

Child Welfare Law

SENECA NATION

KEITH WISNIEWSKI

Contents

1. Purpose.....	4
2. Definitions.....	4
3. Jurisdiction of the Court.....	6
4. Rule of Comity.....	6
5. Duty to Report Child Abuse and Neglect	6
a. Reports of Child Abuse and Neglect	6
b. Mandated Reporting.....	6
c. Referrals of Suspected Substance Abuse by Pregnant Persons to Family Support Services.....	7
d. Anonymity of Reporters.....	7
e. Immunity of Reporters.....	7
6. Duties of Family Support Services.....	7
a. Reports of Child Abuse and Neglect	7
b. Record Keeping Requirement.....	8
c. Certification of Foster and Adoptive Homes.....	8
d. Written or Oral Testimony before the Court.....	9
e. Communications with the Nation Attorneys.....	9
f. Family Placement Search	9
g. Reasonable Efforts Requirement.....	9
h. Active Efforts Requirement.....	10
i. Case Plan	11
j. Case Plan Review	13
7. Notice.....	14
a. Timing.....	14
b. Persons Entitled to Notice	14
c. Alternative Service.....	14
8. Guardian ad Litem.....	14
a. Appointment.....	14
b. Responsibilities	14
c. Qualifications	15
d. Training.....	15
9. Placements.....	15
a. Applicability.....	15

b.	Background Checks	15
c.	Search for Family Members	16
d.	Placement Preferences	16
e.	Good Cause to Deviate from Placement Preferences	16
10.	Petitions for Access with the Child.	16
a.	Timeframe for Hearing.....	17
b.	Standard of Hearing	17
c.	Modification.....	17
11.	Voluntary Placement.....	17
a.	Circumstances for a Voluntary Placement Agreement.....	17
b.	Court Approval of a Voluntary Placement Agreement	17
c.	Requirements for a Voluntary Placement Agreement	18
d.	Review Hearing	18
e.	Permanency Hearing.....	18
f.	Revocation.	18
g.	Breach	18
12.	Involuntary Placement.....	18
a.	Risk and Safety Factors for the Care and Custody of Children	18
b.	Procedures for the Removal of the Child.....	19
c.	Written Decisions Requirement.....	19
d.	Emergency Custody Hearing.....	19
e.	Transfer of Jurisdiction to the Court.....	19
f.	Transfer of Jurisdiction from this Court.....	19
g.	Efforts Hearing.....	19
h.	Fact-finding and Disposition Hearing.....	19
i.	Review Hearing	21
j.	Permanency Hearing.....	22
k.	Trial Reunification	22
13.	Guardianship Petitions.....	22
a.	Who May Petition	22
b.	Timeframe for Hearing.....	23
c.	Hearing Standard	23
d.	Order.....	23

e.	Extension of Guardianship	23
f.	Petition for Return to Parent.	23
14.	Termination of Parental Rights.	24
a.	Purpose	24
b.	Voluntary Termination of Parental Rights.	24
c.	Involuntary Termination of Parental Rights.....	25
15.	Adoption Petitions.	28
a.	Purpose	28
b.	Search for Family Members	28
c.	Adoption Files	28
d.	Eligibility for Adoption	28
e.	Timeframe for Adoption Petitions.....	28
f.	Who May Submit an Adoption Petition.....	28
g.	Home Study.....	29
h.	Timeframe for Hearing.....	29
i.	Hearing Standard.	29
j.	Placement Preferences Apply	29
k.	Voluntary Termination Agreements.	29
l.	Family Access Orders	29
16.	Foster Home Licensing.....	29
a.	Foster Home Licensing Authority.....	29
b.	Background Checks	29
c.	License Application and Required Documentation.....	29
d.	Home Inspection	30
e.	Home Study.....	31
f.	Preliminary Determination.	31
g.	Final Determination	32
h.	Issuance of License.....	32
i.	Requirements of a License.....	32
j.	License Revocation.....	32

1. Purpose. Ne'näh ha'degagön ha'didwadanoöhgwa'. It must be so that we all love each other. The purpose of this law is to promote the love we have between each other as a family, a community, and a Nation. We believe above all, our children must be loved and well cared for. This law should promote the relationships parents have with their children and recognize that although some parents may not be well equipped to raise their children, they can unlearn unhealthy behaviors and learn healthy ones. Occasionally, it may be in the best interests of the child to be permanently raised by another person. However, the relationships between the child and their parents, siblings, grandparents, other interested family members, and the child's community should be maintained and strengthened. Only in very rare instances where a child's relationship with their parents is completely severed because there are no precautions that can be taken to ensure the child's safety, or the parent does not consent to a relationship with the child.
2. Definitions.
 - a. "Adoption File" shall mean any documents or evidence submitted before the Court, and all Court petitions, motions, and orders filed, made, or issued during the pendency of any case under this Law which results in adoption of the child.
 - b. "Adoptive Parent" shall mean a person who has adopted the child by order of a court of competent jurisdiction.
 - c. "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.
 - d. "Best interests of the child" shall mean all factors that contribute to the child's health and well-being including:
 - i. The importance of family integrity and preference to keep the child's family intact;
 - 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 ability of the non-parental caregiver 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 provided the child is fourteen (14) years or age or older;
 - x. Any other factor that may be relevant to the determination as provided by evidence on the record.
 - e. "Child" shall mean a person younger than eighteen (18) years of age who has not been emancipated by a court of competent jurisdiction.

- f. "Child Abandonment" shall mean the parent or other adult legally responsible for the child deserts a child without making any provision for the child's physical health, safety or welfare and with the intention of wholly abandoning the child. Intent to wholly abandon the child is presumed if the parent has made no provisions for the child's wellbeing for a period of one year.
- g. "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.
- h. "Family Support Services" shall mean the Nation's department handling child welfare.
- i. "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.
- j. "Court" shall mean the Peacemakers' Court unless otherwise specified.
- k. "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.
- l. "Family" shall mean any person related to the child through blood, marriage, adoption or clan.
 - i. "Immediate family" shall mean the person's parents, stepparents, siblings, and children.
 - ii. "Extended family" shall mean any relatives who do not qualify as immediate family but are related by blood through a common ancestor of the person.
- m. "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; or
 - iv. A court order by a court of competent jurisdiction adjudicating him as the father.
- n. "Foster Parent" shall mean an adult who is certified through Family Support Services as a foster parent and has physical custody of the child.
- o. "Guardian" shall mean an adult 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.

- p. "Guardian ad Litem" shall mean an adult appointed by the Court to protect the interests of a child throughout the duration of the case.
 - q. "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.
 - r. "Mother" shall mean the biological mother of the child.
 - s. "Nation" shall mean the Seneca Nation of Indians.
 - t. "Nation Member" shall mean a person enrolled with the Nation.
 - u. "Parent" shall mean the mother, father, or adoptive parent as defined under this section. Hereinafter, "parent" shall refer to a singular parent or both parents.
 - v. "Parental rights" shall mean the rights to physical and legal custody of the child.
 - w. "Putative Father" shall mean the possible biological father to the child whose paternity has not yet been established.
 - x. "Residence" shall mean the residence where the person lives. The child's residence is the same as their parents'. If the parents do not live together, the child's residence is with the parent or guardian with physical placement of the child.
 - y. "Service Plan" shall mean the list of services ordered by the Court for the parent or guardian to complete to remediate the issues that led to removal of the child.
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 or is eligible for enrollment in the Nation who resides off territory, with the consent of parents; and
 - c. Any child welfare proceeding transferred to the Court from another jurisdiction pursuant to federal law, state law, 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 child welfare proceeding against the parents or guardian of 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. Duty to Report Child Abuse and Neglect.
- a. Reports of Child Abuse and Neglect. Any person who has reasonable suspicion that a child is or has been abused or neglected may make a report to the Statewide Central Register of Child Abuse and Maltreatment Hotline maintained by the New York State Office of Children and Family Services.
 - b. Mandated Reporting. Any person who is required to report suspected child abuse and neglect under New York Social Services Law and the following persons are mandated to report reasonable suspicions of child abuse or neglect to the Statewide Central Register of Child Abuse and Maltreatment Hotline:
 - i. Nation Marshals;
 - ii. First responders from Seneca Fire Department;

- iii. Nation Family Support Services employees;
 - iv. Nation Education Department Personnel who work with children;
 - v. Nation foster parents;
 - vi. Seneca Strong employees;
 - vii. Nation Community Center employees who work with children;
 - viii. Language employees who work with children;
 - ix. Any other person employed by the Nation who works with children.
- c. Referrals of Suspected Substance Abuse by Pregnant Persons to Family Support Services. The following persons must refer pregnant persons suspected of abusing alcohol or controlled substances to Family Support Services for preventative services:
- i. Nation Health System Physicians, Nurse Practitioners and Physician Assistants.
 - ii. Nation Health System Behavioral Health Services Psychiatrist, Psychiatric Nurse Practitioner, Licensed Mental Health Counselors, Licensed Social Workers, and Credentialed Alcohol and Substance Abuse Counselors.
 - iii. Seneca Strong employees.
- d. Anonymity of Reporters. The identity of reporters shall remain confidential and anonymous for those reporters who wish to remain anonymous.
- e. Immunity of Reporters. Any person who makes a good faith report of suspected child abuse or neglect shall be immune from civil and criminal liability in the Courts of the Nation.
6. Duties of Family Support Services. Family Support Services shall have the following duties under this law.
- a. Reports of Child Abuse and Neglect. For all reports of child abuse or neglect, Family Support Services must:
- i. Review and examine all allegations of potential child abuse and neglect and determine the appropriate response, if warranted, which may include offering services to the family or notifying law enforcement;
 - ii. Receive and evaluate referral information, conduct intake inquiries and determine whether to initiate or transfer child welfare proceedings;
 - iii. Attend home visits and visits with the child for Child Protective Services investigations for children who reside on Nation territory;
 - iv. Attend home visits and visits with the child for Child Protective Services investigations for children who do not reside on territory, if possible;
 - v. Ensure parents, guardians, and other family members are treated in a respectful and culturally sensitive manner during Child Protective Services investigations;
 - vi. Ensure children are treated in an age-appropriate, respectful and culturally-sensitive manner during Child Protective Services investigations;
 - vii. Determine whether a child should be removed under the emergency provisions of this law; and

- viii. Make appropriate referrals of cases to other child welfare agencies when appropriate and share information with other child welfare agencies if their assistance is required or desired.
- b. Record Keeping Requirement.
 - i. Family Support Services must keep records of any reports of suspected child abuse or neglect.
 - ii. Family Support Services must keep any information or documentation used or obtained during any child welfare case under this law or any other jurisdiction until the child, who is the subject of the proceeding, is twenty-eight (28) years of age.
- c. Certification of Foster and Adoptive Homes. Family Support Services must recruit, evaluate, certify, and recertify prospective foster and adoptive homes under Section 16 of this law, which includes:
 - i. Recruiting foster homes;
 - ii. Training prospective foster parents in thirty (30) hours of training for foster and adoptive parents, such as Group Preparation and Selection of the Model Approach to Partnerships in Parenting Program (GPS/MAPP);
 - iii. Providing in-services to certified foster homes;
 - iv. Providing twelve (12) hours of training required for recertification;
 - v. Completing the initial home visits of the prospective foster homes and inspection of certified foster homes on a bi-annual basis under Section 16 of this Law;
 - vi. Completing the home study of prospective foster homes under Section 16(e) of this Law;
 - vii. Ensuring the prospective and certified foster parents complete necessary documentation and assessments required by Section 16 of the Law;
 - viii. Issuing the licensure certificate; and
 - ix. Completing a home study for prospective adoptive homes under Section 15(g) of this law, which shall include:
 - 1. Information about any criminal history, other than crimes enumerated in Section 9(b) of this Law, raised by the background checks for all adults over the age of eighteen (18) years of age who live in the adoptive home;
 - 2. Information about the family's financial stability;
 - 3. Information about the family's physical and mental health;
 - 4. Information about the family's parenting skills; and
 - 5. Information about the family's motivation to adopt.

- d. Written or Oral Testimony before the Court. Family Support Services shall provide written or oral testimony before the Court for each action under this law.
- e. Communications with the Nation Attorneys. Family Support Services shall confer with and make recommendations to the Nation's attorneys;
- f. Family Placement Search. Family Support Services must identify, contact and evaluate family members and fictive kin of the child, which includes:
 - i. Requesting a genealogy from the Nation's Clerk's Office for each parent who is a member of the Nation;
 - ii. Interviewing the parents and household members for information on:
 - 1. Family members the parent prefers to take placement of the child;
 - 2. Any family who may not present on a genealogy from the Clerk's Office; and
 - 3. Any close contacts of the parents that have a relationship with the child who may be considered fictive kin of the child;
 - iii. Calling each family member listed on the genealogy, if there is not a family member seeking immediate custody;
 - iv. Requesting other family contacts not on the genealogy from other known family members;
 - v. Requesting the Nation's Clerk's Office to broaden the genealogy for additional generations, or provide the contact information for members of the child's clan, if no eligible family members express interest in custody of the child;
 - vi. Placing an advertisement in the Nation's Newsletter for Nation members interested in placement of a child, if there are no interested eligible family or clan members;
 - vii. Submitting each interested placement for a background check; and
 - viii. Visiting each eligible prospective placement's home for appropriateness to place the child.
- g. Reasonable Efforts Requirement. Before the removal of the child from the home and prior to the termination of parental rights, Family Support Services must perform reasonable efforts to prevent the removal of the child or reunite the child with their parent or guardian.
 - i. Reasonable Efforts Definition. Reasonable efforts must consist of outreach to the parent or guardian and the offering of accessible, available, and culturally appropriate services designed to remedy issues faced by the parent or guardian, to prevent the breakup of the family, or assist in reunification of the family. The parent, guardian, and children of appropriate age and maturity know their family best and may have excellent insights into problems they face and solutions to those problems.
 - ii. Reasonable Efforts Examples. Depending on the facts and circumstances of the case, reasonable efforts may include assistance or referrals to access:
 - 1. Child care;
 - 2. Homemaking services;
 - 3. Individual, group, and family counseling;
 - 4. Health-care services;

5. Behavioral health evaluation and treatment;
 6. Drug and alcohol counseling;
 7. Parent education;
 8. Vocational counseling;
 9. Community-based family support services; and/or
 10. Any program, practice, class, counseling, or therapy that may assist with healing trauma, unlearning unhealthy behaviors, and learning healthy behaviors.
- iii. Exceptions to Reasonable Efforts. Reasonable efforts are not required under aggravated circumstances, which shall include when the parent or guardian has been charged or convicted of the following crimes, unless the charges have been dismissed or the parent has been 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 the child;
 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.
- h. Active Efforts Requirement. Where the parent or guardian is a Nation member and resides within twenty (20) miles from the Allegany Territory or the Cattaraugus Territory and are entitled to reasonable efforts under Section 5(g)(iii), Family Support Services shall provide active efforts to prevent the removal of the child or reunite the child with their parent or guardian.
- i. Active Efforts Definition. Active efforts must consist of affirmative, active, thorough, timely, and culturally appropriate efforts to maintain or reunite a child with their parents or guardian. Family Support Services must assist the parent or guardian, who are Nation members, through the steps of a case plan and with accessing or developing the resources to satisfy the case plan.
 - ii. Active Efforts Examples. Depending on the facts and circumstances of the case, active efforts include reasonable efforts plus:
 1. Working intensively with the parent or guardian to conduct a comprehensive assessment of the circumstances that would provide for the safe maintenance or reunification of the family;
 2. Identifying the services that would help parents overcome barriers and actively assist parent or guardian in accessing those services;
 3. Involving the parent or guardian in meetings that address the resolution of issues such as permanency planning;
 4. Offering all available and culturally appropriate family preservation strategies;
 5. Keeping the siblings together whenever possible;
 6. Identifying community resources including housing, financial, transportation, mental health, substance abuse, and peer support

- services and actively assisting the parent or guardian in applying for and utilizing those resources;
7. Considering alternative ways or resources that may address the needs of the parent or guardian;
 8. Maintaining or attempting contact with parent or guardian at a minimum of two times per month; and/or
 9. Providing post-reunification services and monitoring.
- i. Case Plan. Develop a case plan for each child, which is a written document which includes:
- i. Information on the placement of the child, including:
 1. Description of the type of home or institution;
 2. A discussion on the safety of the home;
 3. A discussion on the appropriateness of the placement under the placement preferences;
 4. How Family Support Services plans to carry out the voluntary placement agreement, if there is one; and
 5. Any judicial determinations or Court orders regarding the placement of the child.
 - ii. A plan for ensuring the safe and proper care of the child presently and in the future, including:
 1. Services that have been recommended, ordered, or provided to the parent or guardian that would facilitate the return of the child to the parent or guardian;
 2. Services that have been recommended, ordered, or provided to the foster parents or other placement to facilitate the return of the child to the home or the permanent placement of the child, depending on the disposition of the case; and/or
 3. Services that have been recommended, ordered or provided to the child, including considering whether the services are appropriate and how they address the needs of the child while removed from the home and help address the child's transition back into the home or into a permanent placement, depending on the disposition of the case.
 - iii. Information that the placement for the child is:
 1. Safe;
 2. In compliance with the placement preferences or good cause to deviate from the placement preferences;
 3. Consistent with the best interests and special needs of the child;
 4. With input from the parent or guardian, and a child over the age of fourteen (14) years of age;
 5. A placement with a family rather than an institutional setting unless a residential facility is deemed to be appropriate, and safeguards are instituted to ensure the child's stay is short-term and there is a planned transition to a family setting once the child's therapeutic needs have been met; and

6. Geographically close to the residence of the parent or guardian unless it is in the child's best interest to be with a placement who resides more than fifty (50) miles away from the residence of the parent, and a caseworker from Family Support Services or a caseworker from the State or Native nation agency where the child is located, shall visit the child in the placement and submit a report to the Nation not less than every six (6) months that the child remains at the placement.
- iv. The health and education records of the child, including:
 1. The name and address of any of the child's health care providers;
 2. The name and address of any of the child's educational providers;
 3. The child's grade level performance;
 4. The child's school record;
 5. The child's immunization record;
 6. The child's known medical problems;
 7. The child's medications; and
 8. Any other information Family Support Services deems relevant to the health and education of the child.
 - v. A description of the programs and services that will be provided to a child for a child aged fourteen (14) years of age or older to help prepare the child for a successful transition into adulthood.
 - vi. A permanency plan for the child, which must include:
 1. The goal of permanency, including reunification with the parent or guardian, guardianship, adoption, or discharge out of placement of a foster home at the age of eighteen (18) years of age;
 2. A review meeting before each permanency hearing, with the minimum of one meeting per year;
 3. Input from the child regarding the goal of permanency, once the child is fourteen (14) years of age or older. The child is also entitled to select an adult who is not the Family Support Services case worker or foster parent to advise and advocate for the child;
 4. Documentation of efforts by Family Support Services to find a placement willing to accept guardianship or adoption of the child, in the event reunification with the parent or guardian is unlikely.
 - vii. A plan for ensuring the educational stability of the child placed in a foster home, which must include:
 1. Assurances from each placement that they will consider the appropriateness of the current educational setting and the proximity to the school in which the child was enrolled in at the time of placement; and
 2. Documentation Family Support Services coordinated with the school of the child, to ensure the child remains in the school they were enrolled in at the time of placement or assisted with the immediate and appropriate enrollment of the child in a new school with the transfer of educational records.

- j. Case Plan Review. Family Support Services shall establish a procedure to review and update case plans for each child, which includes:
- i. Ensuring the case review hearing is held no less frequently than every six (6) months;
 - ii. Ensuring the permanency hearing is held no less frequently than every twelve (12) months from the date the child was removed from the home and every twelve (12) months thereafter;
 - iii. That in any permanency hearing and any hearing concerning a transition of the child from placement in a foster home to successful adulthood, the child is consulted in an age-appropriate manner by the Court and the guardian ad litem regarding the proposed permanency plan or transition;
 - iv. That the child's health and education records are reviewed, updated, and a copy is supplied to the foster parent at the time of the placement;
 - v. Where the parent is eligible for termination of parental rights under Section 14, a determination whether Family Support Services will submit a petition for the termination of parental rights or join as a party to a petition filed by another party to terminate parental rights, and to identify, recruit, process and approve a qualified adoptive family, or:
 1. Family Support Services determines guardianship is an appropriate option with the agreement of the proposed guardian;
 2. Family Support Services has a documented compelling reason that termination of parental rights and placement for adoption is not in the child's best interest in the child's case plan; or
 3. Family Support Services has not provided the services provided in the case plan in the time allotted in the case plan necessary for the child's safe return home to the level of efforts required;
 - vi. That the child is consulted within the ninety (90) days prior to the child's eighteenth (18) birthday along with other representatives of the child who can assist and support the child in developing a personalized transition plan that includes specific options for:
 1. Housing;
 2. Health insurance;
 3. Education;
 4. Local opportunities for mentors and continuing support services;
 5. Work force supports and employment services;
 6. Information about designating a health care proxy if the child becomes unable to make their own health care decisions and the child does not have or does not want a relative that could otherwise make those decisions under the law of the jurisdiction where medical care is being provided;
 - vii. That children placed in a foster home aged fourteen (14) and older are provided a copy of any consumer report each year until the child is discharged from care; and

- viii. That children placed in a foster home are provided with their official birth certificate, social security card, health insurance information, a copy of their medical records, and a driver's license or identification card when the child reaches eighteen (18) years of age.

7. 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. Family Support Services;
 - ii. The parents or legal guardians of the child subject to the proceedings within this Law;
 - iii. All guardians ad litem;
 - iv. Known putative fathers in proceedings for any of the actions in this law provided:
 - 1. The mother has signed a written statement or made an oral statement in court swearing him to be the father of the child; or
 - 2. Family Support Services has found during the ordinary exercise of due diligence the child has resided with the putative father at any time within the previous six months prior to the initiation of the proceeding or the putative father has regularly contributed support to the child for the past twelve months prior to the initiation of the proceeding;
 - v. The child if the child is fourteen (14) years of age or older and of suitable maturity; and
 - vi. The placement of the child. The placement of the child has a right to be heard but will not be made a party to the case unless the placement of the child is the petitioner.
- 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).

8. 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 first hearing, except for emergency hearings;
 - iii. Have the right to review evidence and records regarding the child;
 - iv. Review the evidence and records submitted to the Court;
 - v. Interview:
 - 1. The parent or guardian,
 - 2. Family Support Services' case workers or case managers, 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; or
 - 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.
9. Placements.
- a. Applicability. Any placement done under this law should be done in accordance with this section, unless it is an emergency placement.
 - b. Background Checks. Any prospective placement must pass a criminal background check including submitting fingerprints for criminal records check of the NCID. Any adult present in a prospective placement must also submit to a child abuse and neglect registry checks. Any prospective placement is not eligible for placement 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.
- c. Search for Family Members. A genealogy shall be requested at the beginning of every case from the Clerk's Office by Family Support Services. Family Support Services shall conduct a diligent search of the child's extended family if there is no family member who seeks immediate custody of the child. A representative for Family Support Services shall provide oral testimony on the record or a written report to the Court of the methods that were used to gather information on the child's family tree, which family members were contacted, and which family members responded.
- d. Placement Preferences. The Court shall consider the following placement preferences within the best interests of the child:
- i. A member of the child's family provided that the Court consider the degree of relation with the child and the relationship the prospective placement had with the child prior to the child being removed from their parents or guardian, in the event there are two or more potential family member placements;
 - ii. A person who is considered fictive kin of the child and who has a relationship with the child prior to removal of the child;
 - iii. A foster home licensed by Family Support Services;
 - iv. A member of the Nation;
 - v. A member of another Native nation;
 - vi. A non-Native within the Nation's territory;
 - vii. Any other placement.
- e. Good Cause to Deviate from Placement Preferences. A placement may deviate from the placement preferences in subsection (d) if the Court finds there is good cause. The Court shall provide a written opinion where there is good cause to deviate from the placement preferences based on clear and convincing evidence.
- i. The Court may consider any evidence presented before the Court but shall consider:
 - 1. Whether the prospective family can meet any special needs of the child;
 - 2. Whether the prospective placement can keep siblings together; and
 - 3. Whether the placement can provide the child with relationships with their immediate and extended family and connection to the Nation's culture.
 - ii. The Court shall not consider the child's bonding with any placement not in accordance with the preferences after the child was removed from their parents or guardian in its determination of good cause.
10. Petitions for Access with the Child. 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 while the child is removed from their parent or guardian.

- a. Timeframe for Hearing. The Court shall hold a hearing for family member access to the child with all parties within thirty (30) days of the filing of the petition. Any party may request an extension up to thirty (30) days.
- b. 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 schedules of the child and petitioner;
 - 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.
- c. Modification. Any party may petition to enforce, revoke, or modify access. The hearing shall be held within thirty (30) days. The Court may suspend access until the hearing if there are allegations the family member placed the child at risk for significant physical or emotional harm or actual significant physical or emotional harm has occurred.

11. Voluntary Placement

- a. Circumstances for a Voluntary Placement Agreement. A parent or guardian may transfer temporary physical custody and care of the child through a voluntary placement agreement under the following circumstances:
 - i. Military deployment;
 - ii. Entry into a residential rehab facility for addiction or physical rehabilitation;
 - iii. The parent or guardian was convicted of a crime which may result in a jail sentence;
 - iv. Hospitalization of the parent or guardian for a medical condition;
 - v. Any other temporary condition that would necessitate the placement of the child outside the home for a limited time and approved by Family Support Services.
- b. Court Approval of a Voluntary Placement Agreement. The Court will review the signed voluntary placement agreement at a hearing with the parent or guardian and approve the agreement if:
 - i. The agreement was made voluntarily by the parent or guardian;
 - ii. The placement is made in compliance with the placement preferences in Section 9 of this Law; and
 - iii. Family Support Services has worked with the family on the agreement, reviewed the agreement, and approved the agreement.

- c. Requirements for a Voluntary Placement Agreement. A voluntary placement agreement must contain:
 - vi. The proposed time frame for the placement and return of the child;
 - vii. Conditions in which the child will be returned to the parent or guardian;
 - viii. Access schedule for the parent or guardian;
 - ix. Access schedule for biological and adopted siblings;
 - x. A signed release for routine medical care for the child;
 - xi. Services the parent will complete, if applicable; and
 - xii. Financial contribution of the parent to support the child.
- d. Review Hearing. Within one hundred-eighty (180) days from the initial placement, a hearing must be held to determine whether continued placement of the child is within the child's best interests. The Court may set further review hearing to coincide with the proposed date of the return of the child in the agreement.
- e. Permanency Hearing. Within twelve (12) months since the date the child was placed outside the home and every twelve (12) months thereafter, the Court must hold a permanency hearing to review the permanency plan for the child including the following determination if applicable:
 - i. Whether the child will be returned to the parent and a projection on the timeline for return;
 - ii. Whether the child will be referred for guardianship with the current placement or a relative without current custody under the placement provisions;
 - iii. Whether Family Support Services will petition for a termination of parental rights so the child can be placed for adoption; and
 - iv. Whether the child will be placed in another planned permanent living arrangement where Family Support Services has provided documentation to the Court supporting a compelling reason it would not be in the best interests of the child to be placed with one of the four specified placements in this subsection.
- f. Revocation. A parent may revoke the voluntary placement agreement by submitting a petition to the Court. The Court must hold a hearing within fourteen (14) days with testimony from the guardian ad litem and Family Support Services and a determination that revocation is within the best interest of the child.
- g. Breach. Family Support Services may petition to revoke the voluntary placement agreement due to breach of the agreement to continue the hearings under the Involuntary Placement provisions under this law.

12. Involuntary Placement.

- a. Risk and Safety Factors for the Care and Custody of Children. Family Support Services shall adopt risk and safety factors that would necessitate removal of the child from their home. Family Support Services shall provide a copy of the current risk and safety factors to the Court whenever the factors are updated.

- b. Procedures for the Removal of the Child. Family Support Services will adopt procedures for the removal of the child from the home and provide a copy to the Court whenever such procedures are updated.
- c. Written Decisions Requirement. For all proceedings under this article, the Court must provide the reasons for its decision in a written opinion before the court supported by evidence presented at the hearing.
- d. Emergency Custody Hearing. Family Support Services must petition the Court to obtain a court order that the child is at risk of immediate serious physical or emotional harm if the child remained in the home and temporary placement and care of the child is vested in a placement recommended by Family Support Services. The placement shall be temporary until the Disposition Hearing. The hearing must be held within seventy-two (72) hours of the removal of the child excluding Saturdays, Sundays, and holidays. The Court may approve one seventy-two (72) hour extension provided one of the parties has requested additional time with a reasonable excuse or there is a delay on behalf of the Court. If the time frame is not abided by, the Court must order the return of the child.
- e. Transfer of Jurisdiction to the Court. The Court may accept transfers of jurisdiction to the Court from another jurisdiction under the Indian Child Welfare Act, 25 U.S.C. §1911. The Court shall hold a review hearing within ten (10) business days after transfer of the case and ascertain the disposition of the case and determine what hearings are required to be held in this Court at the time of the transfer.
- f. Transfer of Jurisdiction from this Court. This Court may transfer jurisdiction to another jurisdiction of the case in the event a party to the case or Family Support Services petitions to transfer jurisdiction and there is good cause to transfer the case.
- g. Efforts Hearing. Within thirty (30) days of the removal, the Court shall hold a hearing to determine whether Family Support Services performed the efforts required to prevent the removal of the child from the home or that efforts were not required. This determination may occur with the Emergency Custody Hearing, the Fact-Finding and Disposition Hearing, or a separate hearing.
- h. Fact-Finding and Disposition Hearing.
 - i. Timeframe for Hearing. The Court shall hold a Fact-Finding and Disposition Hearing within thirty (30) days of the removal of the child. A party may request an extension up to thirty (30) days to prepare for the hearing.
 - ii. Agreement to a Proposed Service Menu. The parent or guardian, who is alleged to have placed the child at risk for serious physical or emotional harm or where actual serious physical or emotional harm has occurred, may agree they committed the allegations in the petition and to a proposed service menu, to replace the need for the Fact-Finding and Disposition Hearing. The Court shall have a hearing for informed, knowing, and voluntary consent by the parent or guardian to the allegations in the petition and the disposition of the case.
 - iii. Relevant Evidence. The Court shall consider:

1. Reports from Child Protective Service Agencies, medical records, school records or any other written records or evidence that is made within the ordinary course of business;
 2. Testimony from any witness with relevant first-hand information to support or refute the allegations of risk for serious physical or emotional harm to the child, or that actual serious physical or emotional harm of the child has occurred;
 3. Testimony from a representative from Family Support Services, including the following information:
 - a. Background of the family unit, including address, description of the home, people residing in the home, child's date of birth, enrollment status of the child, child's siblings, child's school or daycare providers;
 - b. Specific allegations, including dates, times, and locations, that:
 - i. The child was placed in an unsafe situation the parent or guardian should have known to protect the child from;
 - ii. The parent or guardian placed the child at risk for serious physical or emotional harm; or
 - iii. The parent or guardian seriously harmed the child, physically or emotionally.
 4. Any known substance abuse, mental health, domestic violence, or parenting concern that the parent or guardian may have that could have contributed to the unsafe situation, risk of harm to the child or the harm to the child;
 5. Any known counseling, treatment, program, class, or other resource that would mitigate any of the known issues of the parent or guardian;
 6. Any relevant previous involvement the family had with Family Support Services regarding the issues presented in this case, including whether Family Support Services provided services to the family to help the family avoid removal of the child;
 7. Current placement of the child;
 8. Efforts by Family Support Services to search for family or other placement of the child if the child is not placed with a family member; and
 9. Any special needs of the child.
- iv. Hearing Standard of the Fact-Finding Hearing. If the Court finds the removal was proper under Family Support Services' Removal Procedures and that the child would suffer serious physical or emotional harm if the child is returned by clear and convincing evidence, the Court shall order disposition of the case.
 - v. Adjournment in Contemplation of Dismissal. If the Court finds the removal was proper but the child is no longer at risk for serious physical or emotional harm if the child is returned, the Court may order an Adjournment in Contemplation of Dismissal for a period of six months. If the family has not

had any allegations of issues placing the child at risk of serious physical or emotional harm, the case will be dismissed at the expiration of a six-month period. Family Support Services will monitor the case and continue to provide services until the case is dismissed.

- vi. Hearing Standard for Disposition. The Court shall address the following in the order for disposition:
 - 1. An Order for any classes, counseling, therapies, assessments, or any other service that could remedy the issues of the parent or guardian that contributed to the allegations that led to removal or which would prevent the return of the child that are available through the Nation or available to the parent or guardian; and
 - 2. The appropriateness of the current placement of the child under Section 9 of this Law and:
 - a. Access schedule of the parent or guardian, including proposed supervisors, if applicable;
 - b. Access schedule with the child's siblings; and
 - c. Any access for the child's family members who have petitioned under Section 10 of this Law.
- i. Review Hearing. Within six (6) months since the date the child was removed from the parent or guardian and within every six (6) months thereafter a review hearing shall be held to evaluate case progress and revise the case plan as needed. Review hearings may be scheduled more often in the Court's discretion. The Court shall determine:
 - i. The safety of the child;
 - ii. The continuing necessity for the placement of the child outside of the home;
 - iii. The appropriateness of the placement under the placement preferences; and
 - iv. The extent of compliance with the case plan by all parties;
 - v. The extent of progress towards mitigating or alleviating the causes which necessitated the removal from home;
 - vi. A projected timeframe the child will likely be safely returned to the parent or guardian;
 - vii. Whether there is concurrent long-term planning for permanent placement if the child is not returned with the parent or guardian through adoption or guardianship;
 - viii. Efforts by Family Support Services and the placement of the child to ensure the placement follows the reasonable and prudent parent standard and the child has regular ongoing opportunities to engage in age and developmentally appropriate activities. The child should be consulted by Family Support Services and the placement of the child to determine what activities are age and developmentally appropriate for the child and whether the child has had the opportunity to engage in such activities; and
 - ix. Efforts by Family Support Services and the placement to prepare the child for independent living before the child reaches the age of majority if the child is fourteen (14) years of age or older.

- j. Permanency Hearing. Within twelve (12) months since the date the child was placed in foster care and within every twelve (12) months thereafter, the Court must hold a permanency hearing to review the permanency plan for the child including the following determination if applicable:
 - i. Whether the child will be returned to the parent;
 - ii. Whether Family Support Services will petition for a termination of parental rights so the child can be placed for adoption;
 - iii. Whether the child will be referred for guardianship;
 - iv. Whether the child will reach the age of eighteen (18) years of age and maintain an independent living situation; or
 - v. Whether the child will be placed in another planned permanent living arrangement where Family Support Services has provided documentation to the Court supporting a compelling reason it would not be in the best interests of the child to be placed within the placement preferences in Section 9 of this Law.

- k. Trial Reunification.
 - i. Timeframe for Hearing. Upon the motion of Family Support Services or the Court, the Court shall hold a hearing within fourteen (14) days for a hearing for trial reunification.
 - ii. Eligibility for Trial Reunification. The Court may order trial reunification where the parent or guardian has complied with the service plan and has an appropriate home for the child to return to, but:
 - 1. The child has been removed from the home for a period over twenty-two (22) months;
 - 2. The child has been referred for services; or
 - 3. The parent or guardian has been referred to long-term services; and
 - 4. Supervision is recommended for a period up to six (6) months, for the continuation of services and to ensure there is a smooth transition for the family.
 - iii. Hearing Standard. The Court shall order trial reunification for an eligible family if trial reunification is in the best interests of the child by preponderance of the evidence.

13. Guardianship Petitions.

- a. Who May Petition. Family Support Services or the current placement of the child ordered through the Involuntary Placement section may petition for guardianship over a child, provided:
 - i. The child has been removed from the parent or guardian for a minimum of fifteen (15) of twenty-two (22) months under the involuntary placement provisions of this law;
 - ii. That the proposed guardian is willing to care for the child until the child reaches the age of eighteen (18) or twenty-one (21), if both child and guardian agree to the extension under subsection d;

- iii. The proposed guardian is aware the parent may petition to terminate the guardianship under subsection f.
- b. Timeframe for Hearing. The Court shall hold a hearing for guardianship of the child within thirty (30) days. A party may request an extension up to thirty (30) days.
- c. Hearing Standard. The Court must find:
 - i. That guardianship by the proposed guardian and retention of parental rights is within the child's best interest by clear and convincing evidence;
 - ii. Family Support Services has made the efforts required to make it possible for the family to be reunited, efforts were not required, or the parent agrees to the guardianship of the proposed guardian.
- d. Order. The order must set forth conditions that must be met prior to the parent petitioning for a return to parent.
- e. Extension of Guardianship. The Court may extend guardianship from the time the child reaches eighteen (18) years of age until the child is twenty-one (21) years of age with the guardian and child's consent upon a petition from the child or guardian prior to the child's eighteenth (18) birthday. Unless the guardianship is extended under this provision, guardianship shall terminate at eighteen (18) years of age.
- f. Petition for Return to Parent.
 - i. Who May Petition. A parent or Family Support Services may petition to terminate the guardianship and for the parent to regain custody of the child provided:
 - 1. There has been a significant change in circumstances since the guardianship was ordered;
 - 2. The parent has complied with previous court order establishing the guardianship or otherwise remediated the issues which caused the child to be removed or prevented their return to the parent before the guardianship petition was granted; and
 - 3. The parent has an appropriate home for the return of the child.
 - ii. Evidence. The Court may consider any evidence presented before the Court, but it must consider:
 - 1. Testimony from a representative of Family Support Services that:
 - a. The parent has signed releases for any services the parent is currently enrolled in or provided documentation of discharge or completion for any services the parent completed;
 - b. Family Support Services has completed a home visit of the parent's home;
 - c. Family Support Services interviewed the child, the parent, and the guardian.
 - 2. The position of the child through the guardian ad litem or testimony of the child, who is fourteen (14) years of age or older.
 - iii. Timeframe for Hearing. The Court shall hold a hearing for the return of the child to the parent within forty-five (45) days. A party may request an extension for up to thirty (30) days.

- iv. Hearing Standard. The Court may terminate the guardianship and return the child to the parent if the petitioner can prove by clear and convincing evidence that return to the parent is in the best interests of the child. The Court may order such conditions to alleviate the practical concerns of the child regarding the timing of the transfer or other issues related to the move to the parent's home.

14. Termination of Parental Rights.

- a. Purpose. The purpose of the termination of parental rights is to free the child for adoption in supporting the child's best interests for stability in a permanent home. The termination of parental rights will not affect the rights of the child's family to have access to the child in Section 10.
- b. Voluntary Termination of Parental Rights.
 - i. Who May Petition. The parent or the prospective adoptive parent may file for the termination of parental rights if the parent consents to the termination of parental rights and the adoption of the child by the prospective adoptive parent.
 - ii. Putative Father's Rights Hearing. The Court may hold a separate hearing prior to the termination hearing to allow the putative father to respond to the notice of appearance to determine whether the putative father should be allowed to establish paternity prior to proceeding with the voluntary termination. The Court shall allow the putative father to establish paternity if the putative father can show by clear and convincing evidence that:
 - 1. The putative father was not provided notice for any other Court hearing;
 - 2. The prior notice provided to putative father for a prior hearing was provided within the past sixty (60) days; or
 - 3. The prior notice was delivered to a physical or virtual address not associated with putative father.
 - iii. Timeframe for Hearing. The Court shall hold the hearing within thirty (30) days of the petition, or within sixty days (60) of the putative father's rights hearing, to allow putative father time to establish paternity or appeal.
 - iv. Agreements for the Reservation of Parental Rights. The parent may reserve the rights to:
 - 1. periodic photographs and updates of the child with the agreement of the prospective adoptive parent;
 - 2. periodic phone calls or other electronic communication with the child if the child is a suitable age and with the agreement of prospective adoptive parent, the Guardian ad Litem, and Family Support Services; and/or
 - 3. supervised or unsupervised access with the child up to one time per month, with the agreement of the prospective adoptive parent, the Guardian ad Litem, and Family Support Services.

- v. Requirement of Time Specification in Agreement. Any agreement under this Section must include specified dates, events, and/or time periods contemplated for proposed in-person, virtual, or telephonic access and periodic updates.
 - vi. Hearing Standard. The Court shall approve the Agreement to Terminate Parental Rights if the parent knowingly and voluntarily agrees the termination of parental rights and reservation of limited rights in updates and/or access, is in the best interests of the child.
 - vii. Petitions to Modify, Enforce or Terminate Agreement. The child, parent, or adoptive parent may petition to have the agreement under Section(b)(iv) enforced, modified, or terminated. The Court may terminate the agreement due to breach of the agreement by the parent or upon a showing by a preponderance of the evidence that contact with the parent is not in the best interests of the child. The Court may suspend access until the hearing if there are allegations the parent placed the child at risk for significant physical or emotional harm or actual significant physical or emotional harm has occurred.
 - viii. Orders for Family Access. The Court may provide for reasonable access between the child and the child's biological siblings, the child's adopted siblings, or adult family members who the Court granted access under Section 10 of this Act, in a separate order at the time of termination of parental rights, or upon petition of the child, parent, adoptive parent, or such other adult family member.
- c. Involuntary Termination of Parental Rights.
- i. Who May Petition. Family Support Services, the guardian of the child, or the custodial parent in the case of a proposed stepparent adoption may petition to terminate parental rights.
 - ii. Requirement to Terminate Both Parents. The Court may order the termination of parental rights for both parents, and only one parent where:
 - 1. Paternity was never established;
 - 2. The other parent is deceased; or
 - 3. A stepparent attests they will petition to adopt the child.
 - iii. Putative Father's Rights Hearing. The Court may hold a separate hearing prior to the termination hearing to allow the putative father to respond to the notice of appearance to determine whether the putative father should be allowed to establish paternity prior to proceeding with the involuntary termination. The Court shall allow the putative father to establish paternity if the putative father can show by clear and convincing evidence that:
 - 1. The putative father was not provided notice for any other Court hearing;
 - 2. The prior notice provided to putative father for a prior hearing was provided within the past sixty (60) days; or
 - 3. The prior notice was delivered to a physical or virtual address not associated with putative father.

- iv. Family Support Services Petition. Family Support Services may file a petition for involuntary termination of parental rights provided:
 - 1. The child has been in removed from the parent for at least fifteen (15) of the last twenty-two (22) months, or a court of competent jurisdiction has determined:
 - a. That the parent has murdered, committed manslaughter, or aided, abetted, attempted, conspired or solicited murder of a child in the care of the parent, or the other parent of the child;
 - b. That the parent had committed felony assault against a child in the care of the parent that resulted in serious bodily injury;
 - c. The parent had committed felony sexual assault against a child of the parent; or
 - d. The parent had committed felony sexual assault against the other parent and parenthood of the child was the result of the sexual assault.
 - 2. Family Support Services has provided the efforts required to reunite the family or that efforts were not required;
 - 3. If the goal of the permanency plan was reunification with the parent, the parent has failed to substantially complete the services ordered by the Court and mitigate or alleviate the causes which necessitated the removal from the home; and
 - 4. The permanency plan provides for a willing suitable prospective adoptive home and the prospective adoptive parent testifies they will submit an adoption petition within ninety (90) days of the order granting termination, or it is the best interests of the child for parental rights to be terminated without a current suitable adoptive placement.
- v. Guardian Petition. A guardian who was granted permanent guardianship over the child by the Court may petition to terminate parental rights provided:
 - 1. The guardian can demonstrate there has been a substantial change in circumstances since permanent custody was awarded and the guardian no longer agrees that the retention of parental rights is in the best interests of the child;
 - 2. The parent has failed to substantially complete the services ordered by the Court in the Guardianship Order and has not mitigated or alleviated the causes which necessitated the removal from the home;
 - 3. The guardian testifies they will submit an adoption petition within ninety (90) days of the order granting termination; and
 - 4. Termination of parental rights and adoption by the guardian is within the best interests of the child.
- vi. Parent Petition. A parent of the child may file a petition to terminate the parental rights of the other parent for the purposes of stepparent adoption provided:
 - 1. The parent can demonstrate:

- a. Father was aware he was a putative father of the child for a minimum period of one year and failed to establish paternity;
 - b. a court of competent jurisdiction has adjudicated the other parent has neglected, abused, or abandoned the child; or
 - c. the other parent has abandoned the child for the period of one year;
 2. The parent's spouse testifies they will submit such adoption petition within ninety (90) days of the order granting the termination of parental rights; and
 3. Termination of parental rights of the other parent and adoption by the stepparent is within the best interests of the child by clear and convincing evidence.
- vii. Timeframe for Hearing. The Court shall hold the hearing within forty-five (45) days of the petition, or within sixty days (60) of the putative father's rights hearing, to allow putative father time to establish paternity or appeal.
- viii. Hearing Standard. The Court shall order the termination of parental rights where the petitioner proves beyond a reasonable doubt that the child cannot be returned to the parent without a substantial risk of physical or emotional harm and termination of parental rights is within the best interests of the child.
- ix. Orders for Family Access. The Court may provide for reasonable access between the child and the child's biological siblings, the child's adopted siblings, and adult family members who the Court granted access under Section 10 of this Law, in a separate order at the time of termination of parental rights or upon petition of the child, parent, adoptive parent, or such other adult family member.
- x. Temporary Restraining Order Pending Appeal. The Court may provide a temporary restraining order prohibiting contact between the parent and the child where the Court has ordered the termination of parental rights and the parent has appealed such order for the pendency of the appeal if continued access by the parent to the child would place the child at risk for significant physical or emotional harm.

15. Adoption Petitions.

- a. Purpose. The purpose of an adoption pursuant to this law is to provide the child with the stability of having a permanent home and adoptive parent with full parental rights to the child. It is not the purpose of this law to sever connections or knowledge of the child's birth family.
- b. Search for Family Members. Where the child is currently placed with a placement outside of the family, Family Support Services shall notify immediate family members of the parent and any family members who previously expressed an interest in taking custody of the child after the termination of parental rights for their interest in adopting the child. A representative for Family Support Services shall provide oral testimony on the record or a written report to the Court of the methods that were used to gather information on the child's family tree, which family members were contacted, and which family members responded.
- c. Adoption Files. The child shall have a right to adoption files maintained by the Court or Family Support Services. The Court and Family Support Services shall maintain adoption files at the minimum of ten (10) years after the child obtains the age of eighteen (18) years old.
- d. Eligibility for Adoption. Children are eligible for adoption provided the parents of the child do not have any rights to legal or physical custody of the child where:
 - i. One or both of the child's parents are deceased;
 - ii. A court of competent jurisdiction has terminated the rights of the parents; and/or
 - iii. Paternity of the child was never established.
- e. Timeframe for Adoption Petitions. Adoption petitions should be submitted within ninety (90) days after the order to terminate parental rights is issued. Adoption petitions submitted beyond the ninety (90) day timeframe shall provide a good reason for the delay.
- f. Who May Submit an Adoption Petition. The following parties may submit an adoption petition:
 - i. Family Support Services may submit an adoption petition on behalf of the current guardian or placement;
 - ii. the current guardian or placement of the child;
 - iii. the stepparent where the Court terminated one parent's parental rights to facilitate stepparent adoption;
 - iv. a family member who does not have current physical custody of the child.

- g. Home Study. Family Support Services shall submit a home study of the prospective adoptive parent.
 - h. Timeframe for Hearing. The hearing will be held within forty-five (45) days of the submission of the petition or after the conclusion of the appellate process affirming the termination of parental rights.
 - i. Hearing Standard. The Court shall grant the adoption where the petitioner proves by clear and convincing evidence adoption of the child by the petitioner is within the child's best interests.
 - j. Placement Preferences Apply. The placement preferences under Section 9 shall apply to adoption proceedings with more than one petitioner.
 - k. Voluntary Termination Agreements. All agreements under Section 14(b)(iv) for biological parental contact shall continue if the adoption is granted.
 - l. Family Access Orders. The Court may provide for reasonable access between the child and the child's biological siblings, the child's adopted siblings, and adult family members who the Court granted access under Section 10 of this Law, in a separate order at the time of termination of parental rights or upon petition of the child, parent, adoptive parent, or such other adult family member.
16. Foster Home Licensing.
- a. Foster Home Licensing Authority. Family Support Services shall make all final determinations regarding foster home licensing, suspension, and revocation.
 - b. Background Checks. Any prospective placement must pass a criminal background check including submitting fingerprints for criminal records check of the NCID. Any adult present in a prospective foster and adoptive placement must also submit to child abuse and neglect registry checks. Any prospective foster or adoptive parent is not an eligible placement if they are 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.
 - c. License Application and Required Documentation. The following documents are required to certify foster and adoptive parents:
 - i. A complete application for all adults present in the household, which shall include the significant other of an applicant who resides in the home;
 - ii. Certification of completion of training prospective foster parents in thirty (30) hours of training for foster and adoptive parents for each applicant, such as Group Preparation and Selection of the Model Approach to Partnerships in Parenting Program (GPS/MAPP);
 - iii. Three letters of character reference for each applicant, stating how long the reference has known the applicant, the relationship between the reference

- and the applicant, and any information the reference thinks is relevant to the applicant being a foster parent;
- iv. A completed health assessment for each applicant;
 - v. Certificate of enrollment from a Native nation, if applicable;
 - vi. Marriage certificate or divorce order, if applicable;
 - vii. Proof of income;
 - viii. Completion of an alcohol and substance abuse assessment;
 - ix. Satisfactory completion of a criminal background check and child abuse and neglect registry check for each adult over the age of eighteen (18) years of age;
 - x. Foster Care Confidentiality Agreement;
 - xi. Foster Parent Agreement; and
 - xii. A school record check for any child living in the home.
- d. Home Inspection. Upon the completion of an application, Family Support Services shall visit the home and to interview the applicants and ensure the home meets the following requirements:
- i. The physical facilities of the home is in good condition and there are no hazards to the health and safety of children, such as:
 - 1. Leaking gas from a stove or heating unit;
 - 2. Dangerous substances or objects accessible to children;
 - 3. Peeling lead based paint accessible to young children;
 - 4. Exposed electrical wiring;
 - 5. Broken or missing windows; or
 - 6. Rotting garbage, food, human waste, or animal waste throughout the living quarters;
 - ii. The home is in good repair and kept sufficiently clean and sanitary condition so the physical well-being and comfort is assured for children;
 - iii. Children of opposite sex will not share a bedroom if any child is over seven years of age;
 - iv. Bedrooms for foster children must not sleep more than three children per bedroom;
 - v. No bed may be located in an unfinished attic or basement;
 - vi. Children over the age of three cannot sleep in the same room with an adult of the opposite sex;
 - vii. Each child must have their own bed or crib, sufficient for the child's age, development and size, with suitable bedding, and a waterproof cover if needed;
 - viii. The home has a safe supply of potable water for drinking. There must be hot water for bathing and washing. Water from private wells, springs and other private sources must be tested annually for contaminants.
 - ix. Windows above the first floor must have safety features to prevent child tampering or a fall such as window barriers, screens, guards, and/or stoppers;
 - x. The home must have a safe and adequate heating apparatus for the reasonable comfort of the children in the home;

- xi. There are functioning and sanitary toilet and bathing facilities;
 - xii. The home is free from fire hazards and is equipped with working smoke detectors and carbon monoxide detectors on each floor;
 - xiii. Certified foster homes may not rent rooms to lodgers or boarders;
 - xiv. All businesses run at the premises must be approved by Family Support Services that it will not adversely affect the safety and welfare of the children or there are proper safeguards that the business will not impact the safety or welfare of the children; and
 - xv. All firearms must be securely stored and inaccessible to children.
- e. Home Study. At the initial home inspection, Family Support Services shall complete a home study for prospective foster homes, which shall include:
- i. Information about any criminal history, other than crimes enumerated in subsection (b) of this Section, raised by the background checks for all adults over the age of eighteen (18) years of age who live in the adoptive home;
 - ii. Information about the family's financial stability;
 - iii. Information about the family's physical and mental health;
 - iv. Information about the family's parenting skills; and
 - v. Information about the family's motivation to foster.
- f. Preliminary Determination.
- i. Denial. A prospective foster home shall be denied if there is a clear indication the family should be denied because:
 1. The home could not meet the foster care standards, even with time to cure;
 2. An adult residing within the home cannot pass the background check;
 3. An adult residing within the home who has a serious physical or mental health issue that would adversely affect caregiving of a child;
 4. An adult residing within the home has an alcohol or substance abuse issue that would adversely affect caregiving of a child; or
 5. Any other factor that would place foster children in a home with a risk for significant physical or emotional harm.
 - ii. Further Investigation. If a prospective home appears to meet the standards required, or there are only minor issues that can be fixed before the license is granted, Family Support Services shall contact the character references and other appropriate sources close with the applicants to ask the following questions:
 1. Whether the prospective foster parents suffer from any significant physical or emotional issues;
 2. Whether the prospective foster parents have a history of alcohol or substance abuse;
 3. Whether the prospective foster parents have been previously charged for any crime that could pose a risk for significant physical or emotional harm to a child.

- iii. Opportunity to Correct. If there are issues with the foster home or application that may be corrected in a reasonable amount of time, Family Support Services shall notify the prospective foster family in writing of the issues with their application and a timeframe not to exceed six (6) months to correct those issues.
- g. Final Determination. Family Support Services shall make a final determination whether a prospective home shall be licensed that all requirements of this Section are met and the foster parents could provide a loving and stable environment for foster children. A denial shall be issued in writing and list reasons for the denial.
- h. Issuance of License. The license shall specify the names of the heads of household who will serve as the foster parents, the number of children the home is licensed to accept and the ages of the children. The license shall be signed by a Family Support Services Supervisor and stamped by the Seneca Nation's Clerk's Office. Family Support Services shall keep the original license and provide the foster family a copy of the license.
- i. Requirements of a License. Foster parents must immediately disclose any change in membership of their household and anyone who reaches the age of eighteen who resides with them to Family Support Services before that person reaches their eighteenth (18) birthday. Foster parents must also disclose any criminal charges within twenty-four hours of arraignment. Foster parents must complete the following annual requirements:
 - i. Twelve hours of training provided by Family Support Services;
 - ii. A bi-annual home inspection;
 - iii. An updated physical;
 - iv. An updated alcohol and substance abuse assessment;
 - v. School records for any children in the home, not in foster care;
 - vi. An updated home study with the foster parents discussing:
 - 1. The history of placements within the home;
 - 2. Any factors which affect the number of children, or the age range of the children that will be placed in the home in the future;
 - 3. Any changes in the foster parent's job status or financial security;
 - 4. Any changes to the foster parents' physical and mental health;
 - 5. Any other information affecting the current placement or future placements.
- j. License Revocation.
 - i. Emergency License Revocation.
 - 1. Investigation. Family Support Services shall investigate any information it gathers or receives that conditions exist at any licensed foster home that could pose an immediate threat to the physical or emotional health of a foster child.
 - 2. Standard of Revocation. If Family Support Services finds probable cause that conditions exist at a licensed foster home that pose an immediate threat to the physical or emotional health or safety of any child, Family

- Support Services shall immediately revoke the license of the foster home.
3. Notice. Family Support Services shall notify the foster parents of the revocation orally or in writing and state the reasons for the emergency revocation. If the initial notice is oral, written notice shall be provided within three (3) days of the oral notice.
- ii. Non-emergency License Revocation.
 1. Investigation. Family Support Services shall investigate any information it gathers or receives that conditions exist that pose a threat to the physical or emotional health and safety, or which could adversely affect the ability of the foster parents to provide adequate care and a loving and stable environment for foster children.
 2. Standard of Revocation. If Family Support Services finds conditions at the foster home that could adversely affect the ability of the foster parents to provide adequate care and loving and stable environment for foster children.
 3. Notice. Family Support Services shall notify the foster parents in writing that their license will be revoked, the date of revocation and the reason for the revocation.
 - iii. Removal of Foster Children. Family Support Services shall remove any foster children placed with foster parents on the date of revocation and make other arrangements for the placement of the children in accordance with Section 9 of this Law.
 - iv. Placement Hearing. Family Support Services shall petition the Court about any change of placement resulting from the revocation of a foster care license.
 1. Emergency Removal.
 - a. Timeframe for Hearing. The Court shall hold a hearing within seventy-two (72) hours of the removal of the child excluding Saturdays, Sundays, and holidays.
 - b. Hearing Standard. The Court shall approve the current placement of the child as a temporary placement with further proceedings to allow for a broader search under the placement preferences or approve the current placement as appropriate under Section 9 of this law.
 2. Non-emergency Removal.
 - a. The Court shall hold a hearing prior to the date of removal, if possible, or within seventy-two (72) hours of the date of removal of the child, excluding Saturdays, Sundays, and holidays.
 - b. The Court shall approve the current placement of the child as a temporary placement with further proceedings to allow for a broader search under the placement preferences or approve the current placement as appropriate under Section 9 of this law.

- v. Appeal of Revocation of Foster Care License.
 - 1. Timeframe for Appeal. The foster parents may appeal the revocation of the foster care license within five (5) days of being provided the initial notice by Family Support Services that their foster care license was revoked.
 - 2. Timeframe for Hearing. The Court shall hold a hearing within five (5) days of the petition.
 - 3. Hearing Standard. The Court shall determine whether Family Support Services acted in a manner that was arbitrary, capricious, or not in accordance with this law. If the Court finds Family Support Services did act in a manner that was arbitrary, capricious, or not in accordance with this law, it may reinstate the foster care license.
 - 4. Timeframe for Decision. Within five (5) days of the hearing, the Court shall issue their decision in writing.

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