

MATCH-E-BE-NASH-SHE-WISH BAND OF POTTAWATOMI MINOR GUARDIANSHIP AND VOLUNTARY ADOPTION ACT

Section 1 Authority and Title.

The Match-E-Be-Nash-She Band of Pottawatomi’ (a/k/a “Gun Lake Tribe”) Constitution, Article VII, Section 1(n) grants the Tribal Council the authority “to safeguard and promote the peace, safety, morals, and general welfare of the Tribe.” Pursuant to this authority, the Tribal Council enacts this Minor Guardianship and Voluntary Adoption Act (hereinafter “Act”).

Section 2 Jurisdiction

2.01 The Gun Lake Tribal Court (hereinafter “Court”) will have jurisdiction in all general child welfare matters arising under the provisions of this Act. The Court shall have the authority to issue all orders necessary to ensure the safety of children within the Tribe’s community. This grant of civil jurisdiction to the Court authorizes the Court to exercise its power to issue and enforce subpoenas, issue orders of restriction, impose fines, adjudicate and punish contempt, and issue other orders that may be deemed necessary and appropriate, in matters involving children.

2.02 The Gun Lake Tribal Court will have jurisdiction over the following persons:

1. Any child residing within Tribal trust lands and his or her parents, guardians, custodians, and members of the child’s household;
2. Any child under the age of eighteen (18) who is enrolled or eligible for enrollment with the Tribe, regardless of where the Child may reside;
3. Any member of a federally recognized American Indian Tribe, Alaska Native, or a member of a regional corporation defined under 43 USC § 1606 who is under the age of eighteen (18) and is a member or proposed member of a Citizen’s household, including adopted children.

2.03 Once the Gun Lake Tribal Court asserts jurisdiction in a matter involving a minor child, the Gun Lake Tribal Court may retain jurisdiction over the minor child until the child reaches the age of eighteen (18). Jurisdiction is continuing and exclusive unless the Gun Lake Tribal Court enters an order terminating its jurisdiction or transferring jurisdiction to another court.

2.04 Jurisdiction over adults. In any case in which a child has come under the jurisdiction of the Court, the Court shall have authority to exercise jurisdiction over adults to the extent necessary to make proper disposition in each case, including authority to punish for contempt either in or out of the Court’s presence.

2.05 Child Protection Case Precedence. In no circumstances shall the Court address a guardianship petition or petition for adoption under this Act if there is an ongoing child protection case where the permanency goal is reunification with a parent or current guardian. Should the Court receive a petition for guardianship or adoption under this Act and there is an ongoing child protection case where the parties are working towards reunification, the Court shall dismiss the petition without prejudice.

Section 3 Definitions

3.01 The following terms, whenever used or referred to in this Act, will have the following respective meanings, whether used in the singular or plural forms:

1. **“Adult”** means a person eighteen (18) years of age or older, or a person who has been emancipated by order of a court of competent jurisdiction.
2. **“Best Interest of the Child”** means the standard used by the Gun Lake Tribal Court to determine the well-being of a child in a particular case, through the evaluation of the following factors:
 1. Physical, mental, emotional, spiritual, and familial needs of the child;
 2. Providing a stable, nurturing environment for the child;
 3. Meeting the unique individual needs of the child; and
 4. Any other factor considered by the Gun Lake Tribal court to be relevant to a particular child in a guardianship or conservatorship, or adoption under this Act.
3. **“Child”** means a person who is less than eighteen (18) years of age and has not been emancipated by order of a court of competent jurisdiction.
4. **“Child Protection Case”** means a case where a child is held in protective custody by the Tribe or other court of competent jurisdiction after being found to be a child in need of protection or services.
5. **“Citizen”** means an individual who is enrolled as a member of the Match-E-Be-Nash-She-Wish Band of Pottawatomi, a U.S. federally recognized Tribe.
6. **“Conservator”** means a person, other than parent, guardian, or custodian, who has been authorized by a court of competent jurisdiction to exercise the duty and authority to preserve and maintain the income, assets, and property of the minor child subject to the jurisdiction of a court such as the Gun Lake Tribal Court.
7. **“Custodian”** means a person other than a parent or guardian, to whom custody of the child has been given by a court or by a person who has legal custody.
8. **“Court”** means the Gun Lake Tribal Court which is a court of general jurisdiction over all causes of action within the territorial jurisdiction of the Tribe except as may be limited by Tribal or Federal law.
9. **“Extended Family”** means an adult person who is the child’s niece or nephew, first or second cousin, or non-kinship relations recognized by a consensus of Immediate Family Members.

10. **“Father”** for purposes of determining whether a person may participate as an interested party in child custody proceedings under this Act, “father” means a man whose paternity of a child has been legally established through one of the following methods:
 1. By being married to the mother when the child was born;
 2. By an affidavit of parentage;
 3. By acknowledging paternity on the child’s birth certificate at the hospital; or
 4. By establishment from a court of competent jurisdiction.
11. **“Guardian”** means a person other than a parent or custodian, who has been authorized by a court of competent jurisdiction to exercise the duty and authority to provide for the health and welfare of a child.
12. **“Health and Human Services Department”** means the agency of the Gun Lake Tribe that is responsible for investigating and providing reports to the Court concerning the proposed custodial conditions of potential guardian(s) or adopted parent(s) and the best interest of minor children under this Act.
13. **“Indian”** means any member of a federally recognized American Indian Tribe, Alaska Native, or member of a regional corporation as defined in 43 USC § 1606.
14. **“Immediate Family”** means an adult person who is the child’s parent or stepparent, excluding a parent or stepparent from whose custody the child was removed, aunt or uncle, brother or sister, brother-in-law, sister-in-law, or grandparent.
15. **“Mother”** means the biological mother of a child or, in the cases of surrogate motherhood or other non-traditional circumstances involving the creation or gestation of an embryo, the adult female considered to be the mother of a child based on the applicable law of the place where the child was born.
16. **“Parent”** means the biological mother or father of a child or a child’s adoptive parent but not including persons whose parental rights have been terminated or an unwed father whose paternity has not been lawfully established.
17. **“Parental Rights”** means the legal rights to exercise control over a child within the limits of the law and to fulfill the responsibilities, duties and obligations of a parent to a child, including without limitation providing the child with:
 1. Care, custody, and protection;
 2. Advice and counsel;
 3. Discipline;
 4. Education;
 5. Healthcare;
 6. Religious, spiritual, or traditional, education and training;
 7. Fiduciary control over a child’s earnings and assets; and
 8. Direction and control over the child’s activities.

18. **“Permanency Goals”** is a term used in child protection cases where children are in foster care. The term is used to describe which form of custody of a minor child the parties should seek to achieve based on the circumstances of the case and the best interest of the minor child. A few common permanency goals are: (1) reunification with a parent; (2) adoption; (3) legal guardianship; and (4) sustained care or permanent placement with a fit and willing relative.
19. **“Service Area”** means the territory comprised of Allegan County, Barry County, Kalamazoo County, Kent County, and Ottawa County, Michigan, in which the Tribe’s Health and Human Services Department offers services.
20. **“Suitable”** means individuals who are willing and able to provide a home environment to a minor child that is fit, safe, appropriate, as well as meet the purposes of this Act.
21. **“Tribe”** means the Match-E-Be-Nash-She-Wish Band of Pottawatomi, a U.S. Federally Recognized Tribe.
22. **“Tribal Trust Lands”** means all lands held in federal trust by the United States of America for the Tribe.
23. **“Këwabmogéyoyen”** (pronounced koh-wahb-moh-geh-yo-yin) or **“Protected Child”** means a child who has been adjudicated to be a child-in-need-of protection, or a child for whom the Gun Lake Tribal Court has appointed a Guardian or a Conservator, and over whom the Gun Lake Tribal Court has asserted jurisdiction. A child-in-need of protection or any child for whom the Gun Lake Tribal Court has appointed a guardian, or a conservator is a protected child of the Gun Lake Tribal Court until the time the Court terminates jurisdiction or enters an adoption decree. In cases where parental rights are terminated, the child is a permanent këwabmogéyoyen until the child is lawfully adopted, emancipated, or until the child reaches the age of eighteen (18).

Section 4 Delegations of Parental Authority

4.01 Powers of Attorney. A parent, guardian, or custodian may delegate to another person the powers of attorney regarding the care, custody and property of a child, provided that the child is not presently a Protected Child of any court or the subject of a child protection proceeding. The delegable powers may include consent to admission to a hospital or school, routine dental care, non-surgical medical care, emergency dental care, and emergency medical or surgical treatment.

4.02 Non-Delegable Parental Powers. A delegation of parental power does not include the power to consent to marriage, non-emergency elective surgery, or adoption.

4.03 Delegations Valid for Six (6) Months. A delegation of parental authority will only be valid for six (6) months from the date of the execution and may be revoked in writing at any time by the person or agency delegating the power. A delegation of parental authority is renewable upon execution of a new power of attorney.

4.04 Delegations revoked upon issuance of Guardianship Order. In the event that the Court issues a Guardianship Order or an Adoption Decree while there is an active delegation of parental authority, the Guardianship Order/ Adoption Decree shall supersede the Delegation of Authority, and such Delegation will be deemed revoked.

Section 5 Temporary Guardianship

5.01 Establishment. The Gun Lake Tribal Court may, for good cause shown upon a petition of the custodial parent(s) of a child, or other interested party, establish a temporary guardianship over a child, provided that the child is neither a protected child of any court or the subject of any child protection proceeding. The Gun Lake Tribal Court may establish temporary guardianship under such terms and conditions as set forth in the written order.

5.02 Termination. A temporary guardianship may be terminated upon request of the parent(s) or the guardian if the Gun Lake Tribal Court determines that there is no longer a need for the guardianship and that it is in the child's best interests to return custody of the child to the parent(s) or custodian. A temporary guardianship shall not last longer than six (6) months, with the exception that the Court may extend a temporary guardianship for a period not to exceed six (6) months from the initial six (6) month period for good cause shown. The Court shall schedule a hearing to determine the status of the case and whether to order full guardianship of a minor child at least 30 days prior to the date that the Guardianship is scheduled to expire. Expiration of a Temporary Guardianship shall be deemed as an immediate termination of the guardianship.

5.03 Procedure for Requesting a Temporary Guardianship. Unless good cause is shown otherwise, the petitioning party shall follow the procedures set below in Section 6. The Court may, however, allow for an expedited review of the petition if there is an urgent requirement to review it and the parties, including the Department of Health and Human Services, have at least (3) days to review the petition and provide a report. If all interested parties sign a waiver of such notice requirements, the Court may hear the petition and schedule a hearing within 24 hours of receiving the petition. The Court may order a temporary guardianship absent the results of a criminal background check concerning the temporary guardian(s) but shall reserve the right to schedule a hearing at any time during a temporary guardianship to determine the continued appropriateness of a temporary guardianship.

5.04 Temporary Guardianship Authority and Duties. Except as may be provided otherwise by Gun Lake Tribal Court order, the guardian with a temporary guardianship order shall have the same authority and duties as provided under Section 6.17 of this Act.

Section 6 Full Guardianship and/or Conservatorship

6.01 Purpose. The Court may appoint a Guardian or Conservator for any child subject to the jurisdiction of the Court. Unless provided otherwise by a Court order:

1. A Guardian will be responsible for the care and custody of a child and the preservation of the child's income, assets, and property. A Guardian will serve until the child reaches

eighteen (18) years of age, the child is emancipated, or the Guardian dies or is discharged from such duties by the Gun Lake Tribal Court;

2. A Conservator will only be responsible for the preservation of the child’s income, assets, and property. A Conservator will serve until the child reaches eighteen (18) years of age, the child is emancipated, or until the conservator dies or is discharged from such duties by the Gun Lake Tribal Court.

6.02 Grounds. The Gun Lake Tribal Court may appoint a Guardian or Conservator for a child if the proposed guardian and/or conservator are suitable and the appointment is in the best interest of the minor child(ren) subject to the Petition for Guardianship and/or Conservatorship.

6.03 Who May File. Any person over the age of eighteen (18) who is interested in the minor child’s welfare and is willing and able to serve as the minor’s guardian and/or conservator may file a Petition for Guardianship or Conservatorship.

6.04 Guardianship Preferences. The Court shall consider the appointment of a guardian for a child from the following persons in the following preference order:

1. An adult member of the child’s Immediate family;
2. An adult member of the child’s extended family;
3. An adult who is an enrolled Citizen of the Tribe;
4. Any other adult who is suitable.

6.04.1 Subject to the preferences stated in subsection 6.04, priority will be given in the listed order, to placements in homes of the following people:

1. An enrolled Citizen of the Tribe;
2. An enrolled Citizen of another Pottawatomie Tribe, an Ottawa Tribe, or a Chippewa Tribe;
3. An enrolled Citizen of another federally recognized Tribe, band, or group;
and
4. Any other person who is suitable and can meet the needs of the child(ren) subject to guardianship.

6.05 Notice. Before appointing a Guardian or Conservator, the Gun Lake Tribal Court must give notice to all interested parties, including without limitation the child, parents, custodian, agencies and persons caring for the child, and such other person as the Gun Lake Tribal Court deems proper.

6.06 Contents of Petition. A Petition for Guardianship or Petition for Conservatorship will, to the extent available, include the following information:

1. The full name, sex, date and place of birth, residence, and tribal affiliation of the minor child;

2. The petitioner’s full name, address, tribal affiliation, relationship, if any, to the proposed kēwabmogéyoyen and a statement regarding the petitioner’s interest in the proceeding;
3. The names and addresses of the child’s parents or, if the parents or any one of them is deceased, the date and place of the death;
4. The names and addresses of other people known to have an interest in the minor child’s welfare, including those people where the child is placed in the care of;
5. The basis for the Gun Lake Tribal Court’s jurisdiction;
7. The name and address of any person or agency having legal or temporary custody of the proposed kēwabmogéyoyen;
8. A statement of the reason that the appointment of a Guardian or Conservator is sought and who the petitioner recommends having appointed as Guardian or Conservator; and
9. A full description and statement of value of the proposed ward’s assets and liabilities with an estimate of the value of any property owned, possessed, or in which the proposed kēwabmogéyoyen has an interest, including any income and accounts receivable to which the proposed kēwabmogéyoyen is entitled.
10. A list of people willing and able to become an interim successor guardian and/or conservator in the sudden event that the guardian and/or conservator cannot perform his/her duties.
11. A signed release for conducting a criminal background check as required by this Act.
12. The Petitioner(s) signature(s).

6.07 Criminal Background Check. The petitioner and any adult living in the proposed residence shall provide the Court with a signed release to allow the Health and Human Services Department to conduct a criminal background check. Should there be any negative reports reflecting that the petitioner or any adult living in the proposed residence has a criminal record, the Court shall allow the petitioner to provide an explanation as to the circumstances of the criminal conviction. The Court shall reserve the right to review and determine whether any criminal record should affect a proposed guardian or conservator’s ability to serve as such.

6.08 Investigation and Report. Upon the filing of a Petition, the Gun Lake Tribal Court will immediately issue an Order of Investigation and Notice of Hearing requiring the Health and Human Services Department to investigate and generate a report on the proposed kēwabmogéyoyen.

1. Contents of Report. The report must contain all pertinent information necessary to assist the Gun Lake Tribal Court in determining the suitability of the proposed Guardian or

Conservator and the best interests of the proposed k̄w̄abmoḡoyoyen. To this effect, the Report shall address:

- i. The proposed guardian's and/or conservator's age, nationality, race or ethnicity, any religious preference, and tribal affiliation, if any;
- ii. The proposed guardian's marital and family status and history, including the presence of other children or adults in the household and the relationship of those individuals to the proposed guardian;
- iii. The proposed guardian's/conservator's history of substance abuse if any;
- iv. The proposed guardian's educational and employment history and any unique skills and interests;
- v. The proposed conservator's property and income, including financial obligations as indicated in a current financial report provided by the individual;
- vi. The proposed guardian's capacity and disposition of the parties involved to immerse the child in the Tribe's culture and traditions;
- vii. Whether the proposed guardian has ever been the respondent in a domestic violence proceeding or a proceeding concerning a child who was allegedly abused, dependent, deprived, neglected, abandoned, or delinquent, and the outcome of the proceeding;
- viii. Whether the proposed interim successor guardians have ever been the respondent in a domestic violence proceeding, or a proceeding concerning a child who was allegedly abused, dependent, deprived, neglected, abandoned, or delinquent, and the outcome of the proceeding;
- ix. Whether the proposed guardian(s), Conservator, and proposed interim successor guardians have ever been convicted of a crime; and
- x. Any fact or circumstance that raises a specific concern about the suitability of the individual as a guardian/conservator, including the quality of the environment in the home, the functioning of other children in the household, and any aspect of the individual's familial, social, psychological, or financial circumstances that may be relevant to a determination of the individual's suitability. A specific concern is one that suggests that placement of any child, or a particular child, in the home of the individual would pose a risk of harm to the physical or psychological well-being of the child.

2. Report Deadline. No determination can be made on a Petition until the Report has been filed with the Gun Lake Tribal Court and served on all interested parties at least seven (7) days prior to the hearing.

3. Contracting with Outside Agents to Conduct Investigation and Report. Whenever the child subject to these proceedings resides or would reside more than 120 miles away from the Tribe's Gun Lake Tribal Health Center, GLTHHS may determine to contract with an outside agency, firm, or person with experience in child custody matters (i.e. a licensed attorney with guardian ad litem experience) to fulfill the investigation and report requirements called for in this Act. The Gun Lake Tribal Health Center may adopt the outside agent's report as their own, but if the report recommends a finding contrary to the Tribal Health Center's position, the Gun Lake Tribal Health Center may file its own report in conjunction with the outside agents for the Court's consideration. Any outside agent who agrees to provide the investigation and reporting services called for in this Act must also agree to testifying in the Gun Lake Tribal Court concerning their findings.

6.09 Guardians Ad Litem. The Court may appoint a Guardian Ad Litem to represent the best interests of the minor child(ren) subject to any proceeding under this Act at any time both pending a guardianship order and during an ongoing guardianship for any type of proceeding.

6.10 Guardian Ad Litem Duties. In addition to other duties as the Court may Order or prescribe under judicial rules, any Guardian Ad Litem appointed pursuant to this Act shall:

1. Interview the proposed guardian and report to the Court concerning the suitability of each individual interviewed to serve as guardian;
2. Meet with and observe the minor child in the proposed home setting (if possible) and assess the home;
3. Make written reports to the Court regarding the best interests of the child, including conclusions and recommendations and the facts upon which they are based. Guardian Ad Litem reports shall be filed at least three (3) days prior to any hearing. Copies of the Report shall be provided to the other parties;
4. Attend all court proceedings related to the guardianship; and
5. Report to the Court on any matter that the Court requests.

6.11 Consent to Guardianship. Any parent who has legal custody may consent to guardianship and/or conservatorship. Such consent must either be in writing and notarized or be provided verbally during a hearing of the Court. If both parents have joint legal custody, then both parents would need to provide consent in writing or appear at the hearing and verbally consent in the presence of the Court.

6.12 Withdrawal of Consent. Any consent provided in writing may be withdrawn by the person who gave the consent at any time prior to the hearing on the petition for guardianship. No reason needs to be given for withdrawing consent, but the withdrawal of consent must also be notarized.

6.13 Burden of Proof. The proposed guardian on the petition maintains the burden of proving that they are suitable, and that the guardianship is in the best interest of the child(ren).

6.14 Evidence and testimony. In determining whether the best interest of the child and the suitability of the proposed guardian(s) and/or conservator, the Court shall examine each of the following:

1. Validity of written consent (if any).
2. Length of time the child has resided with the petitioner(s).
3. Special conditions of the child.
4. Parent communication with the child.
5. The Health and Human Service Department's Report
6. Minor's consent to guardianship dependent upon maturity.
7. Any report submitted by the Guardian Ad Litem, if applicable.
8. The results of any criminal background check relating to the proposed guardian and/or conservator along with any adult who may reside in the proposed residence for the minor child(ren).
9. Order of preference as indicated under Section 6.04 above.
10. The testimony of the parties.
11. Any other evidence that is relevant.

6.15 Orders Following Hearing. The Court shall issue its decision in writing within thirty calendar days from the date the Court addressed the petition at a hearing.

6.16 Appointment of Guardian or Conservator. If the Court is satisfied that the guardianship will be in the child(ren)'s best interest and that the proposed guardian(s) and /or conservator are suitable, then the Court may appoint the proposed guardian(s) and or conservator following review of the Petition and Report and a hearing with the interested parties. The Gun Lake Tribal Court may, in its discretion, require that a Conservator be bonded in such amount as the Gun Lake Tribal Court may deem necessary to protect the child's income, assets, and property. In situations where the proposed guardian is married, then the preference of the Court shall be to appoint both spouses as co-guardians of the minor child(ren). Guardianship is for an indefinite period of time, and unless the guardianship is terminated early, it shall continue until the child reaches the age of eighteen (18) or is emancipated by Court Order.

6.17 Denial of Petition. If the Court finds that the proposed guardian is not suitable, and/or that guardianship is not in the best interest of the minor child, then the Court shall issue a written decision denying the Petition with an explanation as to its findings of fact and conclusions of law.

6.18 Visitation Plans. The Court may order a Visitation Plan at any time to assure that the child(ren) will continue to maintain a relationship with their parents, grandparents, siblings, or other extended family members during the guardianship.

6.19 Powers and Duties of a Guardian. A Guardian has the following powers and duties:

1. The Guardian has custody of the child and will make provisions for the child's care, comfort and maintenance. The Guardian will, as appropriate, arrange for the child's training, education, employment, and rehabilitation. The Guardian will take reasonable care of the child's personal possessions, and will be responsible as fiduciary regarding the child's income and assets;
2. In arranging for a place of residence, the Guardian will give preference to places within the Service Area, if placement within or outside of that area would be equivalent. The

Guardian will also give preferences to places that are not treatment facilities. If the only available and appropriate places are treatment facilities, the Guardian will give preference to tribal-based treatment facilities, over non-tribal-based treatment facilities; and

4. The Guardian will have the authority to consent to any medical, legal, psychological or other professional care, counsel, treatment or services for the child. The Guardian may give any other consent or approval on the child’s behalf that may be required, appropriate or in the child’s best interest. The Guardian may seek the approval of the Gun Lake Tribal Court for such decisions as the Guardian deems necessary or appropriate.

6.20 Powers and Duties of a Conservator. A Conservator has the following powers and duties:

1. The Conservator will preserve and maintain all of the income, assets, and property of the child and shall function as the child’s fiduciary;
2. The Conservator will hold all accounts, financial instruments, stocks, bonds, securities, and other assets of the child in the Conservator’s name for the benefit of the child; and
3. The Conservator will have the authority to acquire, sell, trade, transfer, or dispose of the assets and property of the child.

6.21 Fiduciary Duty. All persons acting under a power of attorney, as Guardian, or Conservator, and any person or agency appointed to act on behalf of a Protected Child under this Act acts in a fiduciary capacity. As a fiduciary, one owes a duty to act in the best interest of the child, exercising sound judgment and avoiding conflicts of interest. Any such person or agency that breaches the fiduciary duty will be liable for any damage(s) resulting from the breach.

6.22 Reimbursement for Administration Expenses. The Guardian or Conservator is entitled to be reimbursed out of the child’s estate for necessary, reasonable, and proper expenditures incurred in the performance of his or her duties, subject to limitations and requirements that the Gun Lake Tribal Court may establish. The Gun Lake Tribal Court may order reimbursement payments to be made on a regular schedule or on the Guardian/Conservator’s request. This is subject to the submission of adequate proof of the expenditure, the necessity of the expenditure, and the availability of funds.

6.23 Annual Reports. All Guardians and Conservators must file reports with the Gun Lake Tribal Court, at least annually. They must provide complete and accurate information regarding the condition of the child(ren) in the Guardian’s care, and a full accounting from the Conservator of all income, assets and property of the child if applicable.

6.24 Annual Review Hearing. Upon the filing of a report by the Guardian or Conservator, the Gun Lake Tribal Court may conduct an Annual Review Hearing.

6.25 Resignation. Any Guardian or Conservator who wishes to resign may file a motion with the Gun Lake Tribal Court setting forth the reasons for the resignation request. The motion must be accompanied by a final report that conforms to the requirements outlined in subsection 6.23 of this

Act. The Gun Lake Tribal Court will review the petition and the final report, and if satisfied, the Gun Lake Tribal Court may accept the resignation and release the Guardian or Conservator from their duties.

6.26 Interim Successor Guardians and/or Conservators. The Court may appoint an interim successor guardian and/or conservator in the sudden event that the guardian and/or conservator cannot perform his/her duties using the list of potential successor interim guardians and/or conservators on the initial petition. The interim successor guardian shall have the same powers and duties as the appointed guardian and/or conservator until the Court can appoint a new guardian and/or conservator. The Court may schedule a hearing immediately upon receiving notice that an interim successor guardian appointment is needed, wherein the Court may determine, with assistance from the parties, what services are needed during the interim guardianship, to assure the needs of the child will be met and whether the interim successor guardian is willing to serve as the permanent guardian. If the interim successor guardian and/or conservator are unwilling or unable to serve as the child's permanent guardian, then the Court shall direct the Health and Human Services Department to assist the Court in identifying a person who is suitable to serve as the child's permanent guardian.

6.27 Appointment of Successors. Upon the removal, death or resignation of a Guardian or Conservator, the Gun Lake Tribal Court shall appoint a successor guardian and/or conservator. Prior to the appointment of a successor, the Gun Lake Tribal Court will issue an Order requiring that the Health and Human Services Department investigate the child's proposed custodial conditions, which shall address, at a minimum, the child's proposed home environment, opportunity for continued familial/tribal community relations in the proposed guardianship, and education.

6.28 Removal of Guardian and/or Conservator. Removal is the process of removing a guardian and/or conservator from their role due to their failure to perform their duties as set forth in this Act. The Court may appoint an interim successor guardian and/or conservator in the event that it removes a guardian and/or conservator, but the guardianship/conservatorship itself shall continue with a successor taking over the duties of the guardianship/conservatorship.

1. The following parties may request the removal of a guardian and/or conservator:
 - i. The child aged sixteen (16) or over;
 - ii. The child's parents;
 - iii. The Guardian and/or Conservator as applicable;
 - iv. The Department of Health and Human Services;
 - v. The Guardian Ad Litem; or
 - vi. The Court on its own motion.
2. Notwithstanding *Sua sponte* motions from the Court, any party motioning the Court to remove the guardian and/or conservator must include factual allegations of neglect or failure to fulfil the guardian and/or conservator's duties and shall serve a copy of the motion on all the interested parties in the case.
3. Guardian/Conservator Removal Hearing. Upon receiving a Motion to Remove a Guardian, the Court shall schedule a hearing to address the Motion. Depending on the nature of the allegations, the Court may Order the Health and Human Services Department to

investigate the concerns of the Motion and submit a report. The motioning party bears the burden of proving that the guardian or conservator has neglected the child and/or estate or has refused or is unable to perform the guardian’s and/or conservator’s duties.

4. *Sua Sponte* Motions for Removal. If the Court is the moving party, then the Court shall issue notice to the parties that addresses the issues and potential findings that support removing the guardian and/or conservator and shall schedule a hearing. The Court, as a moving party, may subpoena witnesses and require the Guardian *ad litem* and/or the Health and Human Services Department to investigate the Court’s concerns and submit a report.

6.29 Motions to Terminate Guardianship Orders. Termination is the process whereby the entire guardianship is terminated. This may occur upon the child reaching the age of eighteen (18), the child becoming emancipated by Court Order, or a motion to terminate is granted.

1. The following parties may file a Motion to Terminate:
 - i. The child, at least seventeen (17) years in age;
 - ii. The child’s parents;
 - iii. The Department of Health and Human Services;
 - iv. The Guardian *ad litem*; or
 - v. The Court on its own motion.

2. Notwithstanding *Sua sponte* motions from the Court, the motioning party bears the burden of proving either: (1) that it is in the best interest of the child to terminate the guardianship; and/or (2) that full guardianship is unsuitable based on the current circumstances of the case. If the proposed outcome is to return the child to the care of the parents, then the moving party must also show that such an outcome would not threaten the child’s health, education or welfare.

3. Best Interest Study. Upon receiving a Motion to Terminate, or if the Court issues notice of termination, the Court may issue an Order requesting that the Department of Health and Human Services file a Best Interest Study. If the Department of Health and Human Services is the moving party, they may attach the Best Interest Study to their Motion. The purpose of the Best Interest Study is to explore the proposed outcome of any termination and whether termination of the guardianship is in the child(ren)’s best interest.

5. *Sua Sponte* Motions for Termination. If the Court is the moving party, then the Court shall issue notice to the parties that address the issues and potential findings that support terminating the guardianship. The Court, as a moving party, may subpoena witnesses and require the Guardian *ad litem* and/or the Health and Human Services Department to investigate the Court’s concerns and submit a report.

4. Transition Plans. If the Court determines that it is in the best interest of a minor child to terminate the guardianship, or if it determines that full guardianship is no longer suitable for the needs of the child, then the Court may approve or enter a Transition Plan. A Transition Plan shall not last more than six months and is meant to allow a smooth transition from the guardian’s home back to the parent’s home or to another legal custodian in the case of adoption. This may be achieved with a visitation plan that increases the duration and frequency of visits and shared custodial duties among the guardian, conservator (if any) and the parent(s) or other proposed legal custodian.

5. Child aging out. Within six months of a child turning eighteen, the Court shall issue notice to the parties and request the Guardian and/or Conservator to submit a final report in the manner prescribed under subsection 6.23 at least thirty days before the child's eighteenth birthday. The Court may schedule a hearing to determine the status of the child and what services the child may need upon reaching the age of eighteen.

Section 7 Voluntary Adoption

7.01 Jurisdiction. The Court is authorized to address a request for adoption under this Act if the Court receives written consent from a minor child's biological parent(s) as provided under subsection 7.04 herein and if the Court has personal jurisdiction as provided under Section 2.02 of this Act.

7.02 Types. The Tribe recognizes the following types of adoption:

1. Open. The Court, with consent from the biological parents, terminates parental rights, but visitation rights of the parents and/or other named members of the child's biological family will be maintained as outlined in the final adoption decree.
2. Closed. The Court, with consent from the biological parents, terminates parental rights and visitation rights of the parent(s) and/or other named members of the child's biological family will not be maintained. All contact by the biological parent(s) and/or family will be prohibited.
3. Open Customary. The Court, with consent from the child's biological parents, suspends parental rights to biological parents and grants them to the proposed adoptive parents. The adoptive parents will have the sole parental authority to make all decisions regarding the care and upbringing of the adopted child(ren). The visitation rights of the parent(s) and/or other named members of the child's biological family will be maintained as outlined in the final adoption decree.
4. Closed Customary. The Court, with consent from the minor child's biological parents, suspends parental rights to the biological parents and grants them to the proposed adoptive parents. The adoptive parents will have the sole parental authority to make all decisions regarding the care and upbringing of the adopted child(ren). The visitation rights of the parent(s) and/or other named members of the child's biological family will not be maintained.

7.03 Who May File a Petition. Any person over the age of twenty-one (21) may file an adoption petition. Married persons or a couple maintaining a home together must make a joint petition, except where one spouse is a natural parent of the adoptee.

7.04 Parental Consent to Adoption. The Court may only order an adoption under this Act when written consent executed by surviving parent(s) has been filed with the Gun Lake Tribal Court. The consent must be signed in the presence of the Court or notarized as provided below in Section 7.10. The Court must find that all persons consenting have been informed of the nature and consequences

of their actions. The minority-age status of a parent(s) will not be a bar to the right of consent, nor will it invalidate such consent, but the Court shall require the minority parent's parent(s) or legal custodian to also consent in writing.

7.05 Withdrawal of Consent. Consent to adoption may be withdrawn by a parent(s) at any time before the entry of the final adoption decree.

7.06 Petition for Adoption. The petition for adoption must be signed by the adopting parent(s), filed with the Gun Lake Tribal Court, and must contain:

1. The full name, residence, documentary proof of the date and place of birth, and the proposed adoptee's tribal affiliation if any;
2. The full name(s), residence(s), date(s) and place(s) of birth, tribal affiliation if any, occupation(s), and documentary proof of marital status of adopting parent(s);
3. Proof of parental consent to the adoption;
4. A statement by the adopting parent(s) that it is the desire of the adopting parent(s) that the legal relationship of a parent and child be established between them and the adoptee;
5. A full description and statement of value of all property owned or possessed by the adoptee, to the best of the petitioner's knowledge; and
6. Whether petitioner is seeking an open, closed, open customary, or closed customary adoption.
7. Release consenting to criminal background check.

7.07 Pre-Adoptive Placement Assessment. The Gun Lake Tribal Court will not order a pre-adoptive placement until it receives and reviews a pre-adoptive placement assessment submitted by the Health and Human Services Department. If the Court waives the need for a Pre-Adoptive Placement pursuant to Section 7.08 below, it may still require the Health and Human Services Department to submit a Report. A pre-adoptive placement assessment or report must contain the following information:

1. Age, nationality, race or ethnicity, any religious preference, and tribal affiliation, if any;
2. Marital and family status and history, including the presence of other children or adults in the household and the relationship of those individuals to the adoptive parent;
3. Physical and mental health, including any history of substance abuse;
4. Educational and employment history and any unique skills and interests;

5. Property and income, including financial obligations as indicated in a current financial report provided by the individual;
6. Reason for wanting to adopt;
7. The capacity and disposition of the parties involved in immersing the child in the Tribe's culture and traditions;
8. Whether the individual has ever been the respondent in a domestic violence proceeding or a proceeding concerning a child who was allegedly abused, dependent, deprived, neglected, abandoned, or delinquent, and the outcome of the proceeding;
9. Whether the individual has ever been convicted of a crime; and
10. Any fact or circumstance that raises a specific concern about the suitability of the individual as an adoptive parent, including the quality of the environment in the home, the functioning of other children in the household, and any aspect of the individual's family, social, psychological, or financial circumstances that may be relevant to a determination that the individual is not suitable. A specific concern is one that suggests that placement of any child, or a particular child, in the home of the individual would pose a risk of harm to the physical or psychological well-being of the child.

7.08 Pre-adoptive Placement Not Required for Guardians. When there is an existing guardian who has continued to serve as the child's guardian for a period of at least six (6) months under this Act, the Court may determine not to order a Pre-Adoptive Placement.

7.09 Consent of Biological Parents. A biological parent, whose parental rights to a child being considered for adoption have not been terminated by a court of competent jurisdiction, must voluntarily consent to the adoption of the child by petitioner.

1. Requirements for validity. Consent to adoption must be executed either:
 - i. in the presence of the Court after the explanation that:
 - a. The consent may result immediately in a pre-adoptive placement with petitioner(s). Once the Court orders the pre-adoptive placement, the parent(s) will have no legally enforceable right to visit or have any contact with the child, unless otherwise ordered by the Court;
 - b. the consent may result in a final adoption decree;
 - c. if for any reason prior to the entry of a final adoption decree, petitioner does not retain custody of the child, the child will be returned to the biological parent(s) unless doing so would immediately result in the child being a child-in-need-of-protection.

ii. Without the presence of a Court judge if on Court forms which contain:

- a. A notarized statement of consent by the parent(s) which has two witnesses;
- b. Assurances that consent was voluntarily executed; and
- c. An acknowledgement that the parent(s) fully understand(s) the ramifications of the consent.

3. Consent conditioned on open adoption. Consent to adoption may be expressly conditioned upon the entry of an order of the Gun Lake Tribal Court approving an open adoption agreement between the parent and petitioner under subsections 7.02(1) or 7.02(3).

7.10 Open Adoption Agreements. Simultaneously with, or prior to, execution of a written consent to adoptive placement, the parent and petitioner may execute an open adoption agreement that sets out post-adoption visitation rights of the parent and/or other named members of the child's biological family. Upon accepting consent conditioned on such agreement, the Gun Lake Tribal Court will enter the open adoption agreement as a fully enforceable order. If the Gun Lake Tribal Court finds that such agreement would significantly threaten the safety of the child, the Gun Lake Tribal Court may refuse to accept the consent or enter the open adoption order.

7.11 Recommendation of the Health and Human Services Department. Upon completion of the pre-adoptive placement assessment or report, the Health and Human Services Department will, in consultation with the Family Welfare Committee, formulate a written recommendation for the Gun Lake Tribal Court. When performing the investigation and reporting requirements of this Section, the Health and Human Services Department may contract with outside agents, agencies or entities consistent with the provisions under Section 6.08(3) of this Act.

7.12 Initial Hearing. Within seven (7) days of receipt of the recommendation from the Health and Human Services Department, the Gun Lake Tribal Court will schedule a hearing on the petition for adoption.

1. Notice. The adoptee, adopting parent(s) and any other party of record will be given notice of the hearing.
2. Appearances. The adoptee and adopting parent(s) must appear in person at the initial hearing, unless, in the discretion of the Court, the parties are allowed to make an appearance virtually using any means of information technology prescribed by the Court to conduct the hearing.

7.13 Waiver of Pre-Adoptive Placement. If the adoptee has been in the custody of the proposed adoptive parent(s) for more than six (6) months and the Health and Human Services Department recommends adoption at the initial hearing, the Gun Lake Tribal Court, upon recommendation of the Health and Human Services Department, may waive the trial custody period and the final adoption decree may be entered at the initial hearing.

7.14 Trial Custody Period/Pre-Adoptive Placements. If the child has not been in the custody of the proposed adoptive parent(s) for more than six (6) months, then the Court shall issue an order granting the proposed adoptive parent(s) temporary custody of the child and Order the Health and Human Services Department to monitor the child's adjustment and well-being for a period of at least ninety (90) days, but not more than one-hundred and eighty (180) days.

7.15 Final Hearing. Not less than ninety (90) days, or more than one hundred eighty (180) days, after the child has been in the custody of the proposed adoptive parent(s), the proposed adoptive parent(s), and child if deemed appropriate by the Court, must appear before Court. During the hearing, the parties shall report to the Gun Lake Tribal Court about the welfare of the child, the current status of the proposed adoptive parent's home and household and the desire of the proposed adoptive parent(s) to finalize the adoption.

7.16 Adoption Decree; Extension of Trial Custody Period. If the Court is satisfied that the interests of the adoptee are best served by the proposed adoption, the final adoption decree may be entered. The Court may order, or the proposed adoptive parent(s) may request, a six (6) month extension of the trial custody period, after which a final adoption decree must be entered, or the Court may return the custody of the proposed adoptee to the biological parent(s), unless returning the child to the biological parents would place the child in a potentially harmful environment. The Court must provide a certified copy of the adoption decree to the Tribal Enrollment Office.

7.17 Effect of the Final Adoption Decree.

1. Parent and Child Relationship. The Court will terminate or suspend the biological parent's rights based on their written consent. After the final adoption decree is entered, the relation between parent(s) and child and the rights, duties and other legal consequences of a natural relationship of child to parent(s) will thereafter exist between the adoptee and the adoptive parent(s). The Court may enter a deadline for the parties to request a reversal of the Final Adoption Decree up to 180 days from the entrance of the judgment. Any request for reversal beyond this timeframe must meet one of the circumstances in Section 7.19.
2. Tribal Status Not Affected. The status of an adoptee as a citizen of the Tribe will not be affected by adoption. An adoptee who is eligible for citizenship in the Tribe will be enrolled as a tribal citizen prior to finalization of the adoption.
3. Assumption of Surname. Minors adopted through a final decree of the Gun Lake Tribal Court may assume the surname of the person(s) whom they are adopted if culturally appropriate. The Court may require the testimony of a Qualified Expert Witness on the appropriateness of changing a child's surname before determining whether changing the surname of the child is appropriate. Factors that the Court shall consider when making a determination to allow the child's surname to change are: (1) the child's age, (2) how their birth family name connects them to their Tribal identity, (3) and/or possible compromises such as hyphenating the child's surname with their birth name followed by their adopted parent's surname.
4. Rights of Adoptees.

- i. Adoptees will be entitled to the same rights of person and property as children or heirs of the adoptive parents.
- ii. Adoptees will be entitled to society and companionship of their natural siblings consistent with the provisions of this Section.

7.18 Rights of Adoptive Children to Biological Family Information. Any child adopted pursuant to this Act will have the right to obtain information regarding biological parents including, but not limited to, the names of their biological parents, child's place of birth, residence of parents at the time of adoption, and known siblings. The Gun Lake Tribal Court will order release of this information only upon a petition after the child reaches eighteen (18) years of age, unless the child is emancipated by an order of the Gun Lake Tribal Court pursuant to the Child Protection Act, or the child has a medical need for the information.

7.19 Reversing Adoption. The biological parents, adopted parents, and adoptee who has reached eighteen (18) years of age may request the Court to reverse an Adoption Decree entered by the Gun Lake Tribal Court only under one of the following circumstances:

1. Timeline. One of the parties makes the request in writing either before the Court enters the Final Adoption Decree, or before the date when the Final Adoption Decree becomes finalized as provided on the Court's Decree.
2. Involuntary Consent. One of the biological parents petitions the Court for a reversal and provides clear and convincing evidence that their written consent was involuntary or a parent who was not initially named and served in the underlying petition comes forth and provides evidence that notice was deficient, and their consent was not granted.
3. Both the biological parents and the adopted parents stipulate a reversal, and the Court is satisfied that return of the child to the biological parent's custody or the proposed custodial arrangements will not harm the child.

Section 8 Miscellaneous

8.01 Confidentiality of Proceedings and Record. Unless the Court orders otherwise, hearings held in proceedings under this Act will be confidential and held in closed session, without the admission of any person other than the interested parties and witnesses. Any papers, records, petitions, or files pertaining to proceedings maintained by the Health and Human Services Department, or the Court, will not be released to anyone, except by order of the Court.

8.02 Savings Clause. If any Chapter, Section, subsection, or clause of this Act is found by the Court, Gun Lake Tribal Court of Appeals, or any other court of competent jurisdiction to be inconsistent with or in violation of the Tribe governing law or otherwise invalid or unenforceable, such Chapter, Section, subsection, or clause will be deemed to be severed and deleted from this Act, which will remain in full force and effect.

8.03 Construction of this Act.

1. In interpreting this Act, the present tense includes the past and future tenses, and the future tense includes the present tense.

2. When reference is made to any portion of this Act, the reference will apply to all amendments made hereafter.

3. Section headings will not be used in construing this Act.

7.03 No Waiver of Immunity. Nothing in this Act will be construed as a waiver of the immunity of the Tribe or of any Tribal entity, agency, or instrumentality, from unconsented suits or administrative proceedings, unless such suits or proceedings are otherwise explicitly provided.

7.04 Effective Date. This Act is effective upon the date of enactment.

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