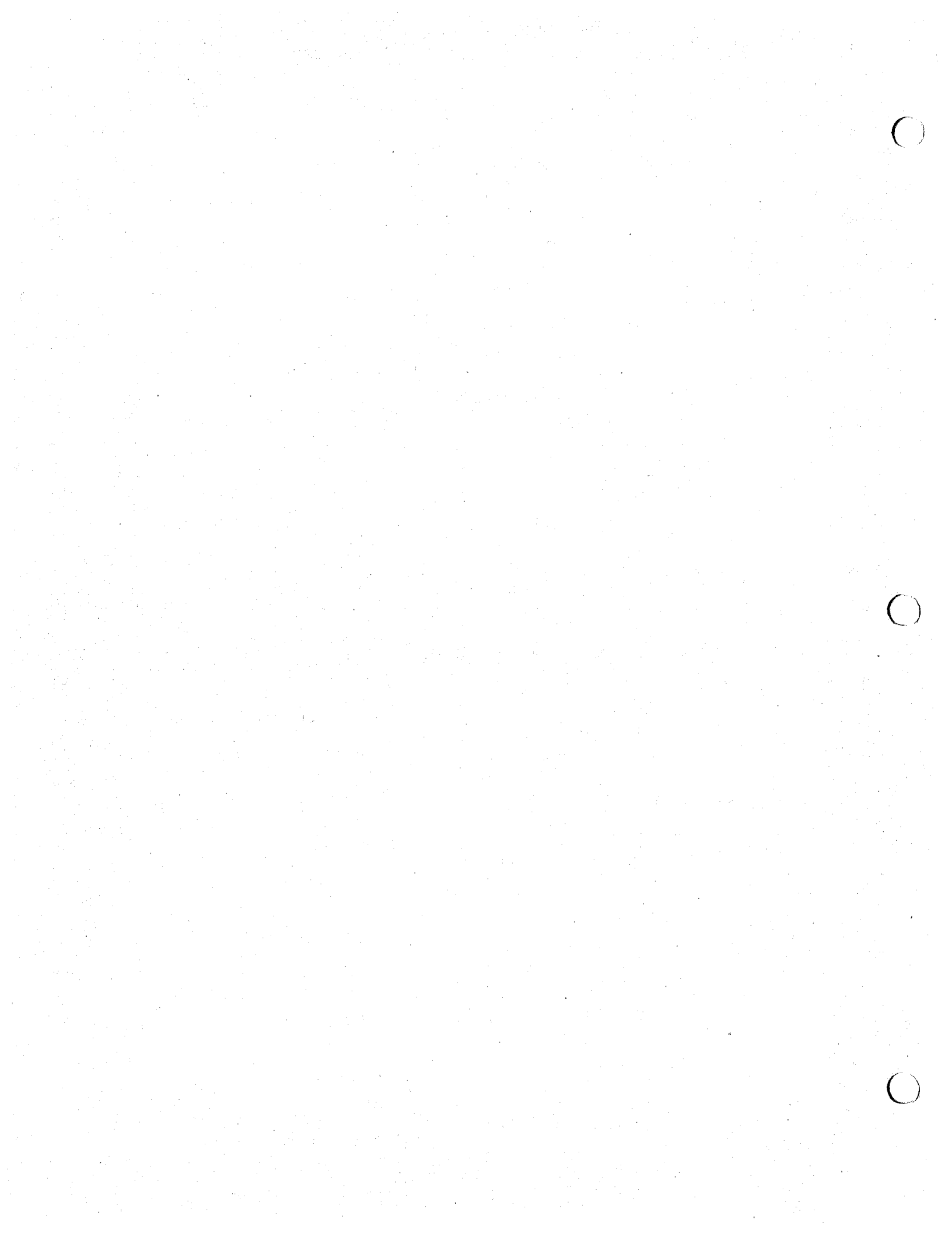




CHAPTER 15

CHILD WELFARE CODE



CHAPTER 15
PENOBSCOT NATION CHILD WELFARE CODE

Accepted at a General Meeting by members of the Penobscot Nation
on Monday, October 24, 1983;
Amended at a General Meeting on May 1, 2010; and
Amended at a General Meeting on May 4, 2013

FOR CONSIDERATION AT THE GENERAL MEETING ON JUNE 4, 2016

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SUBCHAPTER 1. GENERAL PROVISIONS

§1. Title

This chapter may be cited as the "Penobscot Nation Child Welfare Code."

§2. Definitions

As used in this Code, unless the context indicates otherwise, the following terms have the following meanings:

1. Abandonment. "Abandonment" means any conduct on the part of the parent showing intent to forego parental duties or relinquish parental claims. The intent may be evidenced by:
 - A. Failure, for a period of at least 6 months, to communicate meaningfully with the child;
 - B. Failure, for a period of at least 3 months, to maintain regular visitation with the child;
 - C. Failure to participate in any plan or program designed to reunite the parent with the child;
 - D. Deserting the child without affording means of identifying the child and parent or custodian;
 - E. Failure to respond to notice of child protective proceedings; or
 - F. Any other conduct indicating intent to forego parental duties or relinquish parental claims.
2. Abuse or neglect. "Abuse or Neglect" means a threat to a child's health or welfare by physical, mental or emotional injury or impairment, sexual abuse or exploitation **(including human and sex trafficking)**, deprivation of essential needs or lack of protection from these or failure to ensure compliance with Penobscot Nation school attendance requirements.
3. Aggravating factor. "Aggravating factor," means any of the following circumstances with regard to the parent.
 - A. The parent has subjected any child for whom the parent was responsible to aggravated circumstances, including, but not limited to, the following:

Rape, gross sexual misconduct, gross sexual assault, sexual abuse, incest, aggravated assault, kidnapping, promotion of prostitution, abandonment, torture, chronic abuse or any other treatment that is heinous or abhorrent to Penobscot tribal culture.
 - B. The parent refused for 6 months to comply with treatment required in a reunification plan with regard to the child.
 - C. The parent has been convicted of any of the following crimes and the victim of the crime was a child for whom the parent was responsible or the victim was a child who was a member of a household lived in or frequented by the parent:
 - (1) Murder;

- (2) Felony murder;
 - (3) Manslaughter;
 - (4) Aiding, conspiring or soliciting murder or manslaughter;
 - (5) Felony assault that results in serious bodily injury; or
 - (6) Any comparable crime in another jurisdiction.
- D. The parental rights of the parent to a sibling have been terminated involuntarily.
- E. The parent has abandoned the child.
4. **Best interests of the child. In determining the "best interests of the child" the following values shall prevail:**
- A. **A child's need for love, nurturing, protection and stability. A child must have a safe and nurturing home environment that offers emotional support and comfort, the basic needs of food, clothing and shelter, reasonable medical care and protection from danger, violence or exposure to harmful conduct including drug or alcohol abuse.**
 - B. **A child's need for family. A child must have connection to loving family members for guidance and nurturing. Even though not every child has the benefit of family care, others committed to a child can fulfill the role of loving parents and family in that child's life.**
 - C. **A child's need for identity and development. A child must develop self-identity and awareness of his or her unique role within the larger community, including the child's cultural community. This is accomplished through participation in cultural activities, speaking his or her native language, and having opportunities and encouragement to pursue education and enrichment.**
 - D. **A child's need for happiness. A child cannot be happy unless his or her primary needs are met, but also important to a child are opportunities for play and recreation, leisure time as well as other activities the child enjoys, and possession of toys and other personal items the child considers important.**
5. **Child. "Child" means an unmarried person under age eighteen and who is either enrolled or eligible for enrollment in the Penobscot Nation. In emergency proceedings, a child shall be deemed eligible for tribal membership if there is reasonable cause to believe that the child is so eligible. The Department shall confirm the child's eligibility for membership with the Penobscot Nation Department of Trust Responsibility Responsibilities as soon as possible.**
6. **Child protection proceeding. "Child protection proceeding" means a protection proceeding under Subchapter 4, §§1 and 4, preliminary protection proceeding under §3, a review proceeding under §6, a suspension proceeding under Subchapter 6, a termination proceeding under Subchapter 7, an emancipation proceeding under Subchapter 8, an adoption or customary adoption proceeding under Subchapter 9, a permanency guardianship proceeding under Subchapter 10, a guardianship proceeding under Subchapter 11, and an appeal under Subchapter 1, §10.**

7. **Child protection team.** “Child protection team” means a permanently organized team of professionals and agencies that meets on a regular basis to plan and coordinate service delivery to families in which abuse and neglect occur including, but not limited to, functions of assessment of family dynamics, treatment planning, and monitoring of case plans.
8. **Contrary to the welfare of the child.** “Contrary to the welfare of the child” means a situation or condition that threatens the safety and well-being of a child, or a combination of situations and/or conditions that, when considered in their entirety, threatens the safety and/or well-being of a child.
9. **Court.** “Court” means the Penobscot Nation Tribal Court, unless the context otherwise indicates.
10. **Criminal justice agency.** “Criminal justice agency” means a tribal, federal, state, district, county or local government agency or any subunit thereof that performs the administration of criminal justice under a statute or executive order, and that allocates a substantial part of its annual budget to the administration of criminal justice. Courts and the Department of the Attorney General are considered criminal justice agencies. “Criminal justice agency” also includes any equivalent agency at any level of Canadian government.
11. **Custodial parent.** “Custodial parent” means a parent with custody.
12. **Custodian.** “Custodian” means any person, including, **but not limited to**, a biological or adoptive parent, who has the legal right to custody of and control over the person of a child.
13. **Customary adoption.** “Customary adoption” means the tribal process that gives a child a legally recognized permanent parent-child relationship with a person other than the child’s biological parent and that modifies the parental rights of the child’s biological parent(s).
14. **Department.** “Department” means the Penobscot Nation Department of Social Services.
15. **Emergency protection hold.** “Emergency protection hold” means physical custody of a child without court order and over the objection of the child’s parent or custodian.
16. **Extended family.** “Extended family” means the relatives of an individual, by blood, by adoption and by marriage, other than its immediate family, such as aunts, uncles, grandparents and cousins, including individuals that are unrelated by either birth or marriage, who have an emotionally significant relationship with the individual that would take on the characteristics of a family relationship.
17. **Foster parent.** “Foster parent” means a person whose home is approved by the Department as a family foster home and with whom the child lives pursuant to a court order or agreement with the Department.
18. **Gender and Use of Pronouns.** Masculine, feminine and neutral pronouns shall include all genders and the singular shall include the plural, and vice versa, where the context or facts so admit.

19. Grandparent. "Grandparent" means the biological or adoptive parent of a child's biological or adoptive parent. "Grandparent" includes the parent of a child's parent whose parental rights have been terminated, but only until the child is placed for adoption.
20. Guardian ad litem. "Guardian ad litem" means a person appointed and approved by the Court to carry out the functions set forth in §6(2) of Subchapter 1.
21. Interested person. "Interested person" means a person the Court has determined as having a substantial relationship with a child or a substantial interest in the child's well-being, based on the type, strength, and duration of the relationship or interest. A person may request interested person status in a child protection proceeding either orally or in writing.
22. Intervenor. "Intervenor" means a person who is granted intervenor status by the Court in a child protective proceeding because that person has demonstrated that his or her rights may be adversely affected unless such designation is granted, as long as intervention is consistent with the purposes of this Code.
23. Jeopardy. "Jeopardy" means serious abuse or neglect, as evidenced by:
 - A. Serious harm or threat of serious harm;
 - B. Deprivation of adequate food, clothing, shelter, supervision or care; or deprivation of education when the child is at least 7 years of age and or has not completed grade 6;
 - C. Deprivation of necessary health care when the deprivation places the child in danger of serious harm;
 - D. Prenatal drug exposure; or
 - E. Abandonment of the child or absence of any person responsible for the child, which creates a threat of serious harm.
24. Native American tribe. "Native American tribe" means any tribe, nation or other organized group or community of Native Americans recognized as eligible for services provided to Native Americans by the U.S. Secretary of the Interior because of their status as Native Americans.
25. Parent. "Parent" means any biological or adoptive parent whose parental rights have not been terminated or nullified by decree. It does not include the putative father.
26. Person. "Person" means a Native American individual or Native American tribe, facility, institution, or agency, public or private, including the Department.
27. Person responsible for the child. "Person responsible for the child" means a person with responsibility for a child's health or welfare, whether in the child's home or another home or a facility, which, as part of its function, provides for care of the child, including the child's custodian.
28. Pre-adoptive parent. "Pre-adoptive parent" means a person who has entered into a pre-adoption agreement with the Department with respect to the child.

29. **Putative Father.** "Putative father" means a man who is the alleged biological father of a child but whose paternity has not been legally established.
30. **Reasonable and prudent parent standard.** "Reasonable and prudent parent standard" means the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encouraging the emotional and developmental growth of the child, that a caregiver shall use when determining whether to allow a child in tribal custody to participate in age or developmentally appropriate extracurricular, enrichment, cultural, and social activities.
31. **Reasonable efforts.** "Reasonable efforts" means planning, providing or locating and referring parent(s) to services designed to:
- A. prevent the removal of a child from his/her home, including, but not limited to substance abuse counseling, domestic violence services, assistance in accessing resources for basic living needs (e.g., food, housing, clothing);
 - B. reunify a child with his/her parent(s) or custodian(s) after removal, including, but not limited to parenting education, substance abuse and after-care services, mental health counseling, domestic violence services ; and
 - C. finalize a permanent placement for a child when he/she is not able to return home including, but not limited to arranging for guardianship, customary adoption, adoption, or Another Planned Permanent Living Arrangement.

In determining the reasonable efforts that are planned and made, of utmost concern is the health and safety of a child.

32. **Relative.** "Relative" means the biological or adoptive parent of the child's biological or adoptive parent, or the biological or adoptive sister, brother, aunt, uncle or cousin of the child, including step-relatives of the same degree and individuals that are unrelated by either birth or marriage, who have an emotionally significant relationship with the individual that would take on the characteristics of a family relationship.
33. **Removal of the child from home.** "Removal of the child from home" means that the Department or Court has taken a child out of the home of the parent, legal guardian, or custodian without the permission of the parent or legal guardian.
34. **Safe haven provider, "Safe haven provider"** means:
- A. A law enforcement officer;
 - B. Staff at a medical emergency room;
 - C. A medical services provider;
 - D. A hospital staff member at a hospital;
 - E. A representative of the Department; and
 - F. Any person affiliated with a church or religious institution that serves in an administrative capacity or has otherwise assumed a position of trust or responsibility

to the members of that church or religious institution, while acting in the capacity, regardless of whether the person receives compensation.

35. Serious harm. "Serious harm" means:

- A. Serious ~~physical~~ injury or impairment;
- B. Serious mental or emotional injury or impairment, which now or in the future is likely to be evidenced by a serious mental, behavioral or personality disorder, including severe anxiety, depression or withdrawal, untoward aggressive behavior, seriously delayed development or similar serious dysfunctional behavior; or
- C. Sexual abuse or exploitation.

36. Short-term emergency care. "Short-term emergency care" means protective services, emergency shelter care, counseling, emergency medical treatment, and other services which are essential to the care and protection of a child. These services may include emergency caretaker or homemaker services in the child's home or care outside the home when no parent or other responsible adult is available and willing to care for the child in the home.

37. "Surrender and release," used as a noun, means a voluntary relinquishing of all parental rights and releasing a child to the custody and control of the Department.

§3. Purposes

Recognizing the welfare and safety of children must be of paramount concern and that the right of family integrity is limited by the right of children to be protected from abuse and neglect, it is the intent of the Penobscot Nation that the Penobscot Tribal Court exercise its jurisdiction and apply the Penobscot Nation Child Welfare Code in accordance with the customs and laws of the Penobscot Nation and the Indian Child Welfare Act, 25 U.S.C.A. 1902 et seq, the Indian Civil Rights Act, 25 U.S.C.A. 1301 et seq, the Adoption and Safe Families Act, P.L. 105-89, the Fostering Connections to Success and Increasing Adoptions Act of 2008, P.L. 110-351, and other applicable laws, and that this Code:

- 1. Authorize the Department to protect and assist abused and neglected children, children in circumstances which present a ~~substantial~~-risk of abuse or neglect, and their families;
- 2. Provide that children will be taken from the custody of their parents only where failure to do so would place them at risk of serious harm;
- 3. Give family reunification priority as a means for protecting the welfare of children, but prevent needless delay for permanency plans for children when reunification is not possible; and
- 4. Promote the early establishment of permanency plans for the care and custody of children who cannot be reunited with their family.

§4. Jurisdiction

- 1. The Penobscot Nation shall have exclusive jurisdiction over any child welfare proceeding involving a Penobscot child who resides or is domiciled within Penobscot Nation territory, **or who resides or is domiciled within the Title IV-E service area to the extent authorized by applicable law.**

2. The Penobscot Nation shall have jurisdiction over any child welfare proceeding involving a Penobscot child upon acceptance by the Penobscot Nation of transfer of such proceeding from a state court pursuant to 25 U.S.C.A. §1919. The Court shall provide to the Department, notice of expedited hearing on such requested motion to transfer. The Court shall make findings of fact that are in the best interests of the child.
3. The Court shall prioritize and act upon child protection issues including but not limited to the following: preliminary protection, jeopardy, cease reunification, termination, or permanency plan.
4. Except as provided for in Subchapter 10 Permanency Guardianship, the Court's jurisdiction over matters concerning the welfare of a child commences with the filing of a child protection petition and continues until the Court issues an order terminating the protection order based on a finding that the child is no longer in jeopardy or a finding that the Court no longer has jurisdiction over the child.
5. In accordance with the Indian Child Welfare Act, 25 U.S.C.A. §1911(d), the United States, every state, every territory or possession of the United States, and every Native American tribe shall give full faith and credit to the public acts, records, and judicial proceedings of any Native American tribe applicable to Native American child custody proceedings, and court orders to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity.

§5. Authorization and Duties

1. The Department shall act to protect children at risk for abuse or neglect. The Department shall:
 - A. Receive reports of abuse and neglect;
 - B. Promptly investigate appropriate abuse and neglect referrals coming to its attention;
 - C. Determine the degree of substantiated or indicated abuse or neglect for each child in each case;
 - D. If, after investigation, the Department opens a case to assist in alleviating the risk factors present in the home, then a trained caseworker will be assigned to:
 - (1) Provide written information about rehabilitative resources targeted to reduce risk factors; and
 - (2) Develop with the family a written safety plan.
 - E. File a petition if, after investigation, the Department determines that a child is in immediate risk of serious harm or in jeopardy as defined in this Code.
2. The Department shall act to protect infants born identified as being affected by illegal substance abuse or suffering from withdrawal symptoms resulting from prenatal drug exposure, whether or not the prenatal exposure was to legal or illegal drugs, and regardless of whether or not the infant is abused or neglected. The Department shall:
 - A. Receive reports of infants who may be affected by illegal substance abuse or suffering from withdrawal symptoms resulting from prenatal drug exposure;

- B. Promptly investigate all reports received of infants born who may be affected by illegal substance abuse or suffering from withdrawal symptoms resulting from prenatal drug exposure;
- C. Determine whether ~~or not~~ each infant reported is affected by illegal substance abuse or suffers from withdrawal symptoms resulting from prenatal drug exposure; and
- D. Determine whether ~~or not~~ the infant is abused or neglected and, if so, determine the degree of harm or threatened harm in each case.
- E. For each infant whom the Department determines to be affected by illegal substance abuse or to be suffering from withdrawal symptoms resulting from prenatal drug exposure, develop, with the assistance of any health care provider involved in the mother's or the child's medical or mental health care, a Safety Plan for the infant and, in appropriate cases, refer the child or mother or both to a social service agency or voluntary substance abuse prevention or treatment services.

§6. Parties' Rights to Legal Counsel

- 1. The Department shall be represented by the tribal child welfare prosecutor in every child welfare proceeding, except a preliminary protection proceeding, an adoption proceeding, or, unless the Court orders otherwise, an emancipation proceeding.
- 2. The following provisions shall govern guardian's ad litem. The term guardian ad litem is inclusive of lay Court-appointed special advocates.
 - A. The Court, in every child welfare proceeding except a preliminary proceeding, shall appoint a guardian ad litem for the child.
 - B. The guardian ad litem shall investigate then make recommendations as to the best interests of the child. The guardian ad litem is authorized to review all reports and records relevant to the child. The investigation must include, when possible and appropriate, the following:
 - (1) Review of relevant mental health records and materials;
 - (2) Review of relevant medical records;
 - (3) Review of relevant school records and other pertinent materials;
 - (4) Interviews with the child with or without other persons present; and
 - (5) Interviews with parents, foster parents, teachers, caseworkers and other persons who have been involved in caring for or treating the child.
 - C. The guardian ad litem shall have face-to-face contact with the child in the child's home or foster home within 7 days of appointment by the Court and at least once every 3 months thereafter or on a schedule established by the Court for reasons specific to the child and family. The guardian ad litem shall report to the Court and all parties in writing at 6-month intervals, or as is otherwise ordered by the Court, regarding the guardian ad litem's activities on behalf of the child and recommendations concerning the manner in which the Court should proceed in the best interests of the child. The guardian ad litem will have a conversation with the child, as appropriate, about Court proceedings and if and how the child would like to

participate. Any child of age 12 or older shall be provided with the opportunity to address the Court personally.

- D. The guardian ad litem may subpoena, examine and cross-examine witnesses and shall make a recommendation to the Court.
 - E. The guardian ad litem shall make a written report of the investigation, findings and recommendations and shall provide a copy of the report to each of the parties reasonably in advance of the hearing and to the Court, except that the guardian ad litem need not provide a written report prior to a hearing on a preliminary protection order. The Court may admit the written report into evidence in part or in total. If the guardian ad litem admits it into evidence, then the guardian ad litem must produce that witness to testify.
 - F. The guardian ad litem shall make the wishes of the child known to the Court if the child has expressed such wishes, regardless of the recommendation of the guardian ad litem.
 - G. The guardian ad litem or the child may request the Court to appoint legal counsel for the child. The Court shall pay reasonable costs and expenses of the child's legal counsel.
 - H. A person serving as a guardian ad litem under this section acts as the Court's agent and is entitled to quasi-judicial immunity for acts performed within the scope of the duties of the guardian ad litem.
- 3. Parents and custodians have the right to **participate in Court hearings and reviews, and** to present evidence, examine and cross-examine witnesses and make recommendations to the Court.
 - 4. Parents and custodians are entitled to legal counsel in child protection proceedings, except a request for a preliminary protection order and a hearing to contest an adoption. The Court, if it finds them indigent, shall appoint and pay the reasonable costs and expenses of legal counsel for them, if it finds that their ability to present their case to the Court is impaired by circumstance or condition.

§7. Access To and Participating in Proceedings

1. Interested Person

- A. Upon request, unless the Court finds good cause not to do so, the Court may grant interested person status to extended family or other individuals who have a significant relationship to the child, including, but not limited to, teachers, coaches, counselors or a person who has provided or is providing care for the child.
- B. An interested person may attend and observe all Court proceedings under this Code unless the Court finds good cause to exclude the person. The opportunity to attend Court proceedings does not include the right to be heard or the right to present or cross-examine witnesses, present evidence, or have access to pleadings or records.

2. Intervenor

- A. The Court may appoint intervenor status to an interested person.

- B. An intervenor appointed by the Court has the right to attend, observe, and be heard in any Court proceeding under this Code. The right to be heard does not include the right to present or cross-examine witnesses, present evidence or have access to pleadings or records.
 - C. An intervenor may participate in any Court proceeding under this Code as a party only if so provided by the Court when granting intervenor status. The rights of a party include the right to present or cross-examine witnesses, present evidence, and have access to pleadings and records.
3. Interested persons and intervenors are subject to the confidentiality and disclosure limitations of this Subchapter.

§8. Relatives; Visitation and Access; Placement

1. Grandparents:

A grandparent who is designated as an interested person under this Code or who has been granted intervenor status may request the Court to grant reasonable rights of visitation or access. When a child is placed in a prospective adoptive home and the prospective adoptive parents have signed an adoptive placement agreement pursuant to Subchapter 9 §5, a grandparent's right to contact or access to the child that was granted pursuant to this Code is suspended. If the adoption is not final within 18 months of adoptive placement, then the grandparent whose rights of contact or access were suspended pursuant to this section may resume, as a matter of right and without further court order, contact with the child in accordance with the order granting that contact or access, unless the Court determines after a hearing that the contact is not in the child's best interests. A grandparent's rights of visitation or access terminate when the adoption is finalized pursuant to Subchapter 9 §5. Nothing in this section prohibits prospective adoptive parents from independently facilitating or permitting contact between a child and a grandparent, especially when a court has previously ordered rights of contact. Provided, however, that under Customary Adoption pursuant to Subchapter 9 §6, the grandparents may still retain their rights of visitation and access.

2. Other Relatives:

- A. A relative who is designated as an interested person under this Code or who has been granted intervenor status may request the Court to order that the child be placed with the relative. In making a decision on the request, the Court shall make placement with a relative a priority for consideration if that placement is in the best interests of the child.
- B. There is a rebuttable presumption that the relative would create a situation of jeopardy for the child if any contact were to be permitted and that contact is not in the best interests of the child if the Court finds that the relative:
 - (1) Has been convicted of an offense in which a child could be in jeopardy, including but not limited to domestic violence, assault, unlawful sexual touching, criminal threatening, terrorizing, stalking, obstructing report of a crime, criminal restraint, endangering the welfare of a child and cruelty to animals; or

(2) Has been adjudicated of sexually abusing a person who was a child at the time of the abuse.

C. The relative seeking visitation with or access to the child may produce evidence to rebut the presumption.

§9. Determinations of Parentage

1. As part of a child protection proceeding, the Court may order the parties to undergo a **genetic testing** to determine parentage of the child.
2. This section may not be construed to limit the right of a person to file an action to enforce a father's obligations.

§10. Appeals; Petition to Vacate

1. A party aggrieved by an order of the Court ~~under this Code~~ pursuant to **Subchapter 4 or 7** may appeal to the Tribal Appellate Court in accordance with the Tribal Rules of Appellate Procedure. No such order shall be stayed during the appeal period or during the pendency of an appeal.
2. At any time within 30 days from entry of an order of termination by consent pursuant to Subchapter 7 §5.2 or a decree of adoption by consent pursuant to Subchapter 9 §3.1, the parent may withdraw consent upon the grounds that such consent was obtained through fraud or duress pursuant to Subchapter 9 §10 and may petition the Court to vacate such an order or decree. Upon a finding that such consent was obtained through fraud or duress, the Court shall vacate such order or decree and return the child to the parent.

§11. Conducting Proceedings

1. All child welfare proceedings shall be conducted in accordance with the applicable Court Rules of Civil Procedure and Rules of Evidence, except as otherwise provided in this Code. All proceedings shall be recorded. All proceedings and records shall be closed to the public, unless the Court orders otherwise.
2. This subsection governs the disclosure of certain identifying information.
 - A. At each proceeding, the Court shall inquire whether there are any court orders in effect at the time of the proceeding that prohibit contact between the parties. If such an order is in effect at the time of the proceeding, the Court shall keep records that pertain to the protected person's current or intended address or location confidential, subject to disclosure only as authorized in this section. Any records in the file that contain such information must be sealed by the clerk and not disclosed to other parties or their attorneys or authorized agents unless the Court orders the disclosure to be made after a hearing in which the Court takes into consideration the health, safety or liberty of the protected person and determines that ~~the disclosure is in the interest of justice~~ **there is good cause to disclose**.
 - B. If, at any stage of the proceedings, a party alleges in an affidavit or a pleading under oath that the health, safety or liberty of the person would be jeopardized by disclosure of information pertaining to the person's current or intended address or location, the Court shall keep records that contain the information confidential,

subject to disclosure only as authorized in this section. Upon receipt of the affidavit or pleading, the records in the file that contain such information must be sealed by the clerk and not disclosed to other parties or their attorneys or authorized agents unless the Court orders the disclosure to be made after a hearing in which the Court takes into consideration the health, safety or liberty of the person seeking protection and determines that the disclosure is in the interest of justice.

- C. If the current or intended address or location of a party is required to be kept confidential under paragraph A or B immediately above, and the current or intended address or location of that person is a material fact necessary to the proceeding, the Court shall hear the evidence outside of the presence of the person and the person's attorney from whom the information is being kept confidential unless the Court determines after a hearing that takes into consideration the health, safety or liberty of the protected person that the exclusion of the party is not in the interest of justice. If such evidence is taken outside the presence of a party, the Court shall take measures to prevent the excluded person and the person's attorney from accessing the recorded information and the information must be redacted in printed transcripts.
 - D. Records that are required to be maintained by the Court as confidential under this subsection may be disclosed to:
 - (1) A tribal department or state agency if necessary to carry out the statutory function of that tribal department or agency;
 - (2) A guardian ad litem appointed to the case; or
 - (3) A criminal justice agency if necessary to carry out the administration of criminal justice or the administration of juvenile justice.
 - E. In making such disclosure, the Court shall order the party receiving the information to maintain the information as confidential.
- 3. The Court may interview a child witness in chambers, with only the guardian ad litem and ~~the Department and its counsel~~ present, provided that the statements are a matter of record. The Court may admit and consider oral or written evidence of out-of-court statements made by a child, and may rely on that evidence to the extent of its probative value.
 - 4. At any time in the course of its ongoing jurisdiction over a case, upon motion and for good cause shown, the Court may order that a child, parent, custodian, or person frequenting the household be examined by a physician, psychologist or psychiatrist or such other person of relevant expertise as the Court shall designate. However, the Court cannot order the Department to pay for any services for which it does not have financial resources.
 - 5. At any time in the course of its ongoing jurisdiction over a case, the Court ~~may~~ **shall** order any person requesting custody of a child in connection with a child protection proceeding to submit to a home study.

6. When a child has been ordered into the custody of the Department under this Subchapter, within ~~30~~ 10 days of the order, each parent shall provide the Department with information necessary for the Department to make a determination regarding the eligibility of the child for tribal, state, federal or other third party benefits and shall provide any necessary authorization for the Department to apply for these benefits for the child. Prior to a hearing each parent shall file income affidavits as required by the Court. If a child is placed in the custody of the Department, the Court shall order child support from each parent, designate each parent as a non-primary care provider, and apportion the obligation accordingly.
7. Income affidavits and instructions ~~may~~ shall be provided to each parent at the time of service of the petition or motion. The Department will collaborate with the Child Support Program of the Penobscot Nation Department of ~~Human~~ Social Services, when appropriate. The Court may order a deviation when appropriate. Support ordered pursuant to this section must be paid directly to the Department. The failure of a parent to file an affidavit does not prevent the entry of a protection order.

§12. Records; Confidentiality; Disclosure

1. All Departmental records which contain personally identifying information and are created or obtained in connection with the Department's child protective activities and activities related to a child while in the care or custody of the Penobscot Nation, and all information contained in those records, are confidential and subject to release only under the conditions of this section.
 - A. Within the Department, the records are available only to and may be used only by appropriate Departmental personnel and legal counsel for the Department in carrying out their functions.
 - B. Any person who receives records or information from the Department may use the records or information only for the purposes for which that release was intended and may not further disseminate that information. A child, parent, custodian or subject of a record, may not further disseminate any record or information that person receives from the Department ~~unless the dissemination is intended to contribute to that person's understanding of the action being taken or request for advocacy and support in the current child protective action. This prohibition of dissemination is limited to information gained through the Department.~~
2. Upon motion and for good cause shown, the Court shall order Departmental records disclosed to any person if it finds that disclosure is in the best interests of the child.
3. The Department may disclose relevant information in the records to the following persons:
 - A. An agency investigating a report of child abuse or neglect when the investigation is authorized by State statute or by an **formal written** agreement with the Department;
 - B. A law enforcement agency, to the extent necessary for reporting, investigating and prosecuting an alleged crime, the victim of which is a Department employee, an employee of the Court, a person mandated to report suspected abuse or neglect, a person who has made a report to the Department, a person who has provided

information to the Department or an attorney, guardian ad litem, party, witness or prospective witness in a child protection proceeding;

- C. A physician treating the child who is reasonably suspected to have been abused or neglected;
 - D. A child ~~12 years or older~~, named in a record who is reported to be abused or neglected, or the child's parent or custodian, with protection for identity of reporters and other persons when appropriate;
 - E. A parent, custodian or caretaker of a child when the Department believes the child may be at risk of harm from the person who is the subject of the records or information, with protection for identity of reporters and other persons when appropriate;
 - F. A party to a child protection proceeding, when the records or information are relevant to the proceeding, with protection for identity of reporters and other persons when appropriate;
 - G. A person having the legal responsibility or authorization to educate, care for, evaluate, treat, or supervise a child, parent, or custodian who is the subject of a record. This shall include a member of a treatment team or group convened to plan for or treat a child or family which is the subject of a record provided that the individual has signed a confidentiality form;
 - H. Any person engaged in bona fide research, with the written consent of the Tribal Chief and Council, provided that no personally identifying information is made available;
 - I. A person making a report of suspected abuse or neglect (the Department may only ~~state that nothing can be disclosed~~ **disclose that it has not accepted the referral for investigation unless other disclosure provisions of this section apply**);
 - J. The local animal control officer when there is a reasonable suspicion of animal cruelty, abuse or neglect; and
 - K. A Department-approved actual or prospective adoptive (including customary adoption) parent, permanency guardian, or guardian who requests records relating to the child who has been or might be adopted.
4. The Department shall disclose relevant information in the records to the following persons:
- A. The Court-appointed guardian ad litem or attorney of a child who is the subject of a court proceeding involving parental rights and responsibilities, grandparent visitation, custody, permanency guardianship, adoption, customary adoption, guardianship or involuntary commitment; the access of the guardian ad litem or attorney to the records or information under this paragraph is limited to reviewing the records in the offices of the Department; any other use of the information or records during the proceeding in which the guardian ad litem or attorney is appointed is governed by §6.2 of this Subchapter;

- ~~B. Upon request, a parent or legal guardian of a child who is the subject of the records or information;~~
- B. The Court on its finding that access to child protection records may be necessary for the determination of any issue before the Court; access shall be limited to in camera inspection, unless the Court determines that public disclosure of the information is necessary for the resolution of an issue pending before it; or
- C. Any person pursuant to the order of any court of competent jurisdiction.
5. Except as provided in this section, the Department shall retain unsubstantiated child protective services case records for no more than 18 months following a finding of unsubstantiation and then expunge unsubstantiated case records from all Departmental files or archives unless a new referral has been received within the 18-month retention period.
6. The Department may accept requests and charge fees for research and disclosure of its records as provided in this section.
- A. The Department may charge fees for the services listed in paragraph B below to any person except the following:
- (1) A parent in a child protection proceeding, an attorney who represents a parent in a child protection proceeding or a guardian ad litem in a child protection proceeding when the parent, attorney or guardian ad litem requests the service for the purposes of the child protection proceeding; and
 - (2) A person having the legal authorization to evaluate or treat a child, parent or custodian who is the subject of a record, including a member of a treatment team or group convened to plan for or treat a child or family that is the subject of a record; the record must be requested for the purpose of evaluating or treating the child, parent or custodian who is the subject of the record.
- B. The Department may charge fees for the following services:
- (1) Researching its records to determine whether a particular person is named in the records;
 - (2) Receiving and responding to a request for disclosure of records, whether or not the Department grants the request; and
 - (3) Disclosing records.
- C. The Department may adopt policies governing requests for the services listed in paragraph B immediately above. Those policies may provide for a mechanism for making a request, the information required in making a request, the circumstances under which requests will be granted or denied, and any other matter that the Department determines necessary to respond efficiently to requests for disclosure of records. Policies adopted pursuant to this paragraph are routine technical policies subject to Tribal Council approval.
- D. The Department may establish a schedule of fees by policy. The schedule of fees may provide that certain classes of persons are exempt from the fees, and it may establish

different fees for different classes of persons. All fees collected by the Department must be deposited in the Penobscot Nation General Fund.

- E. This section may not be construed to permit or require the Department to make a disclosure in any particular case.

§13. Penalty for Violations

A person who knowingly violates a provision of this Code commits a civil violation for which forfeiture of not more than \$500 may be adjudged.

SUBCHAPTER 2. REPORTING OF ABUSE OR NEGLECT

§1. Reporting of Suspected Abuse or Neglect

1. The following adult persons, while acting in a professional capacity and as a member, official, employee or agent of the Penobscot Nation, shall immediately report or cause a report to be made to the Department when the person knows or has reasonable cause to suspect that a child has been or is likely to be abused or neglected:
 - A. A medical services provider, including but not limited to Physician, surgeon, dentist, podiatrist, chiropractor, nurse, certified nurse's assistant, dental hygienist, dental assistant, optometrist, medical examiner, emergency medical technician, paramedic, medical social worker or other health care provider;
 - B. Teacher, school counselor, educational technician, or bus driver employed by any tribal, federal, public or private school;
 - C. Administrative officer, supervisor of child welfare and attendance, or truancy officer of any tribal, federal, public or private school;
 - D. Child day care worker, head start teacher, public assistance worker, worker in a group home or residential or day care facility or social service worker;
 - E. Person employed in the mental health profession, including but not limited to psychiatrist, psychologist, psychological assistant, licensed or unlicensed marriage, family, or child counselor;
 - F. Law enforcement officer, animal control officer, probation officer, worker in a juvenile rehabilitation or detention facility, or person employed in a public agency who is responsible for enforcing statutes, codes and judicial orders;
 - G. Any person who has assumed full, intermittent or occasional responsibility for the care or custody of the child, regardless of whether the person receives compensation; and
 - H. Any person affiliated with a church or religious institution that serves in an administrative capacity or has otherwise assumed a position of trust or responsibility to the members of that church or religious institution, while acting in the capacity, regardless of whether the person receives compensation.

1. Any person who knows or has reasonable cause to suspect that a child has been or is likely to be abused or neglected may report or cause a report to be made to the Department.
2. Whenever a person is required to report in a capacity as a member of the staff of a school or medical or private institution, agency or facility, that person shall not only immediately notify the person in charge of the institution, agency or facility or a designated agent, but shall also make a report directly to the Department.
3. When, while acting in a professional capacity, any person required to report under this section knows or has reasonable cause to suspect that a child has been abused or neglected by a person not responsible for the child, the person immediately shall report or cause a report to be made to Penobscot Nation Public Safety Department or the Department.
4. When a licensed mental health professional is required to report under this Subchapter and the knowledge or reasonable cause to suspect that a child has been or is likely to be abused or neglected comes from treatment of a person responsible for the abuse or neglect, the licensed mental health professional shall report to the Department in accordance with this Subchapter and under the following conditions:
 - A. The Department shall consult with the licensed mental health professional that has made the report and shall attempt to reach agreement with the mental health professional as to how the report is to be pursued. If agreement is not reached, the licensed mental health professional may request a meeting under paragraph B immediately below.
 - B. Upon the request of the licensed mental health professional who has made the report, after the Department has completed its investigation of the report or has received a preliminary protection order and when the Department plans to initiate or has initiated a jeopardy order or plans to refer or has referred the report to law enforcement officials, the Department shall convene at least one meeting with the licensed mental health professional that made the report, at least one representative from the Department, a licensed mental health professional with expertise in child abuse or neglect and the tribal prosecutor, unless the tribal prosecutor indicates that prosecution is unlikely.
 - C. The persons meeting under paragraph B immediately above shall make recommendations regarding treatment and prosecution of the person responsible for the abuse or neglect. The persons making the recommendations shall take into account the nature, extent and severity of abuse or neglect, the safety of the child and the community, the needs of the child and other family members for treatment of the effects of the abuse or neglect, and the willingness of the person responsible for the abuse or neglect to engage in treatment. The persons making the recommendations may review or revise these recommendations at their discretion.
 - D. The intent of this subsection is to encourage offenders to seek and effectively utilize treatment and, at the same time, provide any necessary protection and treatment for the child and other family members.

5. Any person who is required to report as a staff member of a law enforcement agency or a medical facility, shall make reasonable efforts to have color photographs taken of any areas of trauma visible on a child. The consent of a parent or custodian to the taking of photographs shall not be required.
 - A. The taking of photographs must be done with minimal trauma to the child and in a manner consistent with professional standards.
 - B. Photographs must be made available to the Department as soon as possible in digitized format when feasible.
 - C. The person shall notify the Department as soon as possible if that person is unable to take, or cause to be taken, these photographs.
 - D. Designated agents of the Department may take photographs of any subject matter when necessary and relevant to an investigation of a report of suspected abuse or neglect or to subsequent child protection proceedings.
6. Notwithstanding any other provision of applicable law imposing a duty of confidentiality, a person listed in subsection 1 above may report a reasonable suspicion of animal cruelty, abuse, or neglect to the tribal animal control officer. For purposes of this subsection, the reporter shall disclose only such limited confidential information as is necessary for the tribal animal control officer to identify the animal's location and status and the owner's name and address.
7. A health care provider, including a home-birth midwife, involved in the delivery or care of an infant who the provider knows or has reasonable cause to suspect has been born affected by illegal substance abuse or is suffering from withdrawal symptoms resulting from prenatal drug exposure, whether or not the prenatal exposure was to legal or illegal drugs, shall notify the Department of that condition in the infant. The report required by this subsection must be made in the same manner as reports of abuse or neglect required by this Subchapter. This section, and any notification made pursuant to this section, may not be construed to establish abuse or neglect and may not be construed to require prosecution for any illegal action, including, but not limited to, the act of exposing a fetus to drugs or other substances. The Department shall respond in accordance with Subchapter 1 §5.2.

§2. Reporting Procedures

1. Reports regarding abuse or neglect shall be made immediately by telephone to the Department during working hours, otherwise to the Penobscot Nation Public Safety Department or Maine State Child Protective Intake and shall be followed by a written report within 48 hours to the Department.
2. The report shall include the following information if within the knowledge of the person reporting:
 - A. The name and address of the child and the persons responsible for the child's care or custody;
 - B. The child's age, date of birth and gender;

- C. The nature and extent of abuse or neglect, including a description of injuries and any explanation given for them;
- D. Family composition and evidence of prior abuse or neglect of the child or siblings or other children in the home;
- E. The source of the report, the person making the report, the person's occupation and contact information;
- F. The actions taken by the reporting source, including a description of photographs or x-rays taken; and
- G. Any other information that the person making the report believes may be helpful.

§3. Mandatory Reporting to Medical Examiner for Postmortem Investigation

A person required to report cases of known or suspected abuse or neglect, who knows or has reasonable cause to suspect that a child has died as a result of abuse or neglect, shall report that fact to the police. The police shall cause a post mortem investigation to be carried out by a medical examiner, who shall report findings to the police.

§4. Immunity from Liability

1. A person, including an agent of the Department, participating in good faith reporting under this Subchapter or participating in a related child protection investigation or proceeding, including, but not limited to, a child protective team or other investigating or treatment team is immune from any criminal or civil liability for the act of reporting or participating in the investigation or proceeding to the same extent provided under applicable tribal or Maine state law. Good faith does not include instances when a false report is made and the person knows the report is false. Nothing in this section may be construed to bar criminal or civil action regarding perjury or regarding the abuse or neglect which led to a report, investigation or proceeding.
2. A person participating in good faith in taking photographs or x-rays under this Subchapter is immune from civil liability for invasion of privacy that might otherwise result from these actions to the same extent provided under applicable tribal or Maine state law.
3. In a proceeding regarding immunity from liability, there shall be a rebuttable presumption of good faith.

§5. Privileged or Confidential Communications

1. The privileges under the applicable Court Rules of Evidence and the confidentiality quality of communications between husband and wife and between any professional and patient or client, except that between attorney and client, are abrogated in relation to required reporting, cooperating with the Department or a guardian ad litem in an investigation or other child protective activity, or giving evidence in a child protective proceeding.
2. The confidentiality of employee personnel records is abrogated in relation to required reporting, cooperating with the Department or a guardian ad litem in an investigation or other child protective activity, or giving evidence in a child protective proceeding.

§6. Abandoned Child; Safe Haven Provider

1. A person who voluntarily delivers a child less than 90 days of age to a safe haven provider and who does not express intent to return for the child may be requested to provide information helpful to the welfare of the child. The person who accepts a child under this section may not detain the person delivering the child to obtain information.
2. A safe haven provider who accepts a child under this section shall promptly notify the Department during working hours, otherwise they shall notify the Penobscot Nation Public Safety Department or Maine State Child Protective Intake of the delivery of the child, transfer the child to the Department at the earliest opportunity and provide to the Department all information provided by the person delivering the child to the safe haven provider.
3. All personally identifiable information provided by the person delivering the child to a safe haven provider is confidential and may not be disclosed by the safe haven provider to anyone except to the extent necessary to provide temporary custody of the child until the child is transferred to the Department and except as otherwise provided by court order. All health care or other information obtained by a safe haven provider in providing temporary custody of the child may also be provided to the Department upon request.
4. A person or entity that accepts a child under this section or provides temporary custody of a child accepted under this section is not subject to civil, criminal, or administrative liability for accepting the child or providing temporary custody of the child in the good faith belief that the action is required or authorized by this section. This subsection does not affect liability for personal injury or wrongful death, including, but not limited to, injury resulting from medical malpractice.

§7. Discrimination

No person may be discriminated against by any employer in any way for participating in good faith in reporting under this Subchapter or in a related child protection investigation or proceeding.

SUBCHAPTER 3. INVESTIGATION AND EMERGENCY SERVICES

§1. Investigative Subpoenas

1. The Court may issue subpoenas for the following purposes:
 - A. To require persons to disclose or provide to the Department information or records in their possession which are necessary and relevant to an investigation of a report of suspected abuse or neglect or to a subsequent child protective proceeding; and
 - B. To obtain non-conviction data and other criminal history record information under Title 16 MRSA, §611, et seq., which the Court deems relevant to a child protective case.
2. A person who complies with a subpoena is immune from civil or criminal liability that might otherwise result from the act of providing information to the Department.

3. Information or records obtained by subpoena shall be treated in accordance with Subchapter 1, §12.

§2. Interviewing the Child without Prior Notification

1. After receiving a report of suspected abuse or neglect, the Department may interview a child without prior notification under the following provisions:
 - A. The Department may interview a child without prior notification to a parent or custodian when the Department has reasonable grounds to believe that prior notice would increase the threat of serious harm to the child or another person. The Department may conduct one initial interview with a child without prior notification to the parent or custodian of the child when the child contacts the Department or a person providing services puts that child into contact with the Department.
 - B. The interview may take place at a school, child care facility, hospital, police station or other place where the child is present.
 - C. Upon the request of a Department employee, school officials shall permit the Department to meet with and interview the child when the child is present at the school.
 - (1) The Department caseworker may discuss the circumstances of the interview and any relevant information regarding the alleged abuse or neglect with the child's teacher or guidance counselor or the school's nurse, social worker or principal, as the caseworker determines necessary for the provision of any needed emotional support to the child prior to and following the interview.
 - (2) In order for the Department to be able to conduct interviews in a manner consistent with good forensic practice, school officials may not place any conditions on the Department's ability to conduct the interview. Without limiting the generality of this subparagraph, school officials are specifically prohibited from:
 - (a) Requiring that certain persons be present during the interview;
 - (b) Prohibiting certain persons from being present during the interview; and
 - (c) Requiring notice to or consent from a parent or guardian.
 - (3) School officials shall provide an appropriate, quiet, and private place for the interview to occur.
 - (4) That the Department intends to interview the child is confidential information and may not be disclosed to any person except those school officials, including an attorney for the school, who need the information to comply with the provisions of this section.
 - D. The Department may audio record all questioning of and interviews with children.
 - E. A person being questioned or interviewed under this Subchapter or the parent of a child who is the subject of a proceeding under this Subchapter may not be prohibited from audio recording the questioning or interview.

2. Violation of this section subjects any person involved in the violation, including individual school personnel, to the penalty provided in Subchapter 1, §13.

§3. Surrender and Release; Consent

1. With the approval of the Court and after a determination by the Court that it is in the best interests of the child, the parents or surviving parent of a child may at any time after the child's birth:
 - A. Surrender all parental rights to the child and release the child to the custody and control of the child to the Department; or
 - B. Consent to have the child adopted by a specific petitioner; the adoptee, if 14 years of age or older, must execute the consent in the presence of the judge.
2. The Court may approve consent or surrender and release only if all of the following conditions are met.
 - A. The Department certifies to the Court that counseling was provided or was offered and refused. This requirement does not apply if one of the petitioners is a blood relative.
 - B. The Court has explained the individual's parental rights and responsibilities, the effects of parental consent or the surrender and release, and that in all but specific situations the individual has the right to revoke the consent or surrender and release within 30 days. The individual does not have the right to revoke the consent when the individual is a consenting party and also a petitioner.
 - (1) The Court determines that the consent or the surrender and release has been duly executed and was given freely after the parent was informed of parental rights.
 - (2) Except when a consenting party is also a petitioner, at least 3 days have elapsed since the parents or parent executed the surrender and release or the consent and the parents or parent did not withdraw or revoke the consent or surrender and release before the judge.
3. A consent or a surrender and release is not valid until 3 days after it has been executed, except that consent by a parent petitioning to adopt that parent's own child with that parent's spouse is valid upon signature.

§4. Emergency Protection Hold

1. If probable cause exists to believe that a child is in immediate risk of serious harm, the Department or the Department of Public Safety may take emergency protection hold of a child and authorize any services essential to the care and protection of the child, including but not limited to emergency medical treatment, over the objection of the child's parent or custodian.
2. ~~Upon taking a~~ **Within 12 hours of an** emergency hold of a child, the Department shall prepare a Preliminary Protection Petition with a request for a Preliminary Protection Order and file it with the Court forthwith.

§5. Short-term Emergency Care

1. Upon determination that a child's parents or custodians are unavailable, the Department may provide directly or may authorize another person to provide short-term emergency care to a child who has been or appears to be:
 - A. Threatened with serious harm;
 - B. A runaway from the child's parents or custodian;
 - C. Without any **suitable** person responsible for the child;
 - D. Taken into interim care by a law enforcement officer; or
 - E. In a situation in which the child has lost both parents as a result of a homicide or has lost one parent and the other parent has been arrested, detained or sentenced and committed to a state correctional facility, state mental health institute or state or county jail for an offense related to the homicide.
2. Prior to or upon initiating short-term emergency care, the Department shall make a reasonable effort to determine that the parents or custodians of a child are unavailable. Such effort shall continue throughout the period that such care is provided. A parent or custodian shall be deemed unavailable if his or her physical whereabouts are unknown or, if known, are such that the parent or custodian cannot be contacted.
3. Short-term emergency care shall not exceed 72 hours from the time the Department commences providing or authorizes another person to provide such care.
4. Providing short-term emergency care to a child shall not affect a parent's or custodian's obligation for the support of the child, and the Department may, by agreement or court order, obtain reimbursement from a parent or custodian for the cost of the short-term emergency care provided.

§6. Legal Effect of Consent

When the Department has given its consent, a physician or health care provider shall be immune from civil liability for providing emergency medical treatment without the informed consent of the child or the child's parents or legal guardian.

SUBCHAPTER 4. PROTECTION ORDERS

§1. Child Protection Petition; Petitioners; Content; Filing

1. Petitions may be brought by:
 - A. The Department through an authorized agent;
 - B. A police officer, if there is no authorized agent of the Department available and an emergency protection order is sought; or
 - C. Three or more **adult** members of the Penobscot Nation.
2. A child protection petition shall be sworn and shall include the following:
 - A. Name, date and place of birth, residence, and domicile, if known, of each child;

- B. The name and address of the petitioner and nature of the petitioner's relationship to the child;
- C. Name, residence and domicile, if known, of each parent and custodian;
- D. All facts pertinent to tribal membership of each child and the child's birth parents;
- E. An allegation that the child is in jeopardy or at immediate risk of serious harm;
- F. A summary statement of the facts supporting the allegations in the petition;
- G. A request for specific Court disposition of the case;
- H. A request for child support from the parents.**
- ~~8.~~ **I.** A statement of the rights of parents and custodians under Sub chapter 1, §6; and
- ~~9.~~ **J.** A statement that petition proceedings could lead to the termination of parental rights under Subchapter 7 or a ~~suspension~~ **modification** of parental rights under Subchapter 6, and of the legal effects of such action.
- K. A statement explaining the specific reasonable efforts made to prevent the removal of the child(ren) or to resolve jeopardy.**

Title IV-E requires court orders to state that reasonable efforts were made to prevent removal. In order to do this, the Department of Social Services must provide the court with an explanation of the specific efforts that were made.

- 3. Whenever possible, child protective cases will be given priority in scheduling over other cases of approximate equal age.

§2. Service and Notice

- 1. A child protection petition shall be served as follows:
 - A. The petition and a notice of hearing shall be served on parents and custodians, the guardian ad litem for the child and any other party at least 10 days prior to the hearing date. A party may waive this time requirement if the waiver is written and voluntarily and knowingly executed in Court. Service shall be made in accordance with the applicable Court Rules of Civil Procedure; and
 - B. If the Department is not the petitioner, the petitioner shall serve a copy of the petition and notice of hearing to the Department.
- 2. If the Court ~~issues~~ ~~makes an emergency~~ **a preliminary** protection order, a copy of the order shall be served on the parents and custodians by:
 - A. In-hand delivery by the ~~judge~~ **Court** to any parent, custodian or their counsel who is present when the order is made;
 - B. Service in accordance with the applicable Court Rules of Civil Procedure; notwithstanding the Rules, service by publication of a preliminary protection order shall be complete 5 days after a single publication;
 - C. In-hand service by the Department; or

- D. Any other manner ordered by the Court.
- 3. The Court shall deliver in-hand or by ordinary mail promptly after it is entered, a copy of the protection order to the parents' or custodians' counsel or, if no counsel, to the parents or custodians.
- 4. The copy of the order shall include a notice to parents or custodians of their rights under Subchapter 4, §6. Lack of compliance with this subsection does not affect the validity of the order.

§3. Request for Preliminary Protection Order

1. Preliminary Protection Order

A petitioner may add to a child protection petition a request for a preliminary protection order, which shall include an allegation that the child is in immediate risk of serious harm and a sworn summary of the facts supporting the allegation.

- A. If the Court finds by a preponderance of the evidence presented in the sworn summary or otherwise that there is an immediate risk of serious harm to the child, it may order any disposition under Subchapter 4, §5.
- B. A preliminary protection order shall automatically expire at the time of the issuing of a protection order under Subchapter 4, §4.

2. Emergency Hearing Custodian Consent

- A. If each custodian consents in writing and the consent is voluntarily and knowingly executed in court then the hearing on the preliminary protection order may be waived.
- B. ~~If there is no consent, then the Court shall hold an emergency hearing on that order within 10 days of its issuance, unless all parties agree to a later date. The petitioner shall bear the burden of proof.~~
- C. ~~If, after hearing, the Court finds by a preponderance of the evidence that returning the child to the parent or custodian would place the child in immediate risk of serious harm, it shall continue the order or make another disposition under Subchapter 4, §5.~~
- D. ~~If no parent or custodian appears for the emergency hearing, the Court shall continue the preliminary protection order or make another disposition under Subchapter 4, §5 without hearing.~~

3. Summary Preliminary Hearing

If the custodial parent appears and does not consent, or if a noncustodial parent requests a hearing, then the Court shall hold a summary preliminary hearing on that order within 14 days but not less than 7 days of its issuance or request.

- A. If a parent or custodian is not served with the petition before the summary preliminary hearing, the parent or custodian may request a subsequent preliminary hearing within 10 days after receipt of the petition. The petitioner bears the burden of proof.

- B. At a summary preliminary hearing, the Court may limit testimony to the testimony of the caseworker, parent, custodian, guardian ad litem, foster parent, pre-adoptive parent, or relative providing care and may admit evidence, including reports and records that would otherwise be inadmissible as hearsay evidence.
- C. If after the hearing the Court finds by a preponderance of the evidence that returning the child to the child's custodian would place the child in immediate risk of serious harm, it shall continue the order or make another disposition under Subchapter 4, §5. **The Department shall file a rehabilitation and reunification plan with the Court no later than 10 days from the date of the hearing.**
- D. If the Court's preliminary order includes a finding of an aggravating factor, the Court may order the Department not to commence reunification or to cease reunification, in which case the Court shall conduct a hearing on jeopardy or a permanency planning hearing.
- E. The hearings under this section must commence within 30 days of entry of the preliminary order.
- F. The order shall include a notice to the parents and custodian of their rights under Subchapter 1, §6, and, if the order was made without consent, notice of the date and time of the summary preliminary hearing.
- G. **If no parent or custodian appears for the preliminary hearing, the Court shall continue the preliminary protection order or make another disposition under Subchapter 4, §5 without hearing.**

§4. Hearing on Protection Petition; Protection Order

- 1. The Court shall hold hearings on adjudication and disposition prior to making a protection order. **The Court shall issue a jeopardy order within 120 days of the filing of the child protection petition. This time period does not apply if good cause is shown; however, good cause does not include scheduling problems.**
- 2. After hearing evidence, the Court shall make a finding by a preponderance of the evidence as to whether the child is in jeopardy. **Such a court order requires that findings be in writing, stating that the finding was based on the specific facts and circumstances relating to the child and explicitly documents the basis for the finding.**
- 3. If the Court ~~determines~~ **grants the petition and adjudicates** that the child is in jeopardy it shall hold a dispositional hearing within 30 days of adjudication. Such hearing may be held immediately upon adjudication or, for good cause shown, may be continued beyond the 30 day period.
 - A. At the dispositional hearing, the Court may hear any relevant evidence regarding proposed dispositions, including written or oral reports, recommendations, or case plans.
 - B. Written materials to be offered into evidence shall be made available to each party and the guardian ad litem reasonably in advance of the dispositional hearing.

4. At the dispositional hearing the Department shall submit a family reunification plan for the Court's approval. The Court shall adopt the Department's plan unless it is substantially in conflict with the dispositional principles set forth in Subchapter 4, §5.
5. After hearing evidence on disposition, the Court shall issue an order:
 - A. The order shall specify disposition under Subchapter 4, §5.
 - B. The order shall incorporate by reference a family **rehabilitation and** reunification plan.
 - C. The order may be for a specified period, with a review at the end of that period, or it may be for an indeterminate period, not beyond the child attaining age 18.
 - D. The order shall include notice of the date and time of mandatory Court review in accordance with §6 of this subchapter.
6. The Department shall make reasonable efforts to prevent removal of the child from home, unless the Court finds the presence of an aggravating factor. In an order providing for removal of the child from home, or within 60 days of the date of removal of the child from home, the Court shall make a finding:
 - A. Whether or not the Department has made reasonable efforts to prevent removal of the child from home; and
 - B. If the Court finds that the Department did not make reasonable efforts to prevent removal of the child from home, whether or not there is an aggravating factor.
7. The Department shall make reasonable efforts to reunify the family as provided in Subchapter 4, §7 unless the Court has ordered that the Department need not commence or may cease reunification pursuant to Subchapter 5. In the protection order and in each subsequent judicial case review order, the Court shall make a finding whether or not the Department has made reasonable efforts to reunify the family.
8. The Department shall make reasonable efforts to finalize a permanency plan. In each order determining a permanency plan pursuant to Subchapter 4, §7, the Court shall make a finding whether or not the Department has made reasonable efforts to finalize the permanency plan.

§5. Disposition and Principles

1. ~~The Court shall issue a jeopardy order within 120 days of the filing of the child protection petition. In a jeopardy order, t~~ The Court may order one or more of the following:
 - A. No change in custody;
 - B. Departmental supervision of the child and family in the child's home;
 - C. That the child, the custodian, the parents and/or other appropriate family members accept treatment or services to ~~improve~~ **ameliorate** the circumstance related to the jeopardy;
 - D. If the Court's jeopardy order includes a finding of an aggravating factor, the Court may order the Department to cease reunification, in which case a permanency planning hearing must be held in accordance with §7.1 of this subchapter;

- E. Necessary medical treatment for the child when no custodian is willing or able to consent;
 - F. Emancipation of the child, if the requirements of Subchapter 8 are met;
 - G. Removal of the child from the custodial parent or other custodian and granting custody to a noncustodial parent, other person, or the Department; any order transferring custody shall specify **that remaining in the home is contrary to the welfare of the child and specify** the visitation rights and obligations of parents;
 - H. Payment by the parents of a reasonable amount of support for the child;
 - I. Other specific conditions governing custody; or
 - J. A parental rights and responsibilities order.
2. In determining the disposition that is in the best interests of the child, the Court shall apply the following principles, in this priority:
- A. Protect the child from jeopardy;
 - B. Promote and protect the stability and security of the child's family; and
 - C. Promote and protect the child's ties to the Penobscot Nation.

§6. Case Review

1. If the Court has made a protection order under Subchapter 4, §4, it shall review the case at least once within 6 months of the original order, and ~~periodically~~ **at least every 6 months** thereafter, unless the child has been adopted or emancipated. ~~Mandatory Court review shall be initiated by motion brought by the child's custodian.~~

Title IV-E mandates 6-month reviews.

2. The Court, the child's parent, custodian or guardian ad litem or party to the protection proceeding, except a parent whose rights have been terminated under Subchapter 7 may move for Court review and re-disposition of the case, including discontinuation or modification of the family reunification plan, upon plead showing of substantial change in circumstances. The moving party shall have the burden going forward.
3. ~~Notice of case or re-disposition hearings~~ **reviews** must be given to all parties to the initial proceeding according to applicable Court Rules of Civil Procedure. Notice may not be given to a parent whose rights have been terminated under Subchapter 7. The Department shall provide written notice of all reviews and hearings in advance of the proceeding to the foster parent, pre-adoptive parent, and/or relative providing care.
- A. The notice must be dated and signed, must include
 - (1) A statement that the foster parent, pre-adoptive parent or relative providing care are entitled to notice of and an opportunity to be heard in any review or hearing held with respect to the child; and
 - (2) The following language: "The right to be heard includes only the right to testify and does not include the right to present other witnesses or evidence, to attend

any other portion of the review or hearing or to have access to pleadings or records.”

- B. A copy of the notice must be filed with the Court prior to the review or hearing.
 - C. The Court may convene a prehearing conference to clarify the disputed issues and review the possibility of settlement.
4. The Court shall hear evidence and shall consider the original reason for the jeopardy adjudication and disposition, the events that have occurred since then and the efforts of the parties. After hearing or by agreement, the Court shall make written findings that determine:
- A. The safety of the child in the child’s placement;
 - B. The continuing necessity for and appropriateness of the child’s placement;
 - C. The effect of a change in custody on the child;
 - D. The extent of the parties’ compliance with the case plan and the extent of progress that has been made toward alleviating or mitigating the causes necessitating placement in foster care;
 - E. A likely date by which the child may be returned to and safely maintained in the home or placed for adoption, **customary adoption**, permanency guardianship, **or another planned permanent living arrangement**; and
 - F. If the child is ~~16~~ 14 years of age or older, whether or not the child is receiving instruction to aid the child in ~~independent living~~ **the transition to successful adulthood**.

Changes to Title IV-E of the Social Security Act lowered the age from 16 to 14.

- 5. After review or hearing, and based on a preponderance of the evidence, the Court shall make a finding as to whether the order being reviewed continues to be in accord with the principles set forth in Subchapter 4, §5, and if so, the Court shall either order a protective disposition or vacate the protection order.
- 6. The Court may make any further order that, based on a preponderance of evidence, is authorized under this Code.

§7. Permanency Plans

- 1. ~~Unless subsequent judicial reviews are not required,~~ The Court shall conduct a permanency planning hearing **for all children in tribal custody** and shall determine a permanency plan within the earlier of:
 - A. Thirty days after **the Court has determined that reasonable efforts are not required and a court order to cease reunification has been issued**; or
 - B. Twelve months after the time a child is considered to have entered foster care. A child is considered to have entered foster care on the date of the first judicial finding

that the child has been subjected to child abuse or neglect or on the 60th day after removal of the child from home, whichever occurs first.

These changes are proposed to make it clear that permanency planning hearing are required for all children in care, and to clarify the language as to when these hearings must take place.

2. ~~Unless subsequent judicial reviews are not required,~~ The Court shall conduct a permanency planning hearing within 12 months of the date of any prior permanency planning ~~order~~ **hearing**.
3. After each permanency planning hearing, the Court shall issue a permanency planning order for a child that complies with requirements of this Code. The Court shall enter the order within the time limitations set forth in this Code.
4. A permanency plan for a child under this section must contain determinations on the following issues.
 - A. The permanency plan shall specify one of the following ~~placements~~ **permanency goals** for the child:
 - (1) Returned to a parent; before the Court may enter an order returning the custody of the child to a parent, the parent must show
 - (a) that the parent has carried out the responsibilities set forth in the protection order;
 - (b) that to the Court's satisfaction the parent has rectified and resolved the problems that caused the removal of the child from home and any subsequent problems that would interfere with the parent's ability to care for the child and protect the child from jeopardy; and
 - (c) that the parent can protect the child from jeopardy;
 - (2) Placed for adoption, in which case the Department shall file a petition for termination of parental rights;
 - (3) **Placed for customary adoption, in which case the Department shall file a petition for modification of parental rights;**
 - (4) Cared for by a permanency guardian as provided in Subchapter ~~10~~ 11 or a guardian as provided in Subchapter ~~11~~ 12;
 - (5) Placed with a fit and willing relative; or
 - (6) Placed in another planned permanent living arrangement. **If the child is age 16 or older, ~~the~~ the Court may adopt another planned permanent living arrangement as the permanency plan for the child only after the Department has documented to the Court a compelling reason for determining that reunification, adoption, customary adoption, guardianship, or placement with a fit and willing relative ~~the previous four placements~~ would not be in the best interests of the child.**

Amendments to the IV-E legislation set limits on the age for which another planned permanency arrangement is appropriate so that agencies have to make on-going efforts toward adoption, guardianship, reunification, and placement with a fit and willing relative.

5. **In the case of a child who will not be returned to the parent, consider placement options both inside and outside the tribal service area.**

Title IV-E requires that tribes and states must make every effort to find a suitable, appropriate placement of child even if it is outside the service area or in another state.

6. In the case of a child placed outside the state in which the parents of the child live, determine whether the out-of-state placement continues to be appropriate and is in the best interests of the child.
7. In the case of a child who is ~~at~~ 14 years of age or older, determine the services needed to assist the child to make the transition from foster care to ~~independent living~~ **successful adulthood.**
8. **At every permanency hearing for a child placed in another planned permanent living arrangement:**
 - (1) **the Department shall provide evidence of the ongoing, intensive and, as of the date of the hearing, unsuccessful efforts to return the child home or secure a placement for the child with a fit and willing relative (including adult siblings), a legal guardian, or an adoptive parent, including through efforts that utilize search technology (including social media) to find biological family members for the child;**
 - (2) **the child must be asked about the desired permanency outcome for him/her;**
 - (3) **the Court shall make a judicial determination explaining why, as of the date of the hearing, another planned permanent living arrangement is the best permanency plan for the child and provide compelling reasons why it continues to not be in the best interests of the child to return home, be placed for customary adoption or adoption, be placed with a legal guardian, or be placed with a fit and willing relative;**
 - (4) **the Department shall document the steps it has taken to ensure that the child's foster family home or child care institution is following the reasonable and prudent parent standard, and that the child has regular, ongoing opportunities to engage in age or developmentally appropriate activities (including by consulting with the child in an age and culturally appropriate manner about the opportunities of the child to participate in the activities).**
9. **The Court shall consult, in an age appropriate manner, with the child regarding a proposed permanency or transition plan.** The Court shall consider, but is not bound by, the wishes of a child over the age of 12 in making a determination under this section.

This is a new requirement that resulted from amendments to the Title IV-E legislation. It is included so that both the Department and the Court will know what their responsibilities are for children placed in another planned permanent living arrangement.

§8. Enforcement of Custody Orders Enforcement of Criminal Penalty

When the Court has ordered a change in the custody of a child and a person not entitled to custody refuses to relinquish physical custody to the custodian, then at the request of the Department or custodian, a law enforcement officer may take any necessary and reasonable action to obtain physical custody of the child for the rightful legal custodian. Necessary and reasonable action may include entering public or private property with a warrant based on probable cause to believe that the child is there. **A warrant is not necessary as a child protective court order acts as a warrant permitting search for the child as exigent circumstances.**

SUBCHAPTER 5. FAMILY REUNIFICATION

§1. Family Reunification

- ~~1. When a child has been ordered into protective custody under Subchapter 4, §4, the Department shall provide, arrange, or coordinate services to help enable one or both of the parents to provide a home for the child free from jeopardy.~~ **When a child is considered to have entered foster care, the responsibility for rehabilitation and reunification of the family must be shared between the Department and the parent in good faith. The Department shall assist in providing, arranging and coordinating appropriate services for the parents including, but not limited to, visitation, substance abuse treatment, counseling, and other services that support rehabilitation and reunification.**

~~These services shall include:~~

- ~~A. Giving~~ **The Department shall give** the parents prompt written notice of the following, unless that notice would be detrimental to the best interests of the child:
 - (1) The child's residence and, when practicable, at least 7 days advance written notice of a planned change of the child's residence; and
 - (2) Any serious injuries, major medical care or hospitalization of the child;
 - ~~B. Assuring that the parents have the opportunity to visit with the child as provided by the protection order when this is not detrimental to the best interests of the child;~~
 - ~~C. B.~~ **Periodically reviewing with the parents the Court ordered family reunification plan; and**
 - ~~D. C.~~ **Petitioning for Court review and restoration of custody at the earliest appropriate time.**
2. The family reunification plan incorporated in the protection order shall include the following:

- A. A statement of why the circumstances of the child's home constitute jeopardy to the child;
 - B. A list of the specific changes that must occur to make the home safe for the child;
 - C. A list of the specific services to assist the family which are available and recommended by the Department;
 - D. A statement of the actions the Department will take to keep the family informed about the child and to help them change the circumstances of jeopardy in their home;
 - E. A statement of the parents' obligations under the family reunification plan; and
 - F. A statement explaining the child's need for permanency and relating the family reunification plan to that need.
3. The following provisions shall govern cessation of the family reunification plan:
- A. The Department may cease its family reunification efforts under the Court ordered plan with either parent, if that parent:
 - (1) Cannot be located; or
 - (2) **Is unwilling or Refuses** ~~or is unable~~ to make a good faith effort toward meeting parental obligations under the reunification plan.
 - B. When the Department ceases efforts at family reunification under the protection order, it shall, within two weeks of such action, do one of the following:
 - (1) File a motion for Court review under Subchapter 4, §6 requesting that the Court amend its protection order;
 - (2) File a petition to ~~suspend~~ **modify** parental rights under Subchapter 6; or
 - (3) File a petition to terminate parental rights under Subchapter 7.
 - C. If the Department files a motion under B.1. above but does not seek ~~suspension~~ **modification** or termination of parental rights, the Court may order any other disposition consistent with Subchapter 4, §5.

SUBCHAPTER 6. SUSPENSION MODIFICATION OF PARENTAL RIGHTS

We felt that suspension implies the stopping of all parental rights. Whereas modification implies an alteration or change in parental rights, since there is a possibility that not all rights would be taken away. For example, the parent might retain visitation rights as set forth in the court order.

§1. General Statement

As a general proposition, the Penobscot Nation does not support termination of parental rights **except in rare cases**. However, as part of its Customary Adoption, Penobscot Nation supports suspension of parental rights when it is appropriate and in the best interests of the

~~child.~~ When it is appropriate and in the best interests of the child, modification of parental rights and Customary Adoption is the preferred permanency plan.

§2. ~~Suspension~~ Modification Petition; Petitioners; Time Filed; Contents

1. A ~~suspension~~ **modification** petition may be brought by the legal custodian of the child.
2. A ~~suspension~~ **modification** petition may be brought no earlier than 3 months after issuance of a protection order under Subchapter 4, §4 or a divorce custody order issued by the Court.
3. A ~~suspension~~ **modification** petition shall be sworn and shall include at least the following:
 - A. The name, date and place of birth, residence and domicile, if known, of the child;
 - B. The name and address of the petitioner and nature of the petitioner's relationship to the child;
 - C. The name, residence and domicile, if known, of each parent;
 - D. A specific statement of the alleged grounds for ~~suspension~~ **modification**;
 - E. A summary statement of the facts supporting the ~~allegation~~ **modification**;
 - F. A statement of the rights of parents and custodians under Subchapter 1, §7; and
 - G. A statement of the effects of a ~~suspension~~ **modification** order.
4. On the filing of a petition, the Court shall set a time and date for a hearing on the ~~suspension~~ **modification** petition.

§3. Service

The petition and the notice of hearing shall be served on the parents at least 30 days prior to the hearing date. Service shall be made in accordance with the applicable Court Rules of Civil Procedure.

§4. Hearing on ~~Suspension~~ Modification Petition

The Court shall hold a hearing prior to making a ~~suspension~~ **modification** order.

§5. Grounds for ~~Suspension~~ Modification

1. The Court may order involuntary ~~suspension~~ **modification** of parental rights if:
 - A. One of the following conditions has been met:
 - (1) Custody has been removed from the parent under:
 - (a) A protection order issued by the Court; or
 - (b) A divorce custody order issued by the Court; or
 - (2) The petition has been filed as part of a Customary Adoption proceeding under Subchapter 9; and
 - B. The Court finds, based on clear and convincing evidence, that:

- (1) The parent is unwilling or unable to provide a home for the child free from jeopardy in a time that is reasonable in light of the child's needs; and
 - (2) **Suspension Modification** is in the best interests of the child.
2. The Court may order voluntary **suspension modification** of the parental rights of any parent who knowingly and voluntarily executes before a judge a written consent to **suspension modification**.
 - A. A **suspension modification** order based on consent shall include a finding that the parent understood the effects of the **suspension modification** order and consented thereto voluntarily.
 - B. If **suspension modification** leaves the child without a custodian, the Court shall order custody to the Penobscot Nation.
 3. In deciding whether to **suspend modify**, the Court shall consider the needs of the child, including the child's age, tribal ties, attachments to relevant persons, ability to integrate into a substitute placement or back into the parent's home, and the child's expressed wishes regarding **suspension modification**.
 4. The Court shall not order **suspension modification** if the child is at least 12 years old and objects to the **suspension modification**.

§6. Effects of Suspension Modification Order

1. If the Court determines that it is in the best interests of the child and the Penobscot Nation, it shall issue a final order for a **suspension modification** of parental rights. The **suspension modification** of one parent's rights shall not affect the rights of the other parent.
 - A. Such an order for the **suspension modification** of parental rights may include, but is not limited to the following:
 - (1) A permanent **suspension modification** of the parental rights of the parent to allow the child to go through a customary adoption;
 - (2) A permanent **suspension modification** of the right of the parent to have contact with the child including contact in person, by mail, by telephone or through third parties or the order may allow for a contact agreement agreed upon by the parties to be ordered by the Court;
 - (3) Restraining a parent from contacting the child, the child's foster parent, the child's adoptive parent and/or the Department or other agencies possessing information regarding the child;
 - (4) Ordering that the biological parent's obligation to pay child support arrearages are hereby terminated;
 - (5) Removing the standing of the parent to appear at any future legal proceedings involving the child;

- B. The ~~suspension~~ **modification** of parental rights does not sever or affect in any way a child's relationship to the Penobscot Nation or any rights of inheritance from the biological parent(s); or
 - C. Such an order shall contain a statement regarding why it is in the best interests of the child and the Penobscot Nation to enter this order.
2. Copies of any order for ~~suspension~~ **modification** of parental rights shall be served upon the parent and the agency having legal custody of the child and any other parties as directed by the Court.
 3. Final orders for the ~~suspension~~ **modification** of parental rights may be reviewed by the Court at the request of the biological parent or the agency possessing custody of the child only if one of the following occurs:
 - A. If there is no final permanency order in effect after a period of one year after the entry of the final order ~~suspending~~ **modifying** parental rights;
 - B. The adoption of the child fails; or
 - C. The adoptive parent is deceased.
 4. Notice of this review shall be provided to all parties to the hearing at which the final ~~suspension~~ **modification** of parental rights order was issued.

SUBCHAPTER 7. TERMINATION OF PARENTAL RIGHTS

§1. General Statement

As a general proposition, the Penobscot Nation does not support termination of parental rights but recognizes there may be extreme circumstances when it is appropriate and in the best interests of the child.

§2. Termination Petition; Petitioners; Time Filed; Contents

1. A termination petition may be brought by the **legal** custodian of the child.
2. A termination petition may be brought no earlier than 3 months after issuance of a protection order under Subchapter 4, §4 or a divorce custody order issued by the Court, unless there is an aggravating factor.
3. A termination petition may be filed if the child has been in foster care for 15 out of the last 22 months unless a compelling reason exists that it would not be in the best interests of the child.
4. **A termination petition may be filed within 60 days of a judicial determination that a child is an abandoned infant, as defined in Subchapter 1, §2 unless a compelling reason exists that it would not be in the best interest of the child.**
5. **A termination petition may be filed within 60 days of a judicial determination that reasonable efforts to reunify the child and parent are not required because of an aggravating factor as defined in Subchapter 1, §2.**

<i>These are provisions that we must include as they are IV-E requirements.</i>

- 4-6. A termination petition shall be sworn and shall include at least the following:
- A. The name, date and place of birth, residence and domicile, if known, of the child;
 - B. The name and address of the petitioner and nature of the petitioner's relationship to the child;
 - C. The name, residence and domicile, if known, of each parent;
 - D. A specific statement of the alleged grounds for termination;
 - E. A summary statement of the facts supporting the allegation;
 - F. A statement of the rights of parents and custodians under Subchapter 1, §7; and
 - G. A statement of the effects of a termination order.
- 5-7. On the filing of a petition, the Court shall set a time and date for a hearing on the termination petition.

§3. Service

The petition and the notice of hearing shall be served on the parents at least 30 days prior to the hearing date. Service shall be made in accordance with the applicable Court Rules of Civil Procedure.

§4. Hearing on Termination Petition

The Court shall hold a hearing prior to making a termination order.

§5. Grounds for Termination

1. The Court may order involuntary termination of parental rights if:
 - A. One of the following conditions has been met:
 - (1) Custody has been removed from the parent under:
 - (a) A protection order issued by the Court; or
 - (b) A divorce custody order issued by the Court; or
 - (2) The petition has been filed as part of an adoption proceeding under Subchapter 9; and
 - B. The Court finds, based on clear and convincing evidence, that:
 - (1) The parent is unwilling or unable to provide a home for the child free from jeopardy in a time that is reasonable in light of the child's needs; and
 - (2) Termination is in the best interests of the child.
2. The Court may order voluntary termination of the parental rights of any parent who knowingly and voluntarily executes before a judge a written consent to termination.
 - A. A termination order based on consent shall include a finding that the parent understood the effects of the termination order and consented thereto voluntarily.

- B. If termination leaves the child without a custodian, the Court shall order custody to the Penobscot Nation.
3. In deciding whether to terminate, the Court shall consider the needs of the child, including the child's age, tribal ties, attachments to relevant persons, ability to integrate into a substitute placement or back into the parent's home, and the child's expressed wishes regarding termination.
4. The Court shall not order termination if the child is at least 12 years old and objects to the termination.

§6. Effects of Termination Order

1. An order terminating parental rights divests the parent and child of all legal rights, powers, privileges, immunities, duties, and obligations to each other as parent and child. Except that the child can still inherit from the parents, but the parents cannot inherit from the child post termination of parental rights.
2. The termination of one parent's rights shall not affect the rights of the other parent.
3. Once a termination order is in effect, the parent shall not be entitled to notice of the child's adoption proceedings, nor shall the parent have any right to object to the adoption or participate in the proceedings.
4. No order terminating parental rights may disentitle a child to benefits due him from any third person, agency, state, **Penobscot Nation** or the United States; nor may it affect the rights and benefits that a Native American derives by virtue of descent from a member of a federally-recognized Native American tribe.

SUBCHAPTER 8. EMANCIPATION

§1. Emancipation Petition

1. A person over 16 years of age who is residing on Penobscot Nation territories and whose custodial parent resides on Penobscot Nation territories who wishes to be released from the legal control of parents or custodians, may bring an emancipation petition before the Court.
2. An emancipation petition shall be sworn and shall include at least the following:
 - A. The name, date and place of birth, gender, residence and domicile of the child;
 - B. The name, residence and domicile of each parent and custodian;
 - C. A detailed statement of the child's plan for providing for room, board, health care, education, and vocational training or employment; and
 - D. A statement of the child's reasons for seeking emancipation.
3. On the filing of an emancipation petition, the Court shall set a time and date for a hearing.

§2. Service and Notice

1. The emancipation petition and a notice of hearing shall be served on the parents, custodian, and the Penobscot Nation at least 10 days prior to the hearing date. Service shall be made in accordance with applicable Court Rules of Procedure.
2. The Court shall deliver in hand at the Court, or send by ordinary mail promptly after it is entered, a copy of the emancipation order to the parents, custodian, and the Penobscot Nation. A copy of the order shall include a statement of the legal effects of the emancipation order. Lack of compliance with this subsection does not affect the validity of the order.

§3. Hearing on Emancipation Petition; Grounds for Emancipation

1. The Court shall hold a hearing prior to making an emancipation order.
2. The Court shall order emancipation of the child if it determines that:
 - A. The child has made reasonable provisions for room, board, health care, education, and vocational training or employment;
 - B. The child understands the legal effects of emancipation;
 - C. The child is sufficiently mature to assume the responsibility for his or her own care; and
 - D. It is in the child's best interests to do so.

§4. Effects of Emancipation Order

1. An emancipation order invests the child with the rights, privileges, and duties of an adult, except where otherwise provided by law; it divests the child of the right to be provided for by parents or custodian, and releases the child from their legal control.
2. An emancipation order divests the child's parents and custodian of the right to and responsibility for control of the child, including but not limited to the right to or the responsibility for the child's care, custody, and earnings.
3. An order emancipating a child shall not affect the inheritance rights between the child and parents nor shall it disentitle a child to benefits due from any third person, agency, state or the United States; nor may it affect the rights and benefits that a Native American derives by virtue of descent from a member of a federally-recognized Native American tribe.

SUBCHAPTER 9. ADOPTION AND CUSTOMARY ADOPTION

We separated adoption and customary adoption into two separate subchapters because of the confusion it created for us when they were together in one section. The processes are parallel, but the differences are easier to discern when they are presented separately.

§1. General Statement

In keeping with the Penobscot Nation's commitment to preserving the child's identity as a tribal member, maintaining the connection to the tribe and extended family, and

understanding the importance of a child to know his or her parents, the tribe has established this Customary Adoption process. For purposes of this Subchapter, the term adoption shall also include customary adoption unless otherwise specifically stated. **While the Penobscot Nation believes that its children should grow up in their biological families where they learn cultural norms and expectations through daily interactions with their biological and Penobscot tribal relatives, it acknowledges that situations could arise where adoption may be necessary to ensure that a child has the opportunity to live in a safe, loving, nurturing environment.**

§2. Persons Who May Adopt

Any couple jointly, or any adult, may bring a petition for adoption of a child, which may include a request to change a child's name.

§3. Consent for Adoption

1. Before any adoption is granted, written consent must be given by:
 - A. The adoptee, if the adoptee is 12 years of age or older;
 - B. Each of the adoptee's living parents, except as provided in subsection 2, immediately below; and
 - C. The legal guardian of the child.
2. Adoption may be granted without the consent of the following:
 - A. A parent whose parental rights have been terminated under Subchapter 7 or by order of any court of competent jurisdiction;
 - ~~B. A parent whose rights to allow the child to go through customary adoption has been permanently suspended; and~~
 - B. A parent whose parental rights have been voluntarily or judicially terminated and transferred to a public agency or a duly licensed private agency pursuant to the laws of another state or country.
3. Consent to adoption shall be executed before the Court, who shall make a finding that the consent was knowingly and voluntarily given.

§4. Parental Rights

Establishing paternity of and parental rights to a child shall be guided by the following provisions:

1. If, after notice, the putative father wishes to establish his paternity of and parental rights to said child, he must, within 20 days of such notice or within such longer time period as the Court may order, petition the Court for a decree of paternity and parental rights.

The petition shall be sworn and shall include at least the following:

- A. The name, residence and domicile of the petitioner;
- B. A statement that the petitioner is in fact the biological father of the child;
- C. A statement as to whether the petitioner will consent to adoption of the child; and

- D. If the petitioner will not consent to adoption, a statement of his plan for providing a home for the child.
2. The Court shall schedule a hearing date to determine the petitioner's paternity of and parental rights to the child. Notice of hearing shall be given to the petitioner; the petition and notice of hearing shall be served on the child's mother, the custodian, the child's guardian, and any other party the Court deems appropriate.
 - A. The putative father's acknowledgement of paternity contained within his petition shall be a sufficient basis for a declaration of paternity unless the Court finds, based on clear and convincing evidence, that the petitioner is not the biological father of the child, in which case his consent to adoption of the child shall not be required.
 - B. If the Court finds that the putative father is the biological father and that he is willing and able to provide a home for his child free from jeopardy, the Court shall decree the petitioner to be a biological father with parental rights and shall grant custody of the child to the biological father, which custody shall include the right to consent to the adoption of the child.
 - C. If the Court finds that the putative father is the biological father but that he is unwilling or unable to provide a home for the child free from jeopardy in a time that is reasonable in light of the child's needs; or that he has abandoned responsibility for the child in a manner evidencing gross lack of parental concern for the child; and that adoption is in the best interests of the child, the Court shall decree petitioner a biological father without parental rights and shall order that adoption of the child may proceed without consent of the father.
 3. If a putative father does not petition the Court for decree of paternity and parental rights or, having petitioned and after notice of hearing, does not appear, the Court shall decree the putative father to be without parental rights and order that adoption of the child may proceed without consent of the putative father.

§5. Adoption Proceedings of a Minor

1. An adoption petition shall be sworn and shall include at least the following:
 - A. The full name, age and place of residence of the petitioner and, if married, the place and date of marriage;
 - B. The date and place of birth of the adoptee, if known;
 - C. The birth name of the adoptee, any other names by which the adoptee has been known;
 - D. The residence of the adoptee at the time of the filing of the petition;
 - E. The petitioner's intention to establish a parent and child relationship between the petitioner and the adoptee and a statement that the petitioner is a fit and proper person able to care and provide for the adoptee's welfare;
 - F. The names and addresses of all persons or agencies known to the petitioner that affect the custody, visitation or access to the adoptee;
 - G. The relationship, if any, of the petitioner to the adoptee;

- H. The names and addresses of the Department and the licensed child-placing agency, if any;
 - I. The names and addresses at the time of filing of all persons known to the petitioner from which consent to the adoption is required;
 - J. The proposed name of the adoptee after the entry of the final order of adoption; and
 - K. A statement as to why a final order for adoption is in the best interests of the child and the Penobscot Nation.
2. The petitioner shall indicate to the Court what information the petitioner is willing to share with the biological parents and under what circumstances, and shall provide a mechanism for updating that information.
 3. In any adoptive placement of a child under this Code, a preference shall be given, in the absence of good cause to the contrary, to a placement with:
 - A. Members of the child's extended family;
 - B. Other members of the child's tribe; or
 - C. Other Native American families.
 4. **At least 10 days before the adoption hearing, the Department of Social Services shall submit a written report to the Court that contain**
 - A. The results of the criminal history, social services and other checks into the background of the adoptive parent(s);**
 - B. The findings, opinions and recommendations, if any, of all professionals consulted regarding the proposed adoption;**
 - C. A social history of the biological parent(s) and the child, and a history of any child custody proceedings involving the child's family;**
 - D. The recommendation of the Department and concurrence of the Child Protection Team regarding why the adoption is or is not in the best interests of the child; and**
 - E. The recommendation of the Department and concurrence of the Child Protection Team regarding which parental rights should be modified, which should be assigned to the customary adoptive parent, and what level of visitation or other contact with the child's biological family is appropriate and in the best interests of the child.**

This provides the Court and the Department with an explanation of what the written report should contain.

4. 5. If the Court determines that the petitioner(s) are able to care for and educate the child, with due consideration given to the child's tribal ties, the Court shall issue a decree setting forth the facts and declaring what the child's name shall be and that the child is from that date the child of the petitioner(s); provided the Court shall grant a final decree of adoption only if:

- A. All necessary consents, relinquishments or terminations of parental rights have been duly executed and filed with the Court;
 - B. An adoption home-study performed in accordance with the requirements of 18-A, MRSA § 9-304 has been filed with the Court;
 - C. The petitioner is a suitable adopting parent and desires to establish a parent and child relationship with the adoptee;
 - D. The best interests of the adoptee are served by the adoption;
 - E. All other requirements of this Code have been met; and
 - F. An adoptee over age 12 has had an opportunity to make his or her wishes known to the Court.
5. 6. Upon completion of an adoption proceeding, the biological parents who consented to an adoption or who executed a surrender and release must be notified of the completion by regular mail at their last known address. Notice under this subsection is not required to a biological parent who is also petitioner. When the biological parents' rights have been terminated ~~or suspended~~, the notice must be given to the Department and the Department shall notify the biological parents of the completion by regular mail at their last known address. Actual receipt of the notice is not a precondition of completion of the adoption proceeding and does not affect the rights or responsibilities of adoptees or adoptive parents. The Department shall notify the grandparents of a child when the child is placed for adoption if the Department has received notice that the grandparents were granted reasonable rights of visitation or access.
6. 7. The following records shall be filed in conjunction with adoption proceedings:
- A. An adoption petition shall be filed together with a certified copy of the birth record of the child and of any order issued pursuant to this Subchapter or Subchapter 7, or any other decree enforceable in this Court which nullifies the right of a parent or custodian to consent to adoption; and
 - B. After the adoption has been decreed, the Court shall file a certificate of adoption with the State Registrar of Vital Statistics on a form prescribed and furnished by said Registrar and with the Department of Trust Responsibilities of the Penobscot Nation.
 - C. The petitioners for adoption shall furnish with the petition such information as the State Registrar and the Department of Trust Responsibilities of the Penobscot Nation shall require.

~~§6. Customary Adoption~~

~~In any customary adoptive placement of a child under this Code, placement shall be with:~~

- ~~D. Members of the child's extended family;~~
- ~~E. Other members of the Penobscot Nation; or~~
- ~~F. Other families within the Wabanaki Confederation.~~

7. The Court shall grant a final decree of customary adoption only if in addition to meeting the requirements of §5.1 and §5.4, the following are met:

- A. A statement that the relationship with the adoptee's biological family and the rights of the biological family to a relationship with the adoptee shall be preserved unless the Court expressly finds that the continuation or development of such relationship will be detrimental to the adoptee and orders otherwise;
- B. The best interests of the adoptee are served by the customary adoption;

§6. Court Adoption Records

1. All Court records relating to adoption shall be segregated from all other Court records and shall be closed to inspection by anyone except authorized Court personnel.
2. Upon motion of any party or upon the Court's own motion, the Court, upon a finding that disclosure of specific information is in the child's best interests, shall order such information in the Court adoption records to be disclosed to appropriate persons.
3. Upon application, directly or through a parent or custodian of a person who was adopted by decree of Court, the Court shall disclose to such person, or to the person's parent or custodian, all information contained in the adoption records as may be necessary to protect rights flowing from the person's tribal relationship.
4. Any medical or genetic information in the Court records relating to an adoption must be made available to the adoptee upon reaching the age of 18 and to the adoptee's descendants, adoptive parents, or legal guardian on petition of the Court.

§7. Legal Effects of Adoption

A decree of adoption shall have the same legal effect as regards the relation of biological parent and child as an order terminating parental rights under Subchapter 7. The adopted child is for all intents and purposes, the child of his or her adopters, with rights of inheritance as provided under the law of inheritance.

§9. Legal Effects of Customary Adoption

~~A decree of customary adoption shall have the same legal effect as regards the relation of biological parent and child as an order suspending parental rights under Subchapter 7. The adopted child is for all intents and purposes, the child of his or her adopters, with rights of inheritance as provided under the law of inheritance, except that customary adoption does not override any tribal enrollment laws or requirements. Specifically, the child shall maintain membership rights based on his or her biological family.~~

§8. Appeal and Annulment

1. Any petitioner for adoption, any child's **representative** by his next friend, any parent, or any putative father whose right to notice of the proceeding was waived by the Court as a result of fraud may appeal the Court's decision on an adoption petition, providing that no adoption by consent shall be overturned unless it can be shown that the parent's consent was the result of fraud or duress.

2. An attorney or guardian ad litem appointed to represent a party in an adoption proceeding in the Court continues to represent the interests of that party in any appeal unless otherwise ordered by the Court.
3. The Court may reverse and ~~annul~~ vacate a decree of adoption if it finds:
 - A. That the adoption was obtained as a result of fraud, duress or illegal procedures; or
 - B. The Court finds other good cause shown consistent with the best interests of the child.
4. Notice of an appeal shall be given to parties designated in §2 above and as provided in this Subchapter.
5. If the Court ~~annuls~~ vacates a decree of adoption, the Court Clerk shall transmit immediately a certified copy of the annulment to the State Registrar of Vital Statistics and the Department of Trust Responsibilities of the Penobscot Nation.

SUBCHAPTER 10. CUSTOMARY ADOPTION

§1. General Statement

In keeping with the Penobscot Nation's commitment to preserving the child's identity as a tribal member, maintaining the child's connection to the tribe and extended family, and understanding the importance of a child to know his or her parents, the tribe establishes this Customary Adoption process.

§2. Purpose

This customary adoption process shall be liberally interpreted and construed as an exercise of the inherent sovereign authority of the Penobscot Nation to fulfill the following purposes:

1. To embody and promote the basic traditional values of the Penobscot Nation regarding the protection and care of its children.
2. To promote the belief of the Penobscot Nation that children deserve a sense of permanency and belonging throughout their lives, and at the same time they deserve to have knowledge about their unique cultural heritage including their tribal customs, history, language, spirituality, and values.
3. To provide for the best interests of the tribe and the tribe's children.
4. To allow for formal decisions that address the issues of the rights, responsibilities, care, custody and control of minor children when the biological parents are unable or unwilling to provide a safe, stable, nurturing and permanent environment for their children by conferring jurisdiction upon the Penobscot Nation Tribal Court to hear and adjudicate such matters.

§3. Persons Who May Customarily Adopt

Any couple jointly, any adult, or the Department of Social Services on behalf of the customary adoptive parent(s), may bring a petition for the customary adoption of a child, which may include a request to change a child's name.

§4. Consent for Customary Adoption

1. Before any customary adoption is granted, written consent must be given by the adoptee, if the adoptee is 12 years of age or older.
2. Customary adoption may be granted without the consent of the parents since the termination of their rights is not required, but petitioners are encouraged to obtain written consent.

§5. Customary Adoption of a Minor

1. A customary adoption petition shall be sworn and shall include at least the following:
 - A. The full name, age and place of residence of the petitioner and, if married, the place and date of marriage;
 - B. The date and place of birth of the adoptee, if known;
 - C. The birth name of the adoptee and any other names by which the adoptee has been known;
 - D. The residence of the adoptee at the time of the filing of the petition;
 - E. The petitioner's intention to establish a parent and child relationship between the petitioner and the adoptee and a statement that the petitioner is a fit and proper person able to care and provide for the adoptee's welfare;
 - F. The names and addresses of all persons or agencies known to the petitioner that affect the custody, visitation or access to the adoptee;
 - G. The relationship, if any, of the petitioner to the adoptee;
 - H. The names and addresses of the Department and the licensed child-placing agency, if any;
 - I. The names and addresses of any other relatives who may have an interest in the care, custody and control of the minor child;
 - J. The proposed name of the adoptee after the entry of the final order of customary adoption; and
 - K. A statement as to why a final order for customary adoption is in the best interests of the child and the Penobscot Nation.
2. The petitioner shall indicate to the Court what information the petitioner is willing to share with the biological parents and under what circumstances, and shall provide a mechanism for sharing and updating that information.
3. In any customary adoptive placement of a child under this Code, a preference shall be given, in the absence of good cause to the contrary, to a placement with:

- A. Members of the child's extended family;
 - B. Other members of the Penobscot Nation; or
 - C. Other families within the Wabanaki Confederacy.
4. At least 10 days before the customary adoption hearing, the Department of Social Services shall submit a written report to the Court that contains:
- A. The results of the criminal history, social services and other checks into the background of the customary adoptive parent(s);
 - B. The findings, opinions and recommendations, if any, of all professionals consulted regarding the proposed customary adoption;
 - C. A social history of the biological parent(s) and the child, and a history of any child custody proceedings involving the child's family;
 - D. The recommendation of the Department and concurrence of the Child Protection Team regarding why the customary adoption is or is not in the best interests of the child; and
 - E. The recommendation of the Department and concurrence of the Child Protection Team regarding which parental rights should be modified, which should be assigned to the customary adoptive parent, and what level of visitation or other contact with the child's biological family is appropriate and in the best interests of the child.

The Department shall serve a copy of the report upon the biological parents(s) of the child, the customary adoptive parent(s), and the child or the child's legal representative at least at least 10 days before the hearing.

5. Any other person may submit a separate report to the Court, which shall include his or her own recommendations for consideration by the Court, at least 10 days before the customary adoption hearing.
6. If the Court determines that the petitioner(s) is/are able to care for and educate the child, the Court shall issue a decree setting forth the facts and declaring what the child's name shall be and that the child is from that date the child of the petitioner(s); the Court shall grant a final decree of customary adoption only if:
- A. All necessary consents, relinquishments or modifications of parental rights have been duly executed and filed with the Court;
 - B. A customary adoption home-study, performed in accordance with the requirements of 18-A, MRSA § 9-304, has been filed with the Court;
 - C. The Court believes the petitioner is a suitable adopting parent and desires to establish a parent and child relationship with the adoptee;
 - D. The Court trusts that the best interests of the adoptee are served by the customary adoption;
 - E. All other requirements of this Code have been met; and

- F. An adoptee age 12 or older has had an opportunity to make his or her wishes known to the Court.
7. Upon completion of a customary adoption proceeding, the biological parents must be notified of the completion by regular mail at their last known address. Actual receipt of the notice is not a precondition of completion of the customary adoption proceeding and does not affect the rights or responsibilities of adoptees or adoptive parents. The Department shall notify the grandparents of a child when the child is placed for customary adoption if the Department has received notice that the grandparents were granted reasonable rights of visitation or access.
8. The following records shall be filed in conjunction with customary adoption proceedings:
- A. A customary adoption petition shall be filed together with a certified copy of the birth record of the child and of any order issued pursuant to this Subchapter or Subchapter 7;
 - B. After the customary adoption has been decreed, the Court shall file a certificate of adoption with the State Registrar of Vital Statistics on a form prescribed and furnished by said Registrar and with the Department of Trust Responsibilities of the Penobscot Nation; and
 - C. The petitioners for customary adoption shall furnish with the petition such information as the State Registrar and the Department of Trust Responsibilities of the Penobscot Nation shall require.
9. The Court shall grant a final decree of adoption only if in addition to meeting the requirements of §5.1 and §5.4, the following are met:
- A. The Court finds that the relationship with the adoptee's biological family and the rights of the biological family to a relationship with the adoptee are to be preserved unless the Court expressly determines that the continuation or development of such relationship will be contrary to the welfare of the adoptee and orders otherwise;
 - B. The Court is convinced that the best interests of the adoptee are served by the customary adoption.

§6. Court Customary Adoption Records

1. All Court records relating to customary adoption shall be segregated from all other Court records and shall be closed to inspection by anyone except authorized Court personnel.
2. Upon motion of any party or upon the Court's own motion, the Court, upon a finding that disclosure of specific information is in the child's best interests, shall order such information in the Court customary adoption records to be disclosed to appropriate persons.
3. Upon application, directly or through a parent or custodian of a person who was customarily adopted by decree of Court, the Court shall disclose to such person, or to the person's parent or custodian, all information contained in the customary adoption

records as may be necessary to protect rights flowing from the person's tribal relationship.

4. Any medical or genetic information in the Court records relating to a customary adoption must be made available to the adoptee upon reaching the age of 18 and to the adoptee's descendants, adoptive parents, or legal guardian on petition of the Court.

§7. Legal Effects of Customary Adoption

A decree of customary adoption shall have the same legal effect as regards the relation of biological parent and child as an order modifying parental rights under Subchapter 6. The customarily adopted child is for all intents and purposes, the child of his or her adopters, with rights of inheritance as provided under the law of inheritance, except that customary adoption does not override any tribal enrollment laws or requirements. Specifically, the child shall maintain membership rights based on his or her biological family.

§8. Appeal and Annulment

1. Any petitioner for customary adoption, any child's representative, any parent, may appeal the Court's decision on a customary adoption petition, providing that no customary adoption by consent shall be overturned unless it was determined to be the result of fraud or duress.
2. An attorney or guardian ad litem appointed to represent a party in a customary adoption proceeding in the Court continues to represent the interests of that party in any appeal unless otherwise ordered by the Court.
3. The Court may reverse and annul a decree of customary adoption if it finds:
 - A. That the customary adoption was obtained as a result of fraud, duress or illegal procedures; or
 - B. The Court finds other good cause shown consistent with the best interests of the child.
4. Notice of an appeal shall be given to parties designated in §2 above and as provided in this Subchapter.
5. If the Court annuls a decree of customary adoption, the Court Clerk shall transmit immediately a certified copy of the annulment to the State Registrar of Vital Statistics and the Department of Trust Responsibilities of the Penobscot Nation.

SUBCHAPTER 11. PERMANENCY GUARDIANSHIP

§1. Criteria

As part of the permanency plan developed by the Department when the Court has ordered reunification efforts to cease, the Court may appoint a person or persons as guardian of a child, to be known as a permanency guardian, only if the Court finds that the prospective permanency guardian:

- A. Has the ability to provide a safe home for the child;

- B. Has a close emotional bond with the child and that the child has a close emotional bond with the prospective permanency guardian;
- C. Is willing and able to make an informed, long-term commitment to the child;
- D. Has the skills to care for the child and to obtain needed information about and assistance with any special needs of the child; and
- E. Is willing and able to create, maintain, and foster the child's connections to their family, community, and tribe as appropriate.

§2. Powers and Duties of Permanency Guardian

A permanency guardian has all the powers and duties of a guardian of a child pursuant to Subchapter 44 12, Guardianship.

§3. Parental and Relative Contact

A parent, grandparent, extended family member or sibling of a child subject to a permanency guardianship or to a proceeding to establish a permanency guardianship may petition the Court to determine rights of contact as provided in §6A below. If the Court determines that it is in the best interests of the child, it may order that the parent, grandparent, extended family member, or sibling of the child has a reasonable right of contact with the child and may specify the type, frequency, duration, and conditions of that contact.

§4. Child Support

1. The parents shall pay the permanency guardian child support. Title 19-A, MRSA, §1652 and Title 19-A, chapter 63 shall govern the award of child support to the permanency guardian. The child support obligation may be enforced pursuant to Title 19-A, chapter 65 or 67 or any other legal mechanism consistent with the Child Support Program of the Penobscot Nation Department of Human Social Services.
2. If there is an existing child support order or obligation regarding the child, and if the Court fails to make a child support order at the time of appointing a permanency guardian, the permanency guardian becomes the obligee under the existing support order or obligation. A copy of the order appointing the permanency guardian is sufficient proof of the permanency guardian's status of obligee.

§5. Jurisdiction over Permanency Guardian

The Court has exclusive jurisdiction to appoint or remove a permanency guardian and to establish any rights of contact between a child and a parent, grandparent, extended family member or sibling. The Department monitors but does not retain custody when a permanency guardian has been appointed by the Court.

§6. Proceedings to Terminate Permanency Guardianship or to Determine Rights of Contact

Proceedings to terminate permanency guardianship or to determine rights of contact are governed by the following:

1. Any party to the child protective proceeding may petition to terminate a permanency guardianship and any parent, grandparent, extended family member or sibling of the

child may petition the Court to establish rights of contact with the child, except that a person having once petitioned unsuccessfully to terminate a permanency guardianship or to establish rights of contact may not bring a new petition to terminate the permanency guardianship to establish rights of contact within 12 months after the end of the previous proceeding, and then only if the petitioner alleges and proves that there has been a substantial change of circumstances regarding the child's welfare in the previous 12 months;

2. Notice of a petition under the previous paragraph must be given in accordance with applicable the Court Rules of Civil Procedure to all parties to the child protective case and to the permanency guardian; and
3. Permanency guardianship may be terminated only if the petitioner proves by a preponderance of the evidence that the termination is in the best interests of the child.

§7. Effects on Inheritance Rights and Public Benefits

1. The appointment of a permanency guardian does not affect the inheritance rights between a child and the child's parent or parents.
2. The appointment of a permanency guardian may not affect the child's entitlement to benefits due that child from any third person, agency or state or the United States. Except as required by federal law or regulation, the permanency guardian's resources and income are not counted in determining eligibility for any public benefit to which the child may be entitled.
3. Permanency guardianship does not affect the rights and benefits that a Native American derives by virtue of descent from a member of a federally-recognized Native American tribe.

§8. Resignation, Death or Incapacity of Permanency Guardian

Resignation of a permanency guardian does not terminate the guardianship until it has been approved by the Court. If a permanency guardian resigns, dies or becomes incapacitated, the Court shall hold a judicial review and a permanency planning hearing at the earliest practicable time.

§9. Preference

The Court shall give preference for placement and permanency guardianship to a person nominated by a deceased permanency guardian in a valid will or by an incapacitated permanency guardian in a valid power of attorney, unless the Court finds that this placement or permanency guardianship is not in the child's best interests.

§10. Limitation

The Court does not have authority to provide a guardianship subsidy for permanency guardianship.

§11. Appointments Terminate; Later Appointments

Unless the Court has scheduled a judicial review or orders otherwise, the Court's appointment of the guardian ad litem and attorneys for parents and guardians terminate, and the attorneys and guardian ad litem have no further responsibilities to their clients or

the Court upon appointment of a permanency guardian pursuant to this Subchapter. If a party files a motion for judicial review when none is required, or if a party files a petition pursuant to §6 of this Subchapter to terminate a permanency guardianship or determine rights of contact, the Court shall appoint a guardian ad litem and attorneys for indigent parents and custodians, including permanency guardians.

SUBCHAPTER 12. GUARDIANSHIP

§1. Status of Guardian of Child; General

A person becomes a guardian of a child by acceptance of a testamentary appointment or upon appointment by the Court. The guardianship status continues until terminated, without regard to the location from time to time of the guardian and child. This Subchapter does not apply to permanency guardians appointed in State District Court or Tribal Court child protective proceedings. If a child has a permanency guardian, the Court may not appoint another guardian without leave of the State District Court or the Tribal Court in which the child protective proceeding is pending.

§2. Testamentary Appointment of Guardian of Minor

The parent of a child may appoint by will a guardian of an unmarried child. Subject to the right of the child under §3 of this Subchapter, a testamentary appointment becomes effective upon filing the guardian's acceptance in the Court in which the will is probated, if before acceptance, both parents are deceased or the surviving parent is adjudged incapacitated. If both parents are deceased, an effective appointment by the parent who died later has priority. The Penobscot Nation recognizes a testamentary appointment effected by filing the guardian's acceptance under a will probated in another state which is the testator's domicile. Upon acceptance of appointment, written notice of acceptance must be given by the guardian to the child and either to the person having the child's care or to the nearest adult relation.

§3. Objection by Child of 12 or Older to Testamentary Appointment

A child of 12 or more years may prevent an appointment of a testamentary guardian from becoming effective, or may cause a previously accepted appointment to terminate, by filing with the court in which the will is probated a written objection to the appointment before it is accepted or within 30 days notice of its acceptance. An objection may be withdrawn. An objection does not preclude appointment by the Court in a proper proceeding of the testamentary nominee, or any other suitable person.

§4. Court Appointment of Guardian of Child; Conditions for Appointment

The Court may appoint a guardian or co-guardians for an unmarried child if:

- A. All parental rights of custody have been terminated or suspended by circumstance or prior court order;
- B. Each living parent whose parental rights and responsibilities have not been terminated or the person who is the legal custodian of the unmarried child consents to the guardianship and the Court finds that the consent creates a condition that is in the best interests of the child;

- C. The person or persons whose consent is required under this Subchapter do not consent, but the Court finds by clear and convincing evidence that the person or persons have failed to respond to proper notice or a living situation has been created that is at least temporarily intolerable for the child even though the living situation does not rise to the level of jeopardy required for the final termination of parental rights, and that the proposed guardian will provide a living situation that is in the best interests of the child; or
- D. The persons or persons whose consent is required under this Subchapter do not consent, but the Court finds by a preponderance of the evidence that there is a de facto guardian and a demonstrated lack of consistent participation by the non-consenting parent or legal custodian of the unmarried child. The Court may appoint the de facto guardian as guardian if the appointment is in the best interests of the child.
 - 1. A guardian appointed by will as provided in §2 of this Subchapter whose appointment has not been prevented or nullified under §3 of this Subchapter has preference over any guardian who may be appointed by the Court, but the Court may proceed with an appointment upon a finding that the testamentary guardian has failed to accept the testamentary appointment within 30 days after notice of the guardianship proceeding or if the Court determines that the appointment is in the best interests of the child.
 - 2. If a proceeding is brought under this Subchapter, the Court may order a parent to pay child support in accordance with Title 19-A, MRSA, Part 3. The Court may order a parent to coordinate with the Child Support Program of the Penobscot Nation Department of Human Social Services when appropriate.
 - 3. If the Court appoints a limited guardian, the Court shall specify the duties and powers of the guardian and the parental rights and responsibilities retained by the parent of the child.

§5. Court Appointment of Guardian of Child; Qualifications; Priority of Child's Nominee

The Court may appoint as guardian any person, or as co-guardians, more than one person, whose appointment is in the best interests of the child. The Court shall set forth in the order of appointment the basis for determining that the appointment is in the best interests of the child. The Court shall appoint a person nominated by the child, if the child is 14 years of age or older, unless the Court finds the appointment contrary to the best interests of the child. The Court may not appoint a guardian for a child who will be removed from the State of Maine for the purpose of adoption.

§6. Court Appointment of Guardian of Child; Procedure

- 1. Notice of the time and place of hearing of a petition for the appointment of a guardian of a child is to be given by the petitioner within 10 days of the scheduled hearing in hand or by certified US mail to the following persons:
 - A. The child, if 12 or more years of age;

- B. The person who has had the principal custody of the child during the 60 days preceding the date of the petition; and
 - C. Any living parent of the child.
2. If the Court finds that all of the following are met it shall make the appointment. In other cases the Court may dismiss the proceedings, or make any other disposition of the matter that will best serve the interests of the child.
- A. A qualified person seeks appointment,
 - B. Venue is proper,
 - C. The required notices have been given,
 - D. The requirements of this Subchapter have been met, and
 - E. The welfare and best interests of the child will be served by the requested appointment.
3. If necessary, the Court may appoint a temporary guardian, with the status of an ordinary guardian, but the authority of a temporary guardian may not last longer than 6 months, except as provided in this Subchapter. Notice of a hearing on the petition for the appointment of a temporary guardian must be served as provided under this Subchapter except that the notice must be given at least 5 days before the hearing, and notice need not be given to any person whose address and present whereabouts are unknown and cannot be ascertained by due diligence. Upon a showing of good cause, the Court may waive service of the notice of hearing on any person, other than the child, if the child is at least 12 years of age.
- A. If one of the parents of a child is a member of the National Guard or the Reserves of the United States Armed Forces under an order to active duty for a period of more than 30 days, a temporary guardianship that would otherwise expire is automatically extended until 30 days after the parent is no longer under those active duty orders or until an order of the Court so provides. This subsection applies only if the parent's service is in support of:
 - (1) An operation mission for which members of the Reserve components have been ordered to active duty without their consent; or
 - (2) Forces activated during a period of war declared by Congress or a period of national emergency declared by the President or Congress.
 - B. If, at any time in the proceeding, the Court determines that the interests of the child are or may be inadequately represented, it may appoint an attorney to represent the child, giving consideration to the preference of the child if the child is 12 years of age or older.

§7. Consent to service by Acceptance of Appointment; Notice

By accepting a testamentary or Court appointment as guardian, a guardian submits personally to the jurisdiction of the Court in any proceeding relating to the guardianship that may be instituted by any interested person. Notice of any proceeding shall be delivered to the guardian, or sent by ordinary mail at the address as listed in the Court records and to the

address as then known to the petitioner. Letters of guardianship must indicate whether the guardian was appointed by will or by court order.

§8. Powers and Duties of Guardian of Child

A guardian of a child has the powers and responsibilities of a parent who has not been deprived of custody of an un-emancipated child, except that a guardian is not legally obligated to provide from the guardian's own funds for the child and is not liable to third persons by reason of the parental relationship for acts of the child. In particular, and without qualifying the foregoing, a guardian has the following powers and duties.

- A. The guardian must take reasonable care of the child's personal effects and commence protective proceedings if necessary to protect other property of the child.
- B. The guardian may receive money payable for the support of the child to the child's parent, guardian, or custodian under the terms of any statutory benefit or insurance system, or any private contract, devise, trust, conservatorship or custodianship. The guardian also may receive money or property of the child paid or delivered by virtue of Title 18-A, MRSA, §5-103. Any sums so received must be applied to the child's current needs for support, care, and education. The guardian must exercise due care to conserve any excess for the child's future needs unless a conservator has been appointed for the estate of the child, in which case excess must be paid over at least annually to the conservator. Sums so received by the guardian may not be used for compensation for the guardian's services except as approved by order of Court or as determined by a duly appointed conservator other than the guardian. If there is no conservator, the excess funds must be turned over to the child when the child attains majority. A guardian may institute proceedings to compel the performance by any person of a duty to support the child or to pay sums for the welfare of the child.
- C. The guardian is empowered to facilitate the child's education, social or other activities and to give or withhold consents or approvals related to medical, health or other professional care, counsel, treatment or service for the child. The guardian is empowered to withhold or withdraw life-sustaining treatment as set forth in Title 18-A, MRSA, §5-312, subsection (a), paragraph (3). A guardian is not liable by reason of such giving or withholding of consent for injury to the child resulting from the negligence or acts of 3rd persons unless it would have been illegal for a parent to have so given or withheld consent. A guardian may consent to the marriage or adoption of the child.
- D. A guardian must report the condition of the child and the child's estate that has been subject to that guardian's possession or control, as ordered by Court on petition of any person interested in the child's welfare or as required by Court rule. If the guardian has received any funds pursuant to Title 18-A, MRSA, §5-103, the guardian shall account to the Court and the child regarding how the funds were expended prior to the termination of that person's responsibilities as guardian.

§9. Termination of Appointment of Guardian; General

A guardian's authority and responsibility terminates upon the death, resignation or removal of the guardian or upon the child's death, adoption, marriage or attainment of majority, but termination does not affect the guardian's liability for prior acts, nor the obligation to account for funds and assets of the child. Resignation of a guardian does not terminate the guardianship until it has been approved by the Court. A testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding.

§10. Resignation of Removal Proceedings

1. Any person interested in the welfare of a child, or the child, if 12 or more years of age, may petition for removal of a guardian on the ground that removal would be in the best interests of the child. A guardian may petition for permission to resign. A petition for removal or for permission to resign may, but need not, include a request for appointment of a successor guardian.
2. After notice and hearing on a petition for removal or for permission to resign, the Court may terminate the guardianship and make any further order that may be appropriate.
3. If, at any time in the proceeding, the Court determines that the interests of the child are, or may be, inadequately represented, it may appoint an attorney to represent the child, giving consideration to the preference of the child if the child is 12 or more years of age.
4. The Court may not terminate the guardianship in the absence of the guardian's consent unless the Court finds by preponderance of the evidence that the termination is in the best interests of the child. The petitioner has the burden of showing by a preponderance of the evidence that termination of the guardianship is in the best interests of the child. If the Court does not terminate the guardianship, the Court may dismiss subsequent petitions for termination of the guardianship unless there has been a substantial change of circumstances.

SUBCHAPTER 13. VOLUNTARY PLACEMENT

Title IV-E permits voluntary placement. This subchapter is added to authorize such placements and to set forth the requirements that have to be met.

§1. Agreement Authorization

The Department and a custodian may enter into a voluntary placement agreement in which the custodian retains custody of the child, and the Department agrees to provide services to the child if the following conditions exist:

1. **The Department finds that staying in the custodian's home would be detrimental to the welfare of the child; and**
2. **The Department finds that, without a voluntary placement agreement, the child is at risk of entering the child protection system.**

§2. Agreement Requirements

An agreement entered into pursuant to §1 must meet the following requirements:

1. The agreement may not exceed 180 days unless, within the 180 days, the Court has found that returning the child to the custodian's home would be contrary to the welfare of the child and that continued placement is in the best interest of the child. If the Court makes that determination, the agreement may continue for up to an additional 90 days. At the end of the continuation, the child is either returned to the custodian's home, or the Department files a child protection petition.
2. The agreement must specify the legal status of the child and the rights and obligations of the custodian, the child, the Department and any other parties to the agreement while the child is in placement.
3. The agreement must specify the financial contribution to be made by the custodian.
4. The agreement must be signed by all parties, including the child if he/she is 12 years of age or older.
5. The agreement must contain the procedures for revocation of the agreement by the custodians.

§3. Additional Parties

Other appropriate service providers and/or tribal departments may be additional parties to the agreement.

SUBCHAPTER 14. CARE OF CHILD IN CUSTODY

§1. Department Care

Within the parameters of funding agency fiscal limitations, the Department shall provide and pay for the care of any child in the care or custody of the Penobscot Nation in accordance with the following:

- A. The Penobscot Nation Social Services contract with the Bureau of Indian Affairs;
- B. Policies and other mandates issued by funding agencies including, but not limited to, the U.S. Department of Health and Human Services; and
- C. The policies set forth in the Code of Federal Regulations (25 CFR Part 20); provided, however, that in all cases for which there exists an agreement between the Penobscot Nation and the State of Maine, such care shall be provided and paid for according to the terms of such agreement.

§2. Powers Delegated to Foster Parents

The foster parents of children in the custody of the Penobscot Nation are authorized to make the following decisions in regard to those children:

- A. Consent to emergency medical treatment if an agent for the Department is unavailable and notice has been provided by the quickest means; and
- B. Consent to application for a driver's license.
- C. Foster parents shall use a reasonable and prudent parent standard that is characterized by careful and sensible parental decisions that maintain the health and safety, and best interest of a child while at the same time encouraging the emotional and developmental growth of the child in their care.**
- D. The Department of Social Services shall provide training to foster parents and others caring for children in tribal custody that includes the knowledge and skills relating to the reasonable and prudent parent standard for participation of the child in age or developmentally appropriate activities.**

Changes in the Title IV-E legislation require us to allow caretakers of children in tribal custody to use a reasonable and prudent parent standard when making decisions regarding the child's participate in age or developmentally appropriate activities, and to provide training to caretakers that includes knowledge and skills relating to the reasonable and prudent parent standard.

§3. Department's Responsibility after Death of Child

If a child in the custody of the Department dies, the Department shall arrange and pay for a burial for the child. If administration of the deceased child's estate is not commenced within 6 days after the date of death by an heir or creditor, then the Department may petition the Probate Court to appoint a personal representative and settle the estate of the deceased child pursuant to Title 18-A M.R.S.A.