether the parties are awarded joint legal custody to make decisions on behalf of the child or sole legal custody to one party.
- iii. Physical Placement and Access Orders. An order for the physical placement and access of a child must include the following, unless one parent is granted sole custody with no access to the other parent:
 - 1. A schedule of custody and/or access which addresses birthdays, religious holidays or ceremonies, secular holidays, school breaks, and a yearly vacation option for each parent entitled to unsupervised access of the child;
 - 2. Restrictions on communication or access of the parties for the safety of the parties or the child, if applicable, including:
 - a. Supervised exchanges of the child;
 - b. Public exchanges of the child;
 - c. Supervised physical placement and/or access by a supervisor approved by the Court;
 - d. Restrictions on communication such as a notebook, a computer software application or app, or other technology
 - e. Any other conditions that the Court determines are necessary for the safety and well-being of the child or other parent.

10. Petitions for Access with the Child by Adult Family Members.

- a. Who May Petition. Adult family members of the child may petition for access with a child subject to this law to establish or maintain their relationship with the child in the event:
 - i. The parent who the petitioning adult family member is related to is deceased, incapacitated, incarcerated, deployed, or otherwise unable to facilitate access through that parent; or
 - ii. The parent who the petitioning adult family member is related to does not have access with the child or does not exercise access with the child.
- b. Timeframe.
 - i. The respondent shall have thirty (30) days after the petition is served, excluding the day of service, to file an answer or motion of dismissal. In the event the thirtieth day falls on a weekend or holiday, the time shall be extended to the following day.
 - ii. The Court shall hold a hearing for family member access with the child with all parties within thirty (30) days after the time to respond to the petition has elapsed. Any party may request an extension up to thirty (30) days.
- c. Standard of Hearing. The Court shall grant access to the child if access by the family member is within the best interests of the child by the preponderance of the evidence. The Court may order such restrictions on access to protect the safety and well-being of the child. In considering whether the adult family member should have access to the child and whether there shall be any restrictions on access, the Court may consider:
 - i. The degree of relation the petitioner is to the child;
 - ii. The prior relationship the petitioner had with the child;
 - iii. Any criminal history of the petitioner which could impact the safety and well-being of the child;
 - iv. The degree of access with the child by the petitioner that is feasible with the parties' schedules and resources;
 - v. Any other factor that could impact the safety and well-being of the child in the event the petitioner is provided access to the child.

11. Modification of Final Orders.

- a. Who May File. A modification of a Final Order may be requested by a party to the final order where the party can show there has been a substantial change of circumstances necessitating a change in the legal custody, physical placement, or access schedule and it is in the best interests of the child.
- b. Emergency Hearing. Where there are allegations the other party placed the child at risk for significant physical or emotional harm or actual significant physical or emotional harm has occurred, the Court may suspend the placement or access schedule until an emergency hearing can be held on whether it is safe for the child to resume the physical placement or access schedule until the modification hearing can be heard. The emergency hearing shall be held within thirty (30) days.
- c. Modification by Agreement. The parties may agree to modification of the order of legal custody, physical placement, or access, and file a stipulation with the Court. The Court may incorporate the stipulation into a revised order of the agreement unless the agreement is not within the best interests of the child.
- d. Timeframe.
 - i. The respondent shall have thirty (30) days after the petition is served, excluding the day of service, to file an answer or motion of dismissal. In the event the thirtieth day falls on a weekend or holiday, the time shall be extended to the following day.
 - ii. A counterclaim shall be answered within twenty (20) days, excluding the day of service.
 - iii. The Court shall hold a hearing for modification of a final order with all parties within thirty (30) days after the time to respond to the petition has elapsed. Any party may request an extension up to thirty (30) days.
- e. Standard of Hearing. The Court shall order a modification of the original order where a party can show by the preponderance of the evidence that the modification is necessitated by a substantial change in circumstances and is within the best interests of the child.
- f. Relocation Factors. The Court will consider it a substantial change in circumstances where one party seeks to relocate further than seventy-five (75) miles from where they currently reside and where the other parent resides for a modification hearing. The Court shall also consider the following factors in its decision whether to allow the relocation of a parent in its determination of the best interests of the child:
 - i. The reasons for the relocation;
 - ii. The reasons against permitting the relocation;
 - iii. The quality of relationship between the child and each parent;

- iv. The impact of the relocation on the child's future contact with the noncustodial parent;
- v. The benefits of the proposed relocation on the child's life; and
- vi. Whether other access schedules could preserve the relationship between the child and the parent who does not have primary placement of the child.

12. Enforcement of Orders.

- a. Who May File. A party to an order may file to enforce an order if more than one period of physical placement or access has been substantially interfered with by the other party. The Court may also enforce any order made during the pendency of a case if one party substantially interferes with physical placement or access of the other party or one party unreasonably refuses to cooperate or communicate with the other party for issues regarding the child for joint legal custody during the pendency of a case.
- b. Timeframe. The Court shall hold a hearing within thirty (30) days after the motion to enforce the order has been served.
- c. Standard of the Hearing. In the event the Court finds that a party has substantially interfered with more than one period of physical placement or access of the other party, or had unreasonably refused to cooperate or communicate for issues regarding the child for joint legal custody, the Court may:
 - i. Grant additional period of physical placement or access to replace those interfered with;
 - ii. Award the moving party a reasonable amount for the cost of maintaining this action and attorney's or lay advocate's fees;
 - iii. Find the responding party in contempt;
 - iv. Grant an injunction requiring the responding party to comply with the final order; and/or
 - v. Order the responding party to pay an amount to compensate the moving party for any financial loss associated with the periods of physical placement that the responding party interfered with.