



LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA
Business Committee Conference Room-2nd Floor Norbert Hill Center
September 4, 2019
9:00 a.m.

- I. Call to Order and Approval of the Agenda**

- II. Minutes to be Approved**
August 7, 2019 LOC Meeting Minutes (pg. 2)

- III. Current Business**
 1. Curfew Law (pg. 4)
 2. Sanctions and Penalties Law (pg. 44)

- IV. New Submissions**

- V. Additions**

- VI. Administrative Updates**
 1. Family Court Rule No. 1 (pg. 53)

- VII. Executive Session**

- VIII. Recess/Adjourn**



LEGISLATIVE OPERATING COMMITTEE MEETING MINUTES
Oneida Business Committee Conference Room-2nd Floor Norbert Hill Center
August 07, 2019
9:00 a.m.

Present: David P. Jordan, Kirby Metoxen, Ernest Stevens III

Excused: Jennifer Webster, Daniel Guzman King

Others Present: Maureen Perkins, Brandon Wisneski, Clorissa Santiago, Leyne Orosco, Rae Skenandore, Lee Cornelius, Michelle Gordon, Trina Schuyler, Brent Truttmann, Jameson Wilson

I. Call to Order and Approval of the Agenda

David P. Jordan called the August 07, 2019 Legislative Operating Committee meeting to order at 9:00 a.m.

Motion by Ernest Stevens III to adopt the agenda; seconded by Kirby Metoxen. Motion carried unanimously.

II. Minutes to be Approved

Motion by Kirby Metoxen to approve the July 17, 2019 Legislative Operating Committee meeting minutes and forward to the Business Committee for consideration; seconded by Ernest Stevens III. Motion carried unanimously.

III. Current Business

1. Curfew Law (1:06-3:40)

Motion by Ernest Stevens III to accept the public comments and public comments review memorandum and defer this item to a work meeting for further consideration; seconded by Kirby Metoxen. Motion carried unanimously.

2. Child Support Law Amendments (3:41-45:21)

Motion by Ernest Stevens III to have one more work session between the Legislative Operating Committee, Legislative Reference Office and the Child Support Agency; seconded by Kirby Metoxen. Motion carried unanimously.

IV. New Submissions

1. Children's Burial Fund Policy Amendments (45:25-51:17)

Motion by Kirby Metoxen to add the Children's Burial Fund Policy Amendments to the Active Files List with Kirby Metoxen as the sponsor; seconded by Ernest Stevens III. Motion carried unanimously.

V. Additions



VI. Administrative Items

1. LOC FY19 Third Quarter Report (51:22-57:18)

Motion by Kirby Metoxen to accept the FY19 Third Quarter Report with noted change and forward to the Oneida Business Committee; seconded by Ernest Stevens III. Motion carried unanimously.

VII. Executive Session

VIII. Adjourn

Motion by Ernest Stevens III to adjourn the August 07, 2019 Legislative Operating Committee meeting at 9:57 a.m.; seconded by Kirby Metoxen. Motion carried unanimously.



Legislative Operating Committee
September 4, 2019

Curfew Law

Submission Date: 12/19/18	Public Meeting: 7/18/19
LOC Sponsor: Ernest Stevens III	Emergency Enacted: n/a

Summary: *This was a recommendation from the TAP Law and Policy Subcommittee, to develop a curfew law for the Oneida Nation.*

12/19/18 LOC: Motion by Jennifer Webster add the Curfew Law to the active files list and assign Ernest Stevens III as the sponsor; seconded Ernest Stevens III. Motion carried unanimously.

2/13/19: *Work Meeting.* Present: Clorissa N. Santiago, Eric Boulanger, Joel Maxam, Maureen Perkins. The purpose of this work meeting was to obtain information from the Oneida Police Department regarding any issues that may currently be occurring on the Reservation related to a lack of curfew, as well as discuss OPD's role in potentially enforcing a Curfew law.

2/14/19: *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was to provide the LOC an update on communications with the Oneida High School's Clan Council, and recent work meeting with OPD. The LOC also discussed potential dates for holding a community meeting potluck on the curfew law.

2/20/19 LOC: Motion by Daniel Guzman King to approve the community meeting notice and direct that a community meeting for the proposed Curfew Law be held on Thursday, March 21, 2019; seconded by Ernest Stevens III. Motion carried unanimously.

3/13/19: *Work Meeting.* Present: Clorissa N. Santiago, Maureen Perkins, student representatives from the Oneida Nation Clan Council. The purpose of this work meeting was to obtain information from the Oneida High School Clan Council regarding their thoughts and opinions on a potential curfew law.

3/21/19: *Work Meeting.* Present: David P. Jordan, Ernest Stevens III, Daniel Guzman King, Jennifer Falck, Clorissa N. Santiago, Maureen Perkins. The purpose of this work meeting was to prepare for tonight's community meeting on the curfew law. The LOC discussed the format for the community meeting, potential discussion points, and questions the LOC members currently have themselves regarding this topic.

3/21/19: *Community Meeting.* Present: David P. Jordan, Lisa Summers, Ernest Stevens III, Daniel Guzman King, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Maureen Perkins. No community members attended the community meeting.

5/1/19: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Ernest Stevens III, Jennifer Falck, Clorissa N. Santiago, Maureen Perkins. The purpose of this work meeting was for the LOC to review the draft of the Curfew law. The LOC made policy decisions for curfew, and directed minor changes be made to the draft. The LRO will update the draft and complete a legislative analysis to be brought back in the near future.

- 5/15/19:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Daniel Guzman King, Jennifer Falck, Clorissa N. Santiago, Maureen Perkins. The purpose of this work meeting was to review and discuss a couple remaining questions that need to be determined before a draft is finalized. LOC provided direction, and a draft will be finalized and moved forward. On track to bring draft and analysis to June 5, 2019 LOC meeting.
- 6/5/19 LOC:** Motion by Jennifer Webster to accept the draft and legislative analysis of the Curfew law and defer these items to a work meeting for further consideration, replacing page four (4) of the packet with the handout; seconded by Ernie Stevens III. Motion carried unanimously.
- 6/5/19:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Daniel Guzman King, Ernest Stevens III, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Maureen Perkins. The purpose of this work meeting was for the LOC to review the two (2) policy considerations contained in the legislative analysis. LOC discussed other potential amendments and directed that minor revisions be made to the law. Additionally, LOC made a decision as to who will be directed to complete the financial analysis – the Finance Department. A memo regarding the fiscal impact statement to Finance and the public meeting packet will be prepared for the next LOC meeting.
- 6/13/19:** E-Poll Conducted. E-Poll was titled “Approval of the Curfew Law Fiscal Impact Statement Request Memorandum to the Finance Department. The requested action of this e-poll was to approve the Curfew law fiscal impact statement request memorandum, with accompanying updated draft and legislative analysis, and forward to the Finance Department directing that a fiscal impact statement of the proposed Curfew law be prepared and submitted to the LOC by July 18, 2019. The e-poll was approved by David P. Jordan, Kirby Metoxen, Jennifer Webster, and Ernest Stevens III. Daniel Guzman King did not provide a response to the e-poll.
- 6/19/19 LOC:** Motion by Jennifer Webster to approve the public meeting packet and forward the Curfew law to a public meeting to be held on July 18, 2019; seconded by Ernest Stevens III. Motion carried unanimously.
- Motion by Jennifer Webster to enter the June 13, 2019 LOC E-poll titled “Approval of the Curfew Law Fiscal Impact Statement Request Memorandum” results into the record; seconded by Ernest Stevens III. Motion carried unanimously.
- 6/19/19:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Ernest Stevens III, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Destiny Prendiville. The discussion during this work meeting centered around the LOC’s recent request for a fiscal impact statement to be completed by July 18, 2019 and a strategy for moving forward.
- 6/27/19:** *Work Meeting.* Present: Jennifer Webster, Daniel Guzman King, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Destiny Prendiville, Kristen Hooker, Maureen Perkins. The discussion during this work meeting centered around the update on the LOC’s communication with the Finance Department.
- 7/17/19 LOC:** Motion by Kirby Metoxen to approve the memorandum regarding the Curfew Law financial impact statement dated July 17, 2019; seconded by Daniel Guzman King. Motion carried unanimously.
- Motion by Kirby Metoxen to amend the June 13, 2019, directive to the Finance Department to direct the Finance Department to complete a fiscal impact statement within ten (10) business days after the LOC approves a final proposed draft of the Curfew law; seconded by Daniel Guzman King. Motion carried unanimously.
- 7/18/19:** *Public Meeting Held.* Present: Ernest Stevens III, Brooke Doxtator, Jennifer Falck, Clorissa N. Santiago, Rae Skenandore, Carol Silva, Amy Williams, Bella Mae Williams, Maureen Perkins. One (1) person gave public comment during this public meeting.
- 7/25/19:** Public Comment Period Closed.

8/7/19 LOC: Motion by Ernest Stevens III to accept the public comments and public comments review memorandum and defer this item to a work meeting for further consideration; seconded by Kirby Metoxen. Motion carried unanimously.

8/15/19: *Work Meeting.* Present: David P. Jordan, Daniel Guzman King, Ernest Stevens III, Jennifer Webster, Brandon Stevens, Jennifer Falck, Clorissa N. Santiago, Maureen Perkins, Jameson Wilson. The purpose of this work meeting was to review and consider the public comments that were received.

Next Steps:

- Accept the updated public comment review memorandum, draft, and legislative analysis.
- Approve the Curfew law fiscal impact statement request memorandum and forward to the Finance Department directing that a fiscal impact statement be prepared and submitted to the Legislative Operating Committee by September 18, 2019.



TO: Legislative Operating Committee (LOC)
FROM: Clorissa N. Santiago, Legislative Reference Office, Staff Attorney *CNS*
DATE: September 4, 2019
RE: Curfew Law: Public Meeting Comment Review

On July 18, 2019, a public meeting was held regarding the proposed Curfew law (“the Law”). The public comment period was then held open until July 25, 2019. On August 15, 2019, the Legislative Operating Committee reviewed and considered all public comments that were received. This memorandum is submitted as a review of the oral and written comments received within the public meeting and public comment period.

Comment 1 – Curfew Hours:

308.5-1. Curfew Established. No minor shall be on any public space either on foot or in any vehicle driven or parked, between the hours of 10:00 p.m. and 6:00 a.m. within the boundaries of the Reservation, unless the minor is accompanied by a parent, guardian, or legal custodian.

308.5-3. Exemptions to Curfew. A minor shall not be in violation of the curfew, if at the time of the alleged violation the minor was:

- (a) in the performance of a duty directed by such parent, guardian, or legal custodian;
- (b) engaged in employment or an employment related activity, or traveling to or returning home from employment;
- (c) engaged in interstate travel;
- (d) attending an educational, cultural, religious, or recreational activity that was supervised by adults, or traveling to or returning home from such activity;
- (e) on the sidewalk in front of his or her home or an adjacent home;
- (f) going to, attending, or returning home from a movie theatre;
- (g) engaged in hunting, fishing, or trapping in accordance with the laws, policies, and rules of the Nation;
- (h) exercising rights protected by the Nation’s Constitution and the United States Constitution, such as free exercise of religion, freedom of speech, and the right of assembly;
- (i) involved in an emergency situation; and/or
- (j) engaged in any other activity as deemed appropriate by the Oneida Police Department officer.

Amy Williams (oral): Hi, my name is Amy Williams. Um, so thanks for the opportunity to allow me to comment. Um, so I did have a chance to review the provisions of the proposal and um my comment is that I would be in favor of first an earlier time, perhaps four or five o’clock instead of six o’clock. And um, I think the reason is because we have three kids, all of them have had

primarily athletic, but as well as academic, responsibilities that are before six o'clock. So, for example, our son has hockey practice at, sometimes practice starts at four or 4:30 a.m. which means leaving the house at four o'clock, so he's out, he's driving around. He's a responsible, you know they are responsible kids doing what they are supposed to be doing.

Response

The commenter requests the Legislative Operating Committee to consider revising the curfew hours to end before 6:00 a.m. to accommodate those minors who may be engaged in athletic or academic extracurricular activities that are held in the early morning hours.

The Legislative Operating Committee determined that the Nation's curfew should be imposed between the hours of 10:00 p.m. and 6:00 a.m. in an effort to be consistent with curfew hours imposed in the surrounding municipalities. A review of local laws demonstrated that the following municipalities impose a curfew during the hours of 10:00 p.m. and 6:00 a.m.:

- Brown County;
- Village of Hobart;
- City of Green Bay;
- City of De Pere;
- Village of Ashwaubenon; and
- Village of Howard.

Consistency in the hours of curfew that are imposed on minors across neighboring municipalities will make it easier for families to ensure they are complying with all laws that may govern across overlapping jurisdictions.

Additionally, the Law accommodates minors who may engage in athletic or academic extracurricular activities that are held during curfew hours through the various exemptions that are provided. The Law provides that a minor shall not be in violation of the curfew, if at the time of the alleged violation the minor was attending an educational, cultural, religious, or recreational activity that was supervised by adults, or traveling to or returning home from such activity. [3 O.C. 308.5-3(d)].

Based on the various exemptions to the curfew hours provided by the Law, there is no recommended revision to the draft, but the Legislative Operating Committee may consider revising the curfew hours if desired.

LOC Consideration

The Legislative Operating Committee discussed the commenter's request to revise the curfew hours to end before 6:00 a.m. to accommodate those minors who may be engaged in athletic or academic extracurricular activities that are held in the early morning hours. Based on the exemptions provided in section 308.5-3 of the Law and the importance of consistency with the laws of other local municipalities, the Legislative Operating Committee determined there is no revision to the Law needed based on this comment.

The Legislative Operating Committee understood the commenter's request to accommodate those minors who have obligations in the early morning hours as some of the Legislative Operating Committee member discussed their own experiences as minors with jobs and/or activities that required them to be out early in the morning, or late into the evening. The Legislative Operating confirmed that the exemptions provided in the Law would address those minors that may be participating in, or traveling to or from, academic or athletic activities or work during curfew hours. In addition to the exemptions specific to academic, athletic, or employment activities, the Law also contains a "catch all" provision that states a minor shall not be in violation of the curfew, if at the time of the alleged violation the minor was engaged in any other activity as deemed appropriate by the Oneida Police Department officer. [3 O.C. 308.5-3(j)].

In addition to expressing the belief that the exemptions in the Law adequately cover those minors who may be participating in activities during curfew hours, the Legislative Operating Committee expressed the importance of being consistent with the curfew laws of the surrounding local municipalities. Consistency across municipalities is important for an ease in the enforcement, and to ensure that families understand and can comply with the laws of all overlapping jurisdictions.

Comment 2 – Police Discretion:

308.5-3. Exemptions to Curfew. A minor shall not be in violation of the curfew, if at the time of the alleged violation the minor was:

- (a) in the performance of a duty directed by such parent, guardian, or legal custodian;
- (b) engaged in employment or an employment related activity, or traveling to or returning home from employment;
- (c) engaged in interstate travel;
- (d) attending an educational, cultural, religious, or recreational activity that was supervised by adults, or traveling to or returning home from such activity;
- (e) on the sidewalk in front of his or her home or an adjacent home;
- (f) going to, attending, or returning home from a movie theatre;
- (g) engaged in hunting, fishing, or trapping in accordance with the laws, policies, and rules of the Nation;
- (h) exercising rights protected by the Nation's Constitution and the United States Constitution, such as free exercise of religion, freedom of speech, and the right of assembly;
- (i) involved in an emergency situation; and/or
- (j) engaged in any other activity as deemed appropriate by the Oneida Police Department officer.

308.6-2. Warning. The first time a minor is held in custody by an Oneida Police Officer for a curfew violation the Oneida Police Officer shall provide the minor and the minor's parent, guardian, or legal custodian a warning and advise the minor and parent, guardian, or legal custodian of the provisions of this law and that any subsequent curfew violations may result in the issuance of a citation and the imposition of a penalty.

Amy Williams (oral): Um, so, I understand the spirit of what's proposed in terms of, in terms of safety. I guess I would, I'm an advocate for also assuring in some ways that the proposed law isn't too punitive and that there is some sort of discernment in terms of oh my gosh these kids are out here doing what they need to be doing and not be afraid that somehow they are going to get in trouble because they're out there by themselves, especially the ones that can drive. So, our kids are out running, sometimes they have study groups in the morning, so um perhaps an earlier time, and that would be the first thing. And then as well as to assure that there are provisions or enough movement in the law where um you know whoever, police or whoever is enforcing, aren't too punitive with kids who are going what they are supposed to be doing.

Response

The commenter encourages the Legislative Operating Committee to ensure that the Law allows the Oneida Police Department enough discretion in the enforcement to ensure that it is not punitive to those minors who are engaging in lawful actions.

The Law was drafted to provide the Oneida Police Department discretion in handling curfew violations. The Law provides various exemptions, or circumstances in which a minor will not violating curfew if at the time of the alleged violation the minor was engaged in those certain circumstances. [3 O.C. 308.5-3]. One (1) of the many exemptions included in the Law provides that a minor shall not be in violation of the curfew, if at the time of the alleged violation the minor was engaged in any activity as deemed appropriate by the Oneida Police Department officer. [3 O.C. 308.5-3(j)]. This broad exemption provides the Oneida Police Department officer discretion in enforcing the curfew.

The Law further requires that the first time a minor is held in custody by an Oneida Police Department officer for violating curfew, the officer shall issue the minor and the minor's parent, guardian, or legal custodian a warning. [3 O.C. 308.6-2]. The purpose of this warning is to advise the minor and parent, guardian, or legal custodian of the provisions of this law and that any subsequent curfew violation may result in the issuance of a citation and the imposition of a penalty. [3 O.C. 308.6-2].

In addition to the specific provisions of the Law stated above which allow for discretion by the Oneida Police Department, the purpose of this Law is not to simply punish those minors who violate curfew, but to support all drug use prevention initiatives of the Nation by protecting the health, safety, and welfare of persons through the establishment of a curfew for minors in public spaces within the Reservation during certain hours in an effort to minimize the opportunity for harm to come to minors during those hours. [3 O.C. 308.1-2].

The recommendation for a Curfew law was brought to the Legislative Operating Committee by the Nation's Tribal Action Plan - Laws and Policy Subcommittee. The purpose of the Tribal Action Plan is to coordinate a comprehensive prevention and treatment program for alcoholism and other substance abuse that includes not only existing resources, but identifies the additional resources necessary to combat these problems. The Laws and Policy Subcommittee was then assigned the specific responsibility to look at what laws of the Nation should be amended, or created, to better support the Tribal Action Plan. The recommendation to develop a Curfew law came to the

Legislative Operating Committee as a result of the discussions from the Laws and Policy Subcommittee which consisted of a cross functional core team that included representatives from the Oneida Business Committee, Oneida Police Department, Governmental Services Division, Oneida Gaming Commission, Family Services, Legislative Reference Office, Human Resources Department, and Retail.

Based on the current provisions of the Law that allow the Oneida Police Department discretion in the enforcement of curfew, there is no recommended revision based on this comment.

LOC Consideration

The Legislative Operating Committee determined there is no revision to the Law needed based on this comment.

This decision was made by the Legislative Operating Committee after discussion of the fact that the Law provides the Oneida Police Department appropriate discretion. The Legislative Operating Committee expressed confidence in the Oneida Police Department's use of discretion in the enforcement of curfew violations.

The Legislative Operating Committee also discussed the fact that during the March 13, 2019, work meeting with the Oneida Nation High School Clan Council the students expressed the fact that Oneida Police Department officers have a strong tradition of talking to people and figuring out what is wrong, instead of just taking punitive measures.

Comment 3 – Responsibility of Parents, Guardians, and Legal Custodians:

308.5-2. Parental Responsibility. No parent, guardian, or legal custodian shall knowingly permit or fail to take action to prevent the minor from being on any public space either on foot or in any vehicle driven or parked, between the hours of 10:00 p.m. and 6:00 a.m. within the boundaries of the Reservation.

Amy Williams (oral): So, our kids are usually under the purview of coaches who are telling them where to be and what time, or uh teachers or other study groups. So just that that would be added in addition to parents, guardians, and whatever language is. And that's all.

Response

The Law provides that no minor shall be on any public space either on foot or in any vehicle driven or parked, between the hours of 10:00 p.m. and 6:00 a.m. within the boundaries of the Reservation, unless the minor is accompanied by a parent, guardian, or legal custodian. [3 O.C. 308.5-1]. The commenter requests that coaches and teaches be added to the designation of "parent, guardian, or legal custodian."

A parent, guardian, or legal custodian of a minor all have a legal responsibility as to the care and custody of a minor. In addition to the general responsibilities of a parent, guardian, or legal custodian, this Law provides that no parent, guardian, or legal custodian shall knowingly permit

or fail to take action to prevent the minor from being on any public space either on foot or in any vehicle driven or parked, between the hours of 10:00 p.m. and 6:00 a.m. within the boundaries of the Reservation. [3 O.C. 308.5-2]. A teacher or coach does not have the same legal responsibilities for the minor, and therefore including them in this provision would be inappropriate.

The Law does provide various exemptions as to the curfew though, that would allow the minor to participate in an academic or athletic function during curfew hours without violating the law. The Law provides that a minor shall not be in violation of the curfew, if at the time of the alleged violation the minor was attending an educational, cultural, religious, or recreational activity that was supervised by adults, or traveling to or returning home from such activity. [3 O.C. 308.5-3(d)].

Based on section 308.5-3(d) of the Law which allows a minor to be exempted from the curfew if attending an educational, cultural, religious, or recreational activity that was supervised by adults, such as a teacher or a coach, or traveling to or returning home from such activity, there is no recommended revision based on this comment.

LOC Consideration

The Legislative Operating Committee agreed that it would be inappropriate to include teachers or coaches in the “parent, guardian, or legal custodian” designation, and that instead section 308.5-3(d) of the Law which allows a minor to be exempted from the curfew if attending an educational, cultural, religious, or recreational activity that was supervised by adults, such as a teacher or a coach, adequately addresses the comment.

The Legislative Operating Committee determined there is no necessary revision based on this comment.

Comment 4 – Community Service:

308.7. Penalties of Curfew Violations

308.7-1. Upon a finding by the Family Court that a violation of this law has occurred, the minor and/or the minor’s parent, guardian, or legal custodian may be subject to the following penalties:

(b) *Community service.* An individual may be ordered to perform community service. Community service can be used in lieu of, or in addition to, a fine.

(1) All community service assignments shall be approved by the Family Court. The Family Court shall give preference to culturally relevant community service assignments and/or community service assignments that focus on the betterment of the individual’s community.

(2) The Family Court shall provide the individual a written statement of the terms of the community service order, and a statement that the community service order is monitored.

(3) The Family Court’s community service order shall specify:

(A) how many hours of community service the individual is required to complete;

- (B) the time frame in which the hours shall be completed;**
- (C) how the individual shall obtain approval for his or her community service assignment;**
- (D) how the individual shall report his or her hours; and**
- (E) any other information the Family Court determines is relevant.**

Patricia Degrand (written): Community Service: Community service has been ordered in the past and it was problematic. In child support contempt cases, parties were ordered to complete a set number of community service hours [Rule CS 2.8-2(c)]. The court order indicated that the community service would be monitored by the Oneida Nation Child Support Agency and completed through the Social Services Department. The court later discovered that there were no community service options being offered through the Social Services Department. Prior to ending the community service orders (community service is not being ordered at the present time), the court attempted to locate other community service options through the Nation but nobody expressed any interest in taking people on. I know liability and background check concerns were raised. While I know the judges would participate in discussions regarding community service, I am unsure as to whether they are going to be able to locate a list of options for people to use to complete community service requirements. I know Judge Collins has reached out to some of the other tribal courts and local municipal courts to find out if they are ordering community service and what community service options they utilize, although these options may not be culturally relevant or tied to the Oneida community. It would be useful if one of the Social Services Department employees, such as the Indigenous Cultural Wellness Practitioner, could serve as the intake for the minors ordered to do community service and monitor compliance to avoid a review hearing on every citation.

Response

The commenter expresses concerns that the Family Court and the Oneida Nation Child Support Agency were unsuccessful with the utilization of community service in the past, and instead suggests that a Social Services Department such as the Indigenous Cultural Wellness Practitioner serve as the intake for the minors ordered to do community service as a result of curfew violations.

The Law provides that the Family Court may order an individual to perform community service as a penalty for curfew violations. [3 O.C. 308.7-1(b)]. When the Family Court orders community service as a penalty the Family Court is responsible for:

- Approving community service assignments and giving preference to culturally relevant community service assignments and/or community service assignments that focus on the betterment of the individual's community; and
- Providing an individual with a written statement of the terms of the community service which includes the following information:
 - Statement that the community service order is monitored;
 - How many hours of community service the individual is required to complete;
 - The time frame in which the hours shall be completed;
 - How the individual shall obtain approval for his or her community service assignment;
 - How the individual shall report his or her hours; and

- Any other information the Family Court determines is relevant. [3 O.C. 308.7-1(b)(1)-(3)].

Although the Family Court is required to approve community service, the Law does not require the Family Court to find potential community service assignments for individuals. Ultimately, it is up to the individual to secure a community service assignment – whether that community service assignment is within a department of the Nation or held outside of the Nation. The Legislative Operating Committee has previously discussed sending communication to various departments of the Nation encouraging the development of community service opportunities for those individuals who violate curfew, particularly culturally relevant opportunities for those minors who violate curfew. The Legislative Operating Committee also discussed encouraging that any community service opportunity be communicated to the Family Court so that the Family Court can share all available information with those individuals when community service is imposed as a penalty.

In regard to who is monitoring compliance with the community service orders, there is nothing in the Law that would prohibit the Family Court from collaborating with another department such as Social Services and stating in the community service order that someone such as the Indigenous Cultural Wellness Practitioner would be responsible for monitoring the community service. How community service is handled should be addressed through internal processes and procedures and not included in the Law so that there is flexibility in handling community service in the future.

There is no revision to the Law recommended based on this comment. However, it is recommended that the Legislative Operating Committee work on sending communication to various departments regarding the development of community service opportunities.

LOC Consideration

The Legislative Operating Committee discussed the fact that they believe there are many potential community service opportunities throughout the Reservation, especially those that can be determined as culturally relevant. Potential community service ideas discussed by the Legislative Operating Committee included apple or corn harvesting, community clean ups, pulling weeds, and volunteering at various community events. The Legislative Operating Committee agreed that how community service is monitored, or what community service assignments are offered should not be included in the Law and should instead be addressed through communication and internal process developed between the Judiciary and various departments of the Nation.

Understanding that potential liability was a concern in the past, the Legislative Operating Committee discussed the fact that the development of waiver forms for community service opportunities should be explored further.

The Legislative Operating Committee plans on sending communication to various departments of the Nation regarding the development of community service opportunities.

Comment 5 – Alternative to Fines or Community Service:

Patricia Degrand (written): Alternative to Fines or Community Service: It would be nice if there was an alternative to the penalties section that is similar to what the court has done with contempt findings. With the contempt findings, the court is able to allow a person one opportunity to comply or be held in contempt [803.26-3(b)(1)]. Typically the court will find the party in contempt, fine them, and then give them a purge condition such as no more findings of contempt within a period of X months. If the purge condition is satisfied, there is then no contempt finding or fine. Having an option similar to this to use with parents and minors could be useful as the citation could be dismissed if there are no further curfew citations issued within a set period of time.

Response

The commenter requests that the Family Court be allowed to stay the enforcement of a penalty against an individual found to have violated the Curfew law, and then dismiss the curfew citation if the individual can refrain from violating this Law for a period of time as determined by the Family Court.

Whether to allow the Family Court to stay the enforcement of a penalty against an individual found to have violated the Curfew law, and then dismiss the curfew citation if the individual can refrain from violating this Law for a period of time is a policy consideration for the Legislative Operating Committee to make. The Legislative Operating Committee may determine:

1. The Law should remain as currently drafted and not address the Family Court's authority to stay the enforcement of a penalty for a curfew violation.
2. The Law should be amended to allow the Family Court to stay the enforcement of a penalty for a curfew violation. If the Legislative Operating Committee makes this decision, then the following revision should be made to the Law:

308.7-2. *Staying a Curfew Penalty.* The Family Court may stay the enforcement of a penalty issued as a result of a curfew violation for a period of time to be determined by the Family Court. If the individual maintains compliance with the law during the time period in which the penalty is stayed, then the Family Court may dismiss the citation. If the individual commits another violation of the law during the time period in which the penalty is stayed, then the penalty shall go into effect.

LOC Consideration

The Legislative Operating Committee determined that the Law should be amended to allow the Family Court to stay the enforcement of a penalty for a curfew violation, and approved the following recommended language:

308.7-2. *Staying a Curfew Penalty.* The Family Court may stay the enforcement of a penalty issued as a result of a curfew violation for a period of time to be determined by the Family Court. If the individual maintains compliance with the law during the time period in which the penalty is stayed, then the Family Court may dismiss the citation. If the individual commits another violation of the law during the time period in which the penalty is stayed, then the penalty shall go into effect.

The Legislative Operating Committee discussed the fact that allowing the enforcement to be stayed provides more discretion to the Family Court to be lenient to youth offenders. This also provides an opportunity for the minor who was found to have violated curfew to correct his or her behavior. The Legislative Operating Committee discussed the notion that sometimes just the action of getting a citation and having to appear in court in front of a judge is enough of a deterrent that the minor will not engage in that behavior again, even if no fine or other penalty associated with the citation was actually imposed. The Legislative Operating Committee is supportive of the Law providing opportunities for corrected behaviors.

Comment 6 – Jurisdiction of the Family Court:

308.6-3. Issuance of a Citation. Any subsequent time a minor is held in custody by an Oneida Police Officer for a curfew violation the Oneida Police Officer may issue a citation to the minor and the minor’s parent, guardian, or legal custodian.

(a) A citation for a violation of this law and/or any orders issued pursuant to this law may include fines and other penalties, as well as conditional orders made by the Family Court.

308.7. Penalties of Curfew Violations

308.7-1. Upon a finding by the Family Court that a violation of this law has occurred, the minor and/or the minor’s parent, guardian, or legal custodian may be subject to the following penalties:

Patricia Degrand (written): Judicial Branch: We had an internal discussion and the Family Court judges recognize that this law could be assigned to the Family Court. I ask that the LRO/LOC reconsider doing so. With the Children’s Code going into effect in October, there are a lot of unknowns with the Family Court’s caseload. One concern I have is with the permanency plan hearings and the effect those will have on our calendar. We have an initial plan for the scheduling of the 6 and 12 month permanency plan review hearings, but realize that we might have to make adjustments depending on the number of cases that are filed/transferred. As curfew violations are typically general civil cases and the Trial Court can hear those matters [801.5-2(a)], please consider assigning this law to the Trial Court. The Trial Court is already hearing all other citations, some of which could involve minors, and adding the Curfew law to the Trial Court’s docket would help with the caseload distribution. Looking back at May – June 2019, the Family Court held court 20 of 22 days with a total of 68 hearings. The Trial Court held court 6 of 22 days with a total of 15 hearings (plus the peacemaking sessions that Judges Hill and Powless have done). If the Curfew Law is left in the Family Court, please don’t add any requirements to any upcoming citations law (if there will be one) that would mandate how quickly the Family Court needs to hold a curfew citation hearing so we can hold these on a bimonthly or trimonthly basis.

Response

The commenter asks the Legislative Operating Committee to reconsider the decision to assign jurisdiction of curfew matters to the Family Court, and to instead assign jurisdiction over these matters to the Trial Court.

The Law assigns jurisdiction over curfew matters to the Family Court based on the fact that the Family Court law provides that the Family Court shall administer the judicial authorities and responsibilities of the Nation over all matters pertaining to the family, children and elders, except for probate matters. [8 O.C. 806.4-1]. Since curfew governs the actions of minors and the minors' parents, guardians, or legal custodians, the Legislative Operating Committee determined it was appropriate to assign jurisdiction to the Family Court in order to avoid any conflicts with the Family Court law.

Based on the fact that the Family Court was established for the purpose of administering the judicial authorities and responsibilities of the Nation over all matters pertaining to the family, children and elders, there is no recommended revision based on this comment.

Additionally, the commenter requests that if the Family Court maintains jurisdiction over curfew matters that no timeframes which would mandate when the Family Court is required to hold curfew citation hearings be included in the proposed Citations law the Legislative Operating Committee is currently developing.

The Legislative Operating Committee is currently developing a Citations law which will provide a consistent process for handling citations of the Nation in order to ensure equal and fair treatment to all persons who come before the Judiciary to have their citations resolved. The Legislative Operating Committee does intend to include general timeframes for the citation process in the proposed law so that all citations are handled in a consistent manner. The Legislative Operating Committee is still in the drafting stages for the Citations law, but a public meeting will be held in the future to provide the opportunity to provide input on this subject.

LOC Consideration

The Legislative Operating Committee determined that no revision should be made to the Law, and that jurisdiction is appropriately placed with the Oneida Family Court. After review and discussion of the caseloads of the Family Court and Trial Court, the Legislative Operating Committee understands that the Family Court carries a much higher caseload than the Trial Court; a caseload that has the potential to continue increasing with the implementation of the Children's Code.

Although the Family Court has a higher caseload than the Trial Court, the Legislative Operating Committee still believes that this Law pertains to children and families and for that reason the Family Court must assume jurisdiction in order to not conflict with the Family Court law.

Comment 7 – Family Counseling:

308.7. Penalties of Curfew Violations

308.7-1. Upon a finding by the Family Court that a violation of this law has occurred, the minor and/or the minor's parent, guardian, or legal custodian may be subject to the following penalties:

(c) *Family counseling and/or parenting programs.* An individual may be ordered to participate in a family counseling and/or a parenting program.

Patricia Degrand (written): Family Counseling: We should make Oneida Behavioral Health aware that orders for family counseling could be included in a curfew citation order.

Response

The commenter requests that Oneida Behavioral Health be made aware that orders for family counseling could be included in a curfew citation order.

Orders to participate in family counseling may not be exclusive to family counseling by the Oneida Behavioral Health department. Individuals may use family counseling services from other entities if available.

Although there is no recommended revision to the Law based on this comment, it is recommended that the Legislative Operating Committee communicate with Oneida Behavioral Health and any other relevant department of the Nation so that it is known that curfew citation orders may include referrals for services such as family counseling or parenting programs.

LOC Consideration

The Legislative Operating Committee agrees that communication should be sent to Oneida Behavioral Health and any other relevant department of the Nation, but that no revision to the Law is needed as a result of this comment.

Comment 8 – Per Capita Attachment:

308.7. Penalties of Curfew Violations

308.7-1. Upon a finding by the Family Court that a violation of this law has occurred, the minor and/or the minor's parent, guardian, or legal custodian may be subject to the following penalties:

(a) Fines. An individual may be ordered to pay a fine as a result of a violation of this law. The Oneida Business Committee shall hereby be delegated the authority to adopt through resolution a fine schedule which sets forth specific fine amounts for violations of this law.

(1) All fines shall be paid to the Judiciary.

(2) Fines shall be paid within ninety (90) days after the order is issued or upheld on final appeal, whichever is later.

(A) The ninety (90) day deadline for payment of fines may be extended if an alternative payment plan is approved by the Family Court.

(3) If an individual does not pay his or her fine the Family Court may seek to collect the money owed through the Nation's garnishment and/or per capita attachment process.

(5) Community service may be substituted for part or all of any fine at the minimum wage rate of the Nation for each hour of community service.

Patricia Degrand (written): Per Capita Attachment: With minors being involved, we may end up with attachment orders that will not be enforceable for several years. For instance, if a minor is

fined \$150 and does not pay it, the court could pursue a per capita attachment. If the child is 14 at the time of the curfew violation order and does not pay, the final accounting may be received by the Trust Enrollment Department several years before the attachment will even be possible. The Trust Enrollment Department will need to be made aware of this. If the child involved is not eligible for a per capita payment, collection in some cases may be difficult. Pursuing a garnishment several years later when the child is of working age may not be feasible. The court, several years later, will not know where the 14-year-old who received a curfew violation is working at age 18.

Response

The commenter expresses concerns about the delay in attaching the per capita of a minor or pursuing a garnishment of a minor once that minor reaches the age of eighteen (18) and is working.

The Law provides that if an individual does not pay his or her fine, the Family Court may seek to collect the money owed through the Nation's garnishment and/or per capita attachment process. [3 O.C. 308.7-1(a)(3)]. The purpose of this provision is to allow the Family Court the option to pursue garnishment or per capita attachment for unpaid fines when appropriate. Garnishment and per capita attachment may not be appropriate as a means to address fines owed by a minor child, but may be an appropriate measure to seek unpaid fines from a minor's parent, guardian, or legal custodian. The Family Court is not required to use the Nation's garnishment and/or per capita attachment process, just as the Family Court is not required to impose fines as a penalty for curfew violations. The discretion lies with the Family Court.

Any attempt by the Family Court to attach the per capita of an individual must comply with the provisions found in the Nation's Per Capita law. [1 O.C. 123.4-9(d)]. Any attempt by the Family Court to garnish the wages of an individual must comply with the provisions found in the Nation's Garnishment law. [2 O.C. 204.6].

There is no recommended revision to the Law based on this comment.

LOC Consideration

The Legislative Operating Committee discussed the fact that the purpose of section 308.7-1(a)(3) is to allow the Family Court the option to pursue garnishment or per capita attachment for unpaid fines when appropriate, but that it is ultimately up to the Family Court to determine when it is appropriate to do so.

The discretion given to the Family Court to determine what penalty should be imposed against the minor and/or the minor's parent, guardian, or legal custodian was also discussed by the Legislative Operating Committee. [3 O.C. 308.7-1]. The Family Court may make the determination that in certain situations penalties should be imposed against the parent, guardian, or legal custodian and not the minor, or vice versa. The Family Court may also make the determination that penalties should be imposed against both the minor and the minor's parent, guardian, or legal custodian. The Family Court is given discretion in the imposition of penalties so that the Family Court can address the specific circumstances of each situation and determine which penalty is most appropriate.

The Legislative Operating Committee determined that there is no revision to the Law needed based on this comment.

Comment 9 – Exemptions to Curfew:

308.5-3. Exemptions to Curfew. A minor shall not be in violation of the curfew, if at the time of the alleged violation the minor was:

- (a) in the performance of a duty directed by such parent, guardian, or legal custodian;

Patricia Degrand (written): Exemptions to Curfew: 308.5-3(a) could give minors an unintended out if their parent or guardian tells them to get out of the house after the curfew goes into effect. Although, in this situation, OPD may only want to cite the parent.

Response

The commenter expresses concern that the exemption to the curfew for a minor in the performance of a duty directed by such parent, guardian, or legal custodian could provide an unintended excuse to those minors violating curfew.

Although the Law provides that it is the responsibility of the parent, guardian, or legal custodian to ensure that the minor is not violating the Nation's curfew [3 O.C. 308.5-2], the Law recognizes that circumstances may arise in which a parent, guardian, or legal custodian may need the minor to be out during curfew hours and provides the flexibility to do so with the exemption provided for in section 308.5-3(a) of the Law. Ultimately, it is up to the discretion of the Oneida Police Department officer to look at the totality of the circumstances and determine if there is a reasonable belief that a violation of curfew has occurred or if an exemption described in section 308.5-3 applies. [3 O.C. 308.6-3].

Additionally, the commenter states that in the circumstance where an unintended exemption is provided by the parent, the Oneida Police Department Officer may want to only cite the parent.

The Law provides that an Oneida Police Officer may issue a citation to the minor and the minor's parent, guardian, or legal custodian for a curfew violation. [3 O.C. 308.6-1(c)]. Although the Law requires that the citation be issued to both the minor and the minor's parent, guardian, or legal custodian, the Law provides discretion to the Family Court to determine what penalty should be imposed against the minor and/or the minor's parent, guardian, or legal custodian. [3 O.C. 308.7-1]. The Family Court may make the determination that in certain situations penalties should be imposed against the parent, guardian, or legal custodian and not the minor, or vice versa. The Family Court may also make the determination that penalties should be imposed against both the minor and the minor's parent, guardian, or legal custodian. The Family Court is given discretion in the imposition of penalties so that the Family Court can address the specific circumstances of each situation and determine which penalty is most appropriate.

LOC Consideration

The Legislative Operating Committee determined that the discretion provided to the Oneida Police Department and the Family Court throughout the Law is appropriate, and therefore determined there is no revision to the Law needed based on this comment.

Comment 10 – Collection of Fines:

308.7. Penalties of Curfew Violations

308.7-1. Upon a finding by the Family Court that a violation of this law has occurred, the minor and/or the minor’s parent, guardian, or legal custodian may be subject to the following penalties:

(a) Fines. An individual may be ordered to pay a fine as a result of a violation of this law. The Oneida Business Committee shall hereby be delegated the authority to adopt through resolution a fine schedule which sets forth specific fine amounts for violations of this law.

(1) All fines shall be paid to the Judiciary.

(2) Fines shall be paid within ninety (90) days after the order is issued or upheld on final appeal, whichever is later.

(A) The ninety (90) day deadline for payment of fines may be extended if an alternative payment plan is approved by the Family Court.

(3) If an individual does not pay his or her fine the Family Court may seek to collect the money owed through the Nation’s garnishment and/or per capita attachment process.

(5) Community service may be substituted for part or all of any fine at the minimum wage rate of the Nation for each hour of community service.

Patricia Degrand (written): Fines: 308.7-1(a)(3) allows the Court to collect money owed through the Nation’s garnishment and/or per capita attachment process. The Family Court is in the process of developing a process for collecting guardian ad litem fees and may utilize the State Debt Collection program and the Wisconsin Tax Refund Interception Program (TRIP) as they are both available to tribal courts. Can this section be amended to add “or another collection process available to the Court”?

Response

The commenter asks the Legislative Operating Committee to revise the language in section 308.7-1(a)(3) to allow for the Family Court to utilize another collection process since the Family Court is currently developing a process for collecting fees that may utilize the State Debt Collection program and the Wisconsin Tax Refund Interception Program.

It is recommended that the Legislative Operating Committee make the following revision to section 308.7-1(a)(3) to allow more flexibility to the Family Court to use any debt collection process that may be available:

(3) If an individual does not pay his or her fine the Family Court may seek to collect the money owed through the Nation’s garnishment and/or per capita attachment process or any other collection process available to the Family Court.

LOC Consideration

The Legislative Operating Committee, in an effort to allow the Law flexibility, approves the following revision to be made to section 308.7-1(a)(3) of the Law:

- (3) If an individual does not pay his or her fine the Family Court may seek to collect the money owed through the Nation's garnishment and/or per capita attachment process or any other collection process available to the Family Court.

Title 3. Health and Public Safety - Chapter 308
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We'll put our arms across to stop them
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308.1. Purpose and Policy
308.2. Adoption, Amendment, Repeal
308.3. Definitions
308.4. Jurisdiction

308.5. Curfew
308.6. Enforcement of Curfew Violations
308.7. Penalties of Curfew Violations

1
2 **308.1. Purpose and Policy**
3 308.1-1. *Purpose.* The purpose of this law is to protect the health, safety, and welfare of persons
4 and property within the Reservation by regulating the activities of minors on the Reservation
5 during certain hours, while imposing certain obligations and responsibilities upon the parents,
6 guardians, and/or legal custodians of a minor for the control and supervision of that minor.
7 308.1-2. *Policy.* It is the policy of the Nation to support all drug use prevention initiatives of the
8 Nation by protecting the health, safety, and welfare of persons through the establishment of a
9 curfew for minors in public spaces within the Reservation during certain hours in an effort to
10 minimize the opportunity for harm to come to minors during those hours.
11
12 **308.2. Adoption, Amendment, Repeal**
13 308.2-1. This law was adopted by the Oneida Business Committee by resolution BC-__-__-__-__.
14 308.2-2. This law may be amended or repealed by the Oneida Business Committee and/or General
15 Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.
16 308.2-3. Should a provision of this law or the application thereof to any person or circumstances
17 be held as invalid, such invalidity shall not affect other provisions of this law which are considered
18 to have legal force without the invalid portions.
19 308.2-4. In the event of a conflict between a provision of this law and a provision of another law,
20 the provisions of this law shall control.
21 308.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.
22
23 **308.3. Definitions**
24 308.3-1. This section shall govern the definitions of words and phrases used within this law. All
25 words not defined herein shall be used in their ordinary and everyday sense.
26 (a) “Court of Appeals” means the branch of the Nation's Judiciary delegated the authority
27 of final appeal within the Nation’s Judiciary, as authorized by Oneida General Tribal
28 Council resolution GTC-03-19-17-A .
29 (b) “Family Court” means the branch of the Nation’s Judiciary delegated the authority to
30 administer the judicial authorities and responsibilities of the Nation related to the family
31 and/or children, as authorized by Oneida General Tribal Council resolution GTC-03-19-
32 17-A.
33 (c) “Guardian” means the person, department, and/or agency appointed the duty and
34 authority of guardianship of a child by a Court for the purpose of managing and caring for
35 the child. A guardian has the right to make major decisions affecting a child including
36 education, religious and cultural upbringing, the right to consent to marriage, to enlistment

37 in the armed forces, to major surgery and medical treatment and to adoption, or make
38 recommendations as to adoption.

39 (d) “Legal custodian” means any person, department, and/or agency, other than a parent
40 or guardian, to whom legal custody of a child has been granted by Court order and has the
41 rights and responsibilities for the following:

42 (1) To have physical custody of the child as determined by the Court, if physical
43 custody is not with the person having legal custody;

44 (2) To protect, educate and discipline the child so long as it is in the child’s best
45 interest; and

46 (3) To provide the child with adequate food, shelter, education, ordinary medical
47 care and other basic needs, according to court order. In an emergency situation, a
48 custodian shall have the authority to consent to surgery as well as any other
49 emergency medical care needs.

50 (e) “Member of the Nation” means an individual enrolled in the Oneida Nation.

51 (f) “Minor” means a person age ~~seventeen (17)~~sixteen (16) years old or younger.

52 (g) “Nation” means the Oneida Nation.

53 (h) “Parent” means the biological or adoptive parent of a child.

54 (j) “Public space” means any public streets, highways, roads, alleys, parks, vacant lots, or
55 any public lands.

56 (j) “Relative” means any person connected with a child by blood, marriage or adoption.

57 (k) “Reservation” means all the property within the exterior boundaries of the Reservation
58 of the Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida 7 Stat. 566,
59 and any lands added thereto pursuant to federal law.

60 61 **308.4. Jurisdiction**

62 304.4-1. Jurisdiction of the Court. The Family Court has jurisdiction over any action brought
63 under this law.

64 ~~308.4-1~~2. Personal Jurisdiction. This law applies to:

65 (a) All members of the Nation, individuals eligible for enrollment in the Nation, and
66 members of other federally-recognized tribes.

67 (b) Individuals leasing, occupying or otherwise using fee land owned by the Nation or by
68 individual members of the Nation; and/or lands held in trust on behalf of the Nation or
69 individual members of the Nation.

70 (c) Individuals who have consented to the jurisdiction of the Nation or as otherwise
71 consistent with federal law. An individual shall be considered to have consented to the
72 jurisdiction of the Nation:

73 (1) By entering into a consensual relationship with the Nation, or with the Nation’s
74 entities, corporations, or members of the Nation, including but not limited to
75 contracts or other agreements; or

76 (2) By other facts which manifest an intent to consent to the authority of the Nation,
77 including failure to raise an objection to the exercise of personal jurisdiction in a
78 timely manner.

79 ~~308.4-2~~3. Territorial Jurisdiction. This law extends within the Reservation to all land owned by
80 the Nation and individual trust and/or fee land of a member of the Nation.

82 **308.5. Curfew**

83 308.5-1. *Curfew Established.* No minor shall be on any public space either on foot or in any
84 vehicle driven or parked, between the hours of 10:00 p.m. and 6:00 a.m. within the boundaries of
85 the Reservation, unless the minor is accompanied by a parent, guardian, or legal custodian.

86 308.5-2. *Parental Responsibility.* No parent, guardian, or legal custodian shall knowingly permit
87 or fail to take action to prevent the minor from being on any public space either on foot or in any
88 vehicle driven or parked, between the hours of 10:00 p.m. and 6:00 a.m. within the boundaries of
89 the Reservation.

90 308.5-3. *Exemptions to Curfew.* A minor shall not be in violation of the curfew, if at the time of
91 the alleged violation the minor was:

- 92 (a) in the performance of a duty directed by such parent, guardian, or legal custodian;
- 93 (b) engaged in employment or an employment related activity, or traveling to or returning
94 home from employment;
- 95 (c) engaged in interstate travel;
- 96 (d) attending an educational, cultural, religious, or recreational activity that was supervised
97 by adults, or traveling to or returning home from such activity;
- 98 (e) on the sidewalk in front of his or her home or an adjacent home;
- 99 (f) going to, attending, or returning home from a movie theatre;
- 100 (g) engaged in hunting, fishing, or trapping in accordance with the laws, policies, and rules
101 of the Nation;
- 102 (h) exercising rights protected by the Nation's Constitution and the United States
103 Constitution, such as free exercise of religion, freedom of speech, and the right of
104 assembly;
- 105 (i) involved in an emergency situation; and/or
- 106 (j) engaged in any other activity as deemed appropriate by the Oneida Police Department
107 officer.

108
109 **308.6. Enforcement of Curfew Violations**

110 308.6-1. *Enforcement Procedure.* A suspected violation of curfew shall be enforced by the Oneida
111 Police Department in the following ways:

112 (a) A minor who is suspected of violating curfew may be stopped by an Oneida Police
113 ~~Officer~~Department officer. No person shall assault, obstruct or flee from any Oneida
114 Police ~~Officer~~Department officer enforcing or attempting to enforce the provisions of this
115 law.

116 (b) The Oneida Police ~~Officer~~Department officer shall ask the minor's name, age, and
117 reason for violating curfew. The minor shall provide the Oneida Police ~~Officer~~Department
118 officer identification if available. No person shall falsely represent his or her name or age
119 to an Oneida Police ~~Officer~~Department officer.

120 (c) If the Oneida Police ~~Officer~~Department officer reasonably believes based on the
121 totality of the circumstances that a violation of curfew has occurred and not one of the
122 exemptions in section 308.5-3 apply, the Oneida Police ~~Officer~~Department officer may
123 take custody of the minor for the purpose of returning such minor to the care and custody
124 of a parent, guardian, or legal custodian.

125 (d) Once the Oneida Police ~~Officer~~Department officer has taken the minor into his or her
126 custody, the minor shall provide the Oneida Police ~~Officer~~Department officer with contact
127 information for his or her parent, guardian, or legal custodian. The Oneida Police
128 ~~Officer~~Department officer shall contact the minor's parent, guardian, or legal custodian to

129 come and pick up the minor and take the minor into his or her care and custody. If the
130 minor's parent, guardian, or legal custodian is unable to pick the minor up, then the Oneida
131 Police ~~Officer~~Department officer may bring the minor home to release the minor to the
132 custody and care of the minor's parent, guardian, or legal custodian.

133 (e) If the Oneida Police ~~Officer~~Department officer is unable to contact the minor's parent,
134 guardian, or legal custodian after reasonable efforts are made, the Oneida Police
135 ~~Officer~~Department officer shall attempt to locate an adult relative or other responsible adult
136 willing and able to accept the care and custody of the minor, and may release the minor
137 into the care and custody of such person.

138 308.6-2. *Warning.* The first time a minor is held in custody by an Oneida Police
139 ~~Officer~~Department officer for a curfew violation the Oneida Police ~~Officer~~Department officer
140 shall provide the minor and the minor's parent, guardian, or legal custodian a warning and advise
141 the minor and parent, guardian, or legal custodian of the provisions of this law and that any
142 subsequent curfew violations may result in the issuance of a citation and the imposition of a
143 penalty.

144 308.6-3. *Issuance of a Citation.* Any subsequent time a minor is held in custody by an Oneida
145 Police ~~Officer~~Department officer for a curfew violation the Oneida Police ~~Officer~~Department
146 ~~officer~~ may issue a citation to the minor and the minor's parent, guardian, or legal custodian.

147 (a) A citation for a violation of this law and/or any orders issued pursuant to this law may
148 include fines and other penalties, as well as conditional orders made by the Family Court.

149 (b) A citation for a violation of this law shall be processed in accordance with the
150 procedure contained in the Nation's laws and policies governing citations.

151 (c) All citations for violations of this law require a mandatory appearance at the citation
152 pre-hearing by the minor and his or her parent, guardian, or legal custodian.

154 **308.7. Penalties of Curfew Violations**

155 308.7-1. Upon a finding by the Family Court that a violation of this law has occurred, the minor
156 and/or the minor's parent, guardian, or legal custodian may be subject to the following penalties:

157 (a) *Fines.* An individual may be ordered to pay a fine as a result of a violation of this law.
158 The Oneida Business Committee shall hereby be delegated the authority to adopt through
159 resolution a fine schedule which sets forth specific fine amounts for violations of this law.

160 (1) All fines shall be paid to the Judiciary.

161 (2) Fines shall be paid within ninety (90) days after the order is issued or upheld
162 on final appeal, whichever is later.

163 (A) The ninety (90) day deadline for payment of fines may be extended if
164 an alternative payment plan is approved by the Family Court.

165 (3) If an individual does not pay his or her fine the Family Court may seek to collect
166 the money owed through the Nation's garnishment and/or per capita attachment
167 process or any other collection process available to the Family Court.

168 (54) Community service may be substituted for part or all of any fine at the
169 minimum wage rate of the Nation for each hour of community service.

170 (b) *Community service.* An individual may be ordered to perform community service.
171 Community service can be used in lieu of, or in addition to, a fine.

172 (1) All community service assignments shall be approved by the Family Court.
173 The Family Court shall give preference to culturally relevant community service
174 assignments and/or community service assignments that focus on the betterment of
175 the individual's community.

176 (2) The Family Court shall provide the individual a written statement of the terms
177 of the community service order, and a statement that the community service order
178 is monitored.

- 179 (3) The Family Court’s community service order shall specify:
- 180 (A) how many hours of community service the individual is required to
181 complete;
 - 182 (B) the time frame in which the hours shall be completed;
 - 183 (C) how the individual shall obtain approval for his or her community
184 service assignment;
 - 185 (D) how the individual shall report his or her hours; and
 - 186 (E) any other information the Family Court determines is relevant.
- 187 (c) *Family counseling and/or parenting programs.* An individual may be ordered to
188 participate in a family counseling and/or a parenting program.
- 189 (d) Any other penalty as deemed appropriate by the Family Court.

190 308.7-2. Staying a Curfew Penalty. The Family Court may stay the enforcement of a penalty
191 issued as a result of a curfew violation for a period of time to be determined by the Family Court.
192 If the individual maintains compliance with the law during the time period in which the penalty is
193 stayed, then the Family Court may dismiss the citation. If the individual commits another violation
194 of the law during the time period in which the penalty is stayed, then the penalty shall go into
195 effect.

196
197 *End.*

198
199 Adopted – BC-__-__-__-__
200

Title 3. Health and Public Safety - Chapter 308
Tłyethinatshawk·late? Kayanłsla?
We'll put our arms across to stop them
CURFEW

308.1. Purpose and Policy
308.2. Adoption, Amendment, Repeal
308.3. Definitions
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3 308.1-1. *Purpose.* The purpose of this law is to protect the health, safety, and welfare of persons
4 and property within the Reservation by regulating the activities of minors on the Reservation
5 during certain hours, while imposing certain obligations and responsibilities upon the parents,
6 guardians, and/or legal custodians of a minor for the control and supervision of that minor.
7 308.1-2. *Policy.* It is the policy of the Nation to support all drug use prevention initiatives of the
8 Nation by protecting the health, safety, and welfare of persons through the establishment of a
9 curfew for minors in public spaces within the Reservation during certain hours in an effort to
10 minimize the opportunity for harm to come to minors during those hours.
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12 **308.2. Adoption, Amendment, Repeal**
13 308.2-1. This law was adopted by the Oneida Business Committee by resolution BC-__-__-__-__.
14 308.2-2. This law may be amended or repealed by the Oneida Business Committee and/or General
15 Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.
16 308.2-3. Should a provision of this law or the application thereof to any person or circumstances
17 be held as invalid, such invalidity shall not affect other provisions of this law which are considered
18 to have legal force without the invalid portions.
19 308.2-4. In the event of a conflict between a provision of this law and a provision of another law,
20 the provisions of this law shall control.
21 308.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.
22
23 **308.3. Definitions**
24 308.3-1. This section shall govern the definitions of words and phrases used within this law. All
25 words not defined herein shall be used in their ordinary and everyday sense.
26 (a) “Court of Appeals” means the branch of the Nation's Judiciary delegated the authority
27 of final appeal within the Nation’s Judiciary, as authorized by Oneida General Tribal
28 Council resolution GTC-03-19-17-A .
29 (b) “Family Court” means the branch of the Nation’s Judiciary delegated the authority to
30 administer the judicial authorities and responsibilities of the Nation related to the family
31 and/or children, as authorized by Oneida General Tribal Council resolution GTC-03-19-
32 17-A.
33 (c) “Guardian” means the person, department, and/or agency appointed the duty and
34 authority of guardianship of a child by a Court for the purpose of managing and caring for
35 the child. A guardian has the right to make major decisions affecting a child including
36 education, religious and cultural upbringing, the right to consent to marriage, to enlistment

37 in the armed forces, to major surgery and medical treatment and to adoption, or make
38 recommendations as to adoption.

39 (d) “Legal custodian” means any person, department, and/or agency, other than a parent
40 or guardian, to whom legal custody of a child has been granted by Court order and has the
41 rights and responsibilities for the following:

42 (1) To have physical custody of the child as determined by the Court, if physical
43 custody is not with the person having legal custody;

44 (2) To protect, educate and discipline the child so long as it is in the child’s best
45 interest; and

46 (3) To provide the child with adequate food, shelter, education, ordinary medical
47 care and other basic needs, according to court order. In an emergency situation, a
48 custodian shall have the authority to consent to surgery as well as any other
49 emergency medical care needs.

50 (e) “Member of the Nation” means an individual enrolled in the Oneida Nation.

51 (f) “Minor” means a person age sixteen (16) years old or younger.

52 (g) “Nation” means the Oneida Nation.

53 (h) “Parent” means the biological or adoptive parent of a child.

54 (j) “Public space” means any public streets, highways, roads, alleys, parks, vacant lots, or
55 any public lands.

56 (j) “Relative” means any person connected with a child by blood, marriage or adoption.

57 (k) “Reservation” means all the property within the exterior boundaries of the Reservation
58 of the Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida 7 Stat. 566,
59 and any lands added thereto pursuant to federal law.

61 **308.4. Jurisdiction**

62 308.4-1. *Jurisdiction of the Court.* The Family Court has jurisdiction over any action brought
63 under this law.

64 308.4-2. *Personal Jurisdiction.* This law applies to:

65 (a) All members of the Nation, individuals eligible for enrollment in the Nation, and
66 members of other federally-recognized tribes.

67 (b) Individuals leasing, occupying or otherwise using fee land owned by the Nation or by
68 individual members of the Nation; and/or lands held in trust on behalf of the Nation or
69 individual members of the Nation.

70 (c) Individuals who have consented to the jurisdiction of the Nation or as otherwise
71 consistent with federal law. An individual shall be considered to have consented to the
72 jurisdiction of the Nation:

73 (1) By entering into a consensual relationship with the Nation, or with the Nation’s
74 entities, corporations, or members of the Nation, including but not limited to
75 contracts or other agreements; or

76 (2) By other facts which manifest an intent to consent to the authority of the Nation,
77 including failure to raise an objection to the exercise of personal jurisdiction in a
78 timely manner.

79 308.4-3. *Territorial Jurisdiction.* This law extends within the Reservation to all land owned by
80 the Nation and individual trust and/or fee land of a member of the Nation.

81

82 **308.5. Curfew**

83 308.5-1. *Curfew Established.* No minor shall be on any public space either on foot or in any
84 vehicle driven or parked, between the hours of 10:00 p.m. and 6:00 a.m. within the boundaries of
85 the Reservation, unless the minor is accompanied by a parent, guardian, or legal custodian.

86 308.5-2. *Parental Responsibility.* No parent, guardian, or legal custodian shall knowingly permit
87 or fail to take action to prevent the minor from being on any public space either on foot or in any
88 vehicle driven or parked, between the hours of 10:00 p.m. and 6:00 a.m. within the boundaries of
89 the Reservation.

90 308.5-3. *Exemptions to Curfew.* A minor shall not be in violation of the curfew, if at the time of
91 the alleged violation the minor was:

92 (a) in the performance of a duty directed by such parent, guardian, or legal custodian;

93 (b) engaged in employment or an employment related activity, or traveling to or returning
94 home from employment;

95 (c) engaged in interstate travel;

96 (d) attending an educational, cultural, religious, or recreational activity that was supervised
97 by adults, or traveling to or returning home from such activity;

98 (e) on the sidewalk in front of his or her home or an adjacent home;

99 (f) going to, attending, or returning home from a movie theatre;

100 (g) engaged in hunting, fishing, or trapping in accordance with the laws, policies, and rules
101 of the Nation;

102 (h) exercising rights protected by the Nation's Constitution and the United States
103 Constitution, such as free exercise of religion, freedom of speech, and the right of
104 assembly;

105 (i) involved in an emergency situation; and/or

106 (j) engaged in any other activity as deemed appropriate by the Oneida Police Department
107 officer.

108

109 **308.6. Enforcement of Curfew Violations**

110 308.6-1. *Enforcement Procedure.* A suspected violation of curfew shall be enforced by the Oneida
111 Police Department in the following ways:

112 (a) A minor who is suspected of violating curfew may be stopped by an Oneida Police
113 Department officer. No person shall assault, obstruct or flee from any Oneida Police
114 Department officer enforcing or attempting to enforce the provisions of this law.

115 (b) The Oneida Police Department officer shall ask the minor's name, age, and reason for
116 violating curfew. The minor shall provide the Oneida Police Department officer
117 identification if available. No person shall falsely represent his or her name or age to an
118 Oneida Police Department officer.

119 (c) If the Oneida Police Department officer reasonably believes based on the totality of the
120 circumstances that a violation of curfew has occurred and not one of the exemptions in
121 section 308.5-3 apply, the Oneida Police Department officer may take custody of the minor
122 for the purpose of returning such minor to the care and custody of a parent, guardian, or
123 legal custodian.

124 (d) Once the Oneida Police Department officer has taken the minor into his or her custody,
125 the minor shall provide the Oneida Police Department officer with contact information for
126 his or her parent, guardian, or legal custodian. The Oneida Police Department officer shall
127 contact the minor's parent, guardian, or legal custodian to come and pick up the minor and
128 take the minor into his or her care and custody. If the minor's parent, guardian, or legal

129 custodian is unable to pick the minor up, then the Oneida Police Department officer may
130 bring the minor home to release the minor to the custody and care of the minor's parent,
131 guardian, or legal custodian.

132 (e) If the Oneida Police Department officer is unable to contact the minor's parent,
133 guardian, or legal custodian after reasonable efforts are made, the Oneida Police
134 Department officer shall attempt to locate an adult relative or other responsible adult
135 willing and able to accept the care and custody of the minor, and may release the minor
136 into the care and custody of such person.

137 308.6-2. *Warning.* The first time a minor is held in custody by an Oneida Police Department
138 officer for a curfew violation the Oneida Police Department officer shall provide the minor and
139 the minor's parent, guardian, or legal custodian a warning and advise the minor and parent,
140 guardian, or legal custodian of the provisions of this law and that any subsequent curfew violations
141 may result in the issuance of a citation and the imposition of a penalty.

142 308.6-3. *Issuance of a Citation.* Any subsequent time a minor is held in custody by an Oneida
143 Police Department officer for a curfew violation the Oneida Police Department officer may issue
144 a citation to the minor and the minor's parent, guardian, or legal custodian.

145 (a) A citation for a violation of this law and/or any orders issued pursuant to this law may
146 include fines and other penalties, as well as conditional orders made by the Family Court.

147 (b) A citation for a violation of this law shall be processed in accordance with the
148 procedure contained in the Nation's laws and policies governing citations.

149 (c) All citations for violations of this law require a mandatory appearance at the citation
150 pre-hearing by the minor and his or her parent, guardian, or legal custodian.

151 **308.7. Penalties of Curfew Violations**

152 308.7-1. Upon a finding by the Family Court that a violation of this law has occurred, the minor
153 and/or the minor's parent, guardian, or legal custodian may be subject to the following penalties:

154 (a) *Fines.* An individual may be ordered to pay a fine as a result of a violation of this law.
155 The Oneida Business Committee shall hereby be delegated the authority to adopt through
156 resolution a fine schedule which sets forth specific fine amounts for violations of this law.

157 (1) All fines shall be paid to the Judiciary.

158 (2) Fines shall be paid within ninety (90) days after the order is issued or upheld
159 on final appeal, whichever is later.

160 (A) The ninety (90) day deadline for payment of fines may be extended if
161 an alternative payment plan is approved by the Family Court.

162 (3) If an individual does not pay his or her fine the Family Court may seek to collect
163 the money owed through the Nation's garnishment and/or per capita attachment
164 process or any other collection process available to the Family Court.

165 (4) Community service may be substituted for part or all of any fine at the minimum
166 wage rate of the Nation for each hour of community service.

167 (b) *Community service.* An individual may be ordered to perform community service.
168 Community service can be used in lieu of, or in addition to, a fine.

169 (1) All community service assignments shall be approved by the Family Court.
170 The Family Court shall give preference to culturally relevant community service
171 assignments and/or community service assignments that focus on the betterment of
172 the individual's community.
173

174 (2) The Family Court shall provide the individual a written statement of the terms
175 of the community service order, and a statement that the community service order
176 is monitored.

177 (3) The Family Court's community service order shall specify:

178 (A) how many hours of community service the individual is required to
179 complete;

180 (B) the time frame in which the hours shall be completed;

181 (C) how the individual shall obtain approval for his or her community
182 service assignment;

183 (D) how the individual shall report his or her hours; and

184 (E) any other information the Family Court determines is relevant.

185 (c) *Family counseling and/or parenting programs.* An individual may be ordered to
186 participate in a family counseling and/or a parenting program.

187 (d) Any other penalty as deemed appropriate by the Family Court.

188 308.7-2. *Staying a Curfew Penalty.* The Family Court may stay the enforcement of a penalty
189 issued as a result of a curfew violation for a period of time to be determined by the Family Court.
190 If the individual maintains compliance with the law during the time period in which the penalty is
191 stayed, then the Family Court may dismiss the citation. If the individual commits another violation
192 of the law during the time period in which the penalty is stayed, then the penalty shall go into
193 effect.

194 *End.*

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197 _____
198 Adopted – BC-__-__-__-__



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we'll put our arms across to stop them
CURFEW LAW LEGISLATIVE ANALYSIS

SECTION 1. EXECUTIVE SUMMARY

REQUESTER: Tribal Action Plan Laws and Policy Subcommittee	SPONSOR: Ernest Stevens III	DRAFTER: Clorissa N. Santiago	ANALYST: Maureen Perkins
Intent of the Legislation	The Tribal Action Plan (TAP) Laws and Policy Subcommittee recommended the Legislative Operating Committee (LOC) draft a curfew law to protect the safety of youth in the community, as well as provide accountability to both youth and parents through consequences that reflect the circumstances and needs of the community. The Curfew law (“Law”) will protect the health, safety and welfare of persons and property on the Reservation by restricting access to public spaces by minors during certain night time and early morning hours.		
Purpose	To protect the health, safety, and welfare of persons and property within the Reservation by regulating the activities of minors on the Reservation during certain hours, while imposing certain obligations and responsibilities upon the parents, guardians, and/or legal custodians of minors for the control and supervision of minors [3 O.C. 308.1-1].		
Affected Entities	Oneida Police Department (OPD) and Oneida Judiciary		
Related Legislation	Family Court law, Per Capita law, Garnishment law, Rules of Appellate Procedure, Family Court Rules, Oneida Judiciary Rules of Evidence, Oneida Judiciary Rules of Civil Procedure, Landlord-Tenant law		
Enforcement	<p>The OPD will enforce suspected violations of this Law by issuing warnings and citations [3 O.C. 308.6].</p> <p>Citations issued result in a mandatory appearance at a citation pre-hearing for both the minor and his or her parent, guardian, or legal custodian.</p> <ul style="list-style-type: none"> The Family Court may issue conditional orders as well as penalties that include fines, community service, mandatory participation in family counseling or parenting programs, and any other penalty the Family Court deems appropriate [3 O.C. 308.6-3(a) and (c)]. The Family Court may stay a penalty at its discretion [3. O.C. 308.7-2]. All fines will be paid to the Judiciary within ninety (90) days after the order is issued or upheld on final appeal, whichever is later. This deadline may be extended at the discretion of the Family Court. If a fine is not paid the Family Court may seek to collect the money owed through the Nation’s garnishment and/or per capita attachment process or any other collection process available to the Family Court [3 O.C. 308.7-1(a)(3)]. 		
Due Process	A citation for a violation of this Law shall be processed in accordance with the procedure contained in the Nation’s laws and policies governing citations [3 O.C. 308.6-3(b)].		
Public Meeting	A public meeting was held on July 18, 2019. Comments were considered by the LOC and changes were directed to the law on August 15, 2019.		
Fiscal Impact	The LOC has directed the Finance Department to complete a fiscal impact statement within ten (10) days after the LOC approves a final proposed draft of the Curfew law; in accordance with the Legislative Procedures Act.		

1 **SECTION 2. LEGISLATIVE DEVELOPMENT**

2 A. **Background.** The Nation does not currently have a law establishing a curfew governing minors in
3 public spaces during certain night time and early morning hours. This Curfew law was requested by
4 the Tribal Action Plan (TAP) Laws and Policy Subcommittee which included input from a cross
5 functional core team that included representatives from the Oneida Business Committee (OBC), Oneida
6 Police Department, Governmental Services Division, Oneida Gaming Commission, Oneida Family
7 Support Services, Legislative Operating Committee, Legislative Reference Office (LRO), Oneida
8 Human Resources Department and Retail Division. This team concluded that a curfew law would help
9 curtail opportunities for minors to be influenced by drugs by limiting their presence in public spaces
10 within the community during certain hours, including night time and early morning, without the
11 presence of a parent, guardian, or legal custodian.

12 *Outreach Efforts*

13 Outreach with the community was held during the Community Budget Session on November 30,
14 2018 where the LOC had an opportunity to collect input from participants by asking them to share their
15 ideas about new laws, amendments to existing laws or anything else they wanted to share. Participants
16 indicated the need for a curfew law for the Reservation [*LOC FY19 First Quarter Report*].
17 Additionally; a community outreach event was held on March 21, 2019 at the Norbert Hill Center
18 cafeteria from 5:00 p.m. to 7:30 p.m. to collect input from the community. No members of the
19 community participated in this event.

20 *Related Research*

21 Research conducted regarding curfew laws revealed that the most common goals of a curfew law
22 are to 1) protect children from becoming victims or perpetrators of crimes, 2) assist parents in exercising
23 their responsibility over minors, and 3) prevent all persons from the dangers posed by unsupervised
24 minors who are out late at night and in the early morning hours. Research indicates that curfew laws
25 may protect youth from victimization and prevent juvenile crimes and delinquency by reducing or
26 preventing exposure of youth to negative situations by restricting their access to public spaces at night
27 and early morning hours [*Grossman & Martin, 2015*]. Although some research has indicated that most
28 crimes involving minors take place during after school hours rather than late at night or early morning
29 hours [*Meyers, 2016*]; the goal of this legislation within the Oneida Reservation is to keep minors safe
30 and accounted for during curfew hours.

31 According to the Office of Juvenile and Delinquency Prevention; the following contribute to the
32 successful implementation of curfew policies:

- 33 ○ Community involvement;
- 34 ○ Creating specific procedures for repeat offenders such as recreational, educational, and job
35 opportunities as well as antidrug and antigang programs;
- 36 ○ Providing a hotline for community questions or problems related to curfews or juvenile
37 delinquency in general; and
- 38 ○ Providing intervention services for juveniles and their families.

39 B. **Previous Attempts to Implement a Curfew.** The LOC has considered a law that included a curfew in
40 the past. A curfew provision was considered in a Public Nuisances law drafted by the LOC in 2010;
41 however, this law was not completed or adopted.

- 42 • Previous attempts at regulating minors through a curfew that were not legislative include a curfew
43 requirement of 10:00 p.m. to 6:00 a.m. that was included in previous Oneida Housing Authority
44 tenant leases. This provision is not in current leases [*Email Communication 05/03/2019, Scott
45 Denny, Residential Rentals & Outreach Area Manager, Oneida Comprehensive Housing
46 Division*].

47 C. **Expected Benefits.** The purpose of this legislation is to provide a clear timeframe that minors must be
48 out of public spaces and accounted for by their parents, guardians or legal custodians. Members of the
49 Oneida Nation High School Clan Council indicated that a curfew law may help to prevent teens from
50 partying, staying out late and engaging in other bad behaviors; as well as helping with responsibility,
51 encouraging youth to stay out of trouble and encouraging safety and school attendance. A curfew law

52 provides a means for parents to enforce a curfew with their children to provide an additional measure
 53 of safety, accountability, obligation and responsibility to both the Nation’s minors and adults
 54 [McDowall, Loftin & Wiersema, 2009]. A curfew law provides OPD with a means to engage with
 55 suspected minors during curfew hours to tell them to go home and to encourage adult supervision of
 56 minors during curfew hours. OPD has expressed that the goal is to keep minors safe and to prevent
 57 vandalized property, arson, graffiti, petty theft and drug issues.
 58

59 **SECTION 3. CONSULTATION AND OUTREACH**

60 **A. Departments and Groups.** The following departments and groups participated in the development of
 61 this Law:

- 62 1. Oneida Police Department; and
- 63 2. Members of the Oneida Nation High School Clan Council.

64 **B. Laws of the Nation.** The drafting of this legislative analysis included a review of the following laws of
 65 the Nation: Family Court law, Family Court Rules, Rules of Appellate Procedure, Oneida Judiciary
 66 Rules of Evidence, Oneida Judiciary Rules of Civil Procedure, Per Capita law, Garnishment law, Public
 67 Use of Tribal Lands law, and Landlord-Tenant law.

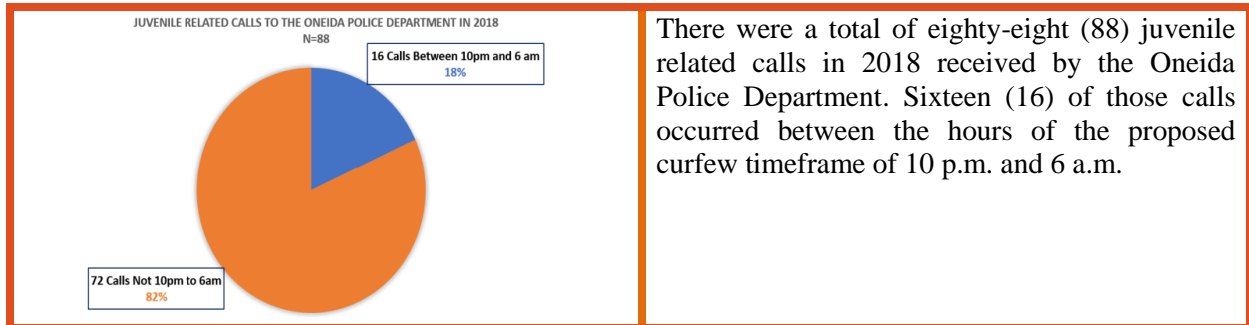
68 **C. Area and Tribal Laws.** The following curfew laws from surrounding municipalities and other tribal
 69 communities were reviewed. The chart provides a breakdown of the ages and curfew time frames the
 70 laws apply to.

Municipality or Tribe	Curfew Applies to Ages:	Curfew in Effect From:
Brown County	Under 17	10pm to 6am
Village of Hobart	Under 17	10pm to 6am
City of Green Bay	Under 17	10pm to 6am
City of De Pere	Under 17	10pm to 6am
Village of Ashwaubenon	Under 17	10pm to 6am
City of Seymour	Under 17	11pm to 6am
Village Howard	Under 17	10pm to 6am
Ho-Chunk Nation	Under 16	10pm to 5am
	16-17	12am to 5am
Lac Du Flambeau Band of Lake Superior Chippewas	Under 18	9pm to daylight during central standard time
		10pm to daylight during daylight savings time
Hoopa Valley Tribe	Under 18	10pm to 5am
Prairie Island Indian Community	Under 16	10pm to 6am
	Over 16 and under 18	11pm to 6am
Ely Shoshone Tribe	Under 18	10pm to 5am Sunday - Thursday
		12am to 5am Friday - Saturday

71
 72 *The State of Wisconsin, Outagamie County and Town of Oneida do not have curfew laws in place.
 73

74 **D. Data.** A memorandum from the TAP Laws and Policy Subcommittee suggested that data related to
 75 police interactions with youth ages seventeen (17) years and younger be requested from the Oneida
 76 Police Department and other neighboring jurisdictions to provide a background for juvenile activity in
 77 the area.

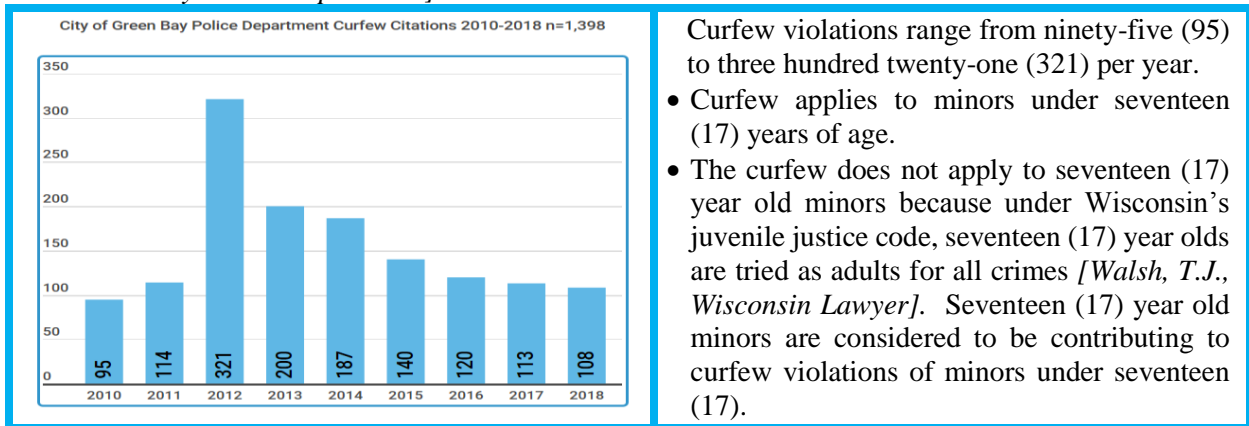
- 78 1. The Oneida Police Department does not currently enforce any curfew laws. The following is
 79 a breakdown of juvenile related calls received by the Oneida Police Department in 2018 [Email
 80 communication 05/06/2019, Eric Boulanger, Chief of Police, Oneida Police Department].



There were a total of eighty-eight (88) juvenile related calls in 2018 received by the Oneida Police Department. Sixteen (16) of those calls occurred between the hours of the proposed curfew timeframe of 10 p.m. and 6 a.m.

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 84

2. The City of Green Bay has issued the following citations related to curfew violations from 2010 to 2018 [Email communication 05/03/2019, Michelle Belongie, Crime Analyst, Green Bay Police Department].



Curfew violations range from ninety-five (95) to three hundred twenty-one (321) per year.

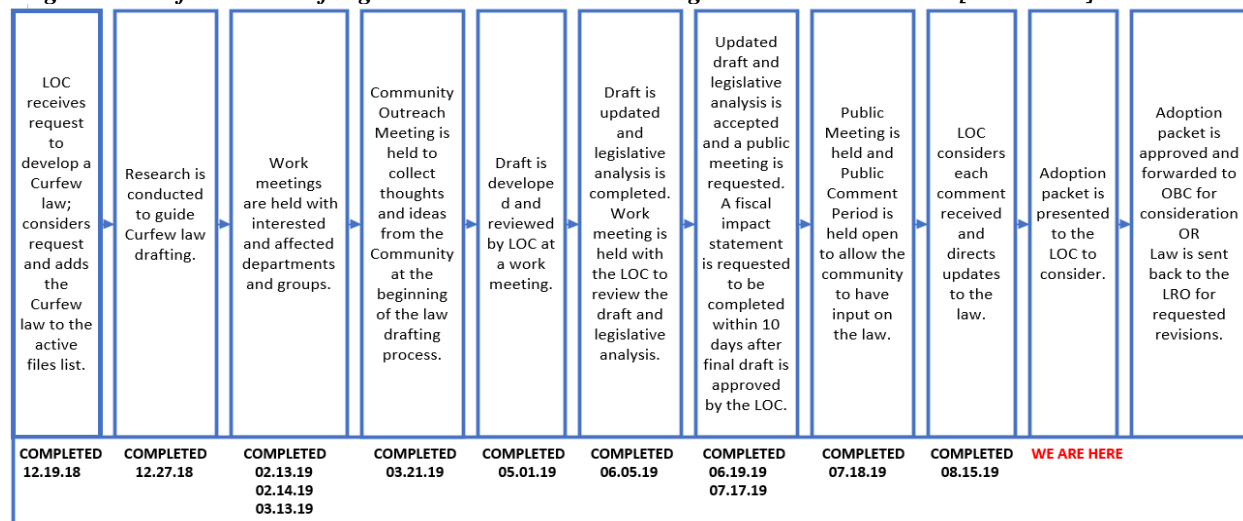
- Curfew applies to minors under seventeen (17) years of age.
- The curfew does not apply to seventeen (17) year old minors because under Wisconsin’s juvenile justice code, seventeen (17) year olds are tried as adults for all crimes [Walsh, T.J., Wisconsin Lawyer]. Seventeen (17) year old minors are considered to be contributing to curfew violations of minors under seventeen (17).

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SECTION 4. PROCESS

A. Below is a diagram of the legislative process contained in the Legislative Procedures Act [1 O.C. 109] with some additional useful information. A public meeting has been held and the LOC has considered each comment collected and made changes to the draft law based on public comment. The LOC is currently at the stage of reviewing the final law for consideration of adoption by the OBC.

Diagram 1. Curfew Law Drafting Process Contained in the Legislative Procedures Act [1 O.C. 109].



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 93
 94

C. The following meetings, work meetings, and outreach events took place at the time of the development of this legislative analysis:

- 95 • December 19, 2018: A request for a Curfew law was received from the TAP Laws and Policy
- 96 Subcommittee, considered by the LOC and the Curfew law was added to the active files list.
- 97 • February 13, 2019: A work meeting was held with the LRO staff and the OPD.
- 98 • February 14, 2019: A work meeting was held with the LOC and the LRO staff.
- 99 • March 13, 2019: A work meeting was held with the LRO staff and the Oneida Nation High School
- 100 Clan Council.
- 101 • March 21, 2019: A Community Outreach Meeting was held. Although no one attended this
- 102 meeting; the opportunity was presented to the community to gather input on the development of
- 103 the Law.
- 104 • May 1, 2019: A work meeting was held with the LOC and the LRO.
- 105 • May 15, 2019: A work meeting was held with the LOC and the LRO.
- 106 • June 5, 2019: The draft and legislative analysis presented to the LOC for further consideration.
- 107 • June 19, 2019: LOC approved the Public Meeting Packet and forwarded the Curfew law to a public
- 108 meeting to be held on July 18, 2019.
- 109 • July 18, 2019: Public meeting held.
- 110 • August 18, 2019: A work meeting was held with the LOC and the LRO to consider each comment
- 111 made and direct changes to the draft law.

Community Outreach Event March 21, 2019

March 21, 2019

The LOC hosted a community pot luck to discuss a Curfew Law. While the community expressed interest in the event, no one attended the meeting. This highlights how collecting public comment is difficult.

LEGISLATIVE OPERATING COMMITTEE OUTREACH EVENT

COMMUNITY POT LUCK
WWW.ONEIDA-NSN.GOV/GOVERNMENT

Thursday, March 21, 2019, 5:00-7:30pm

Norbert Hill Center Cafeteria
7210 Seminary Rd., Oneida, Wisconsin

PROPOSED CURFEW LAW

This will be an exploratory meeting that will gather input from the community regarding issues and concerns related to the implementation of a curfew for minors seventeen (17) years old or younger, and the consequences that would result from violating the curfew.

OUTREACH

The Legislative Operating Committee (LOC) holds community outreach events in an effort to collect thoughts and ideas from the community at the beginning of the legislative process. This provides insight and ideas early and is a more efficient way of getting work done. Outreach events also provide the community with additional opportunities to share their thoughts with the LOC. When the LOC feels that the community may have a particular interest in proposed legislation these events are held in addition to the formal public meetings required by the Legislative Procedures Act.

FOR MORE INFORMATION:
www.oneida-nsn.gov/Register/Public Meetings or contact Oneida Nation Legislative Reference Office located
in the Norbert Hill Center, PO Box 365, Oneida, Wisconsin 54155
Email: LOC@oneidanation.org Phone: 920-869-4376

112
113 **SECTION 5. CONTENTS OF THE LEGISLATION**

114 **A. Purpose and Policy [3 O.C. 308.1]**

- 115 • The purpose of the Law is to restrict access to public spaces by minors not accompanied by
- 116 certain adults during established night and early morning hours, while imposing obligations and
- 117 responsibilities upon adults to protect the health, safety and welfare of youth, adults and public
- 118 property of the Nation. It is the policy of the Nation to support substance abuse prevention
- 119 initiatives to minimize the opportunities of for minors to encounter harmful situations.

120 **B. Jurisdiction [3 O.C. 308.4]**

- 121 • Jurisdiction of the Court. The Oneida Family Court has jurisdiction over any action brought
- 122 under this law [3 O.C. 308.4-1].
- 123 • Personal Jurisdiction. This Law applies to: 1) all members of the Nation and those eligible for
- 124 enrollment with the Nation, as well as members of other federally recognized tribes, 2)
- 125 individuals and their households who lease, occupy or otherwise use fee land or trust land owned
- 126 by the Nation or by individual members of the Nation; through consensual contract or other
- 127 agreement, 3) individuals who have consented to the jurisdiction of the Nation through other
- 128 consensual relationships with the Nation or Nation's entities, corporations or members of the

Nation through contracts or agreements; and 4) any other facts that manifest consent to jurisdiction consistent with federal law and policy including failure to object to the exercise of personal jurisdiction in a timely manner.

i. In accordance with section 308.4-1(b), the Law applies to individuals and their households who lease, rent, or occupy any home involved in a housing program with the Nation's Comprehensive Housing Division, including children who are not enrolled or eligible for enrollment with the Nation or any other federally recognized tribe. The Landlord-Tenant law requires all tenants of the Nation's housing programs to abide by the Nation's laws [6 O.C. 611.6-3(b)(3)].

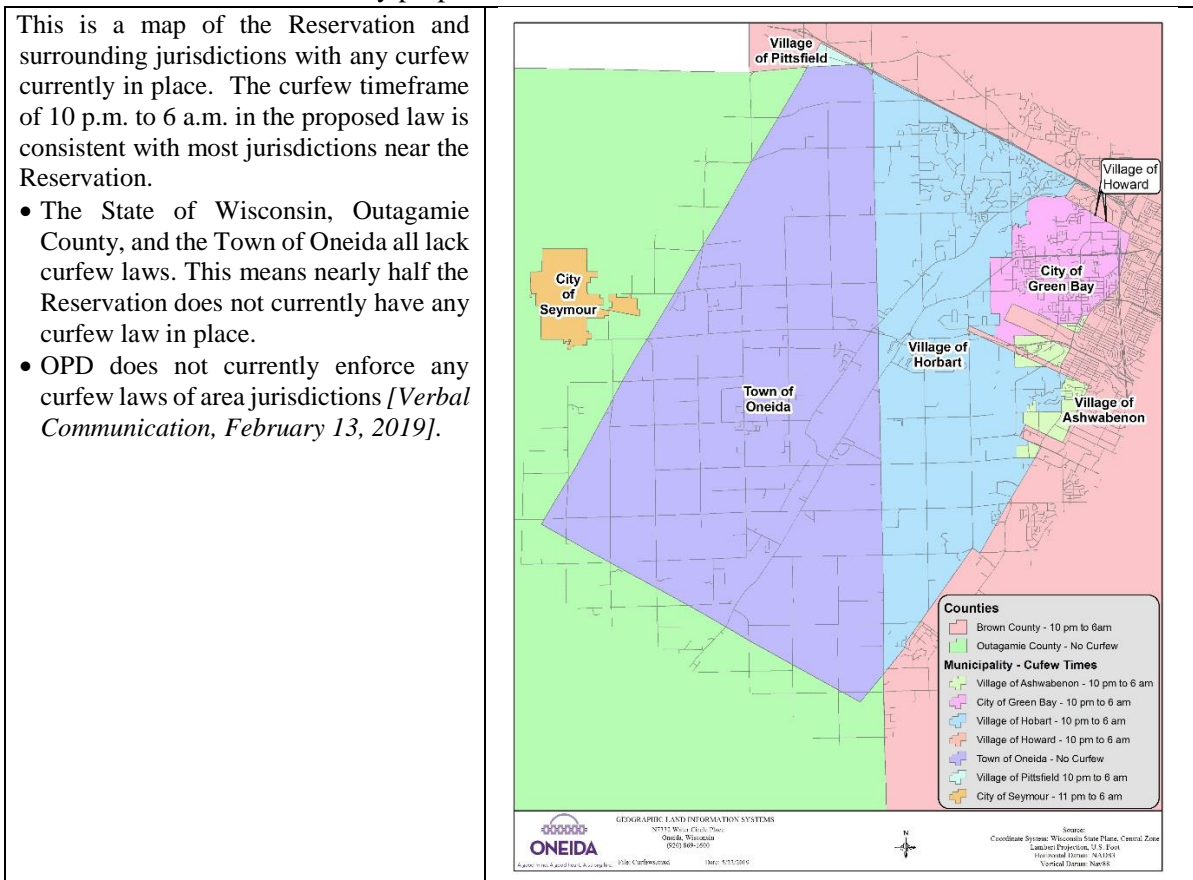
- **Territorial Jurisdiction.** This Law applies to the Reservation to all land owned by the Nation and individual trust and/or fee land of a member of the Nation.

C. **Curfew** [3 O.C. 308.5]

- The curfew is established from 10:00 p.m. to 6:00 a.m. for ages sixteen (16) years old or younger in any public space either on foot or in a vehicle driven or parked within the boundaries of the Reservation. No adult shall knowingly permit or fail to take action to prevent a minor to be in a public space after curfew unless an exemption is met [3 O.C. 308.5-3].

i. Exemptions include common reasons minors would be out at night without the presence of their parent, guardian, or legal custodian such as traveling home from work, participating in cultural and sports activities chaperoned by an adult, and traveling home from the movies; as well as a discretionary measure for OPD to determine if the law has been violated or not.

- The map below demonstrates the curfew in the proposed Law is consistent with the curfew established by municipalities surrounding the Reservation. Members of the Oneida Nation High School Clan Council indicated during a work meeting that Oneida's curfew should be similar to area curfew laws for consistency purposes.



162 **D. Enforcement of Curfew Violations [3 O.C. 308.6]**

- 163 • Oneida Police Department (OPD) officers may stop any minor suspected of violating this law.
164 OPD must ask, and the minor must provide, their name, age and reason for violating curfew. If
165 an OPD officer believes the Curfew law has been violated; the officer may take the minor into
166 custody and contact their parents, guardian or legal custodian to return the minor to their care
167 and custody. If the OPD officer cannot locate a parent, guardian or legal custodian, they may
168 find and release the child to an adult relative or other responsible adult willing and able to accept
169 the care and custody of the minor.
- 170 i. The first time a minor is taken into custody results in a warning by OPD to both
171 the minor and the minor’s parent, guardian or legal custodian advising them of the
172 law and informing them that any additional violations of the curfew law may result
173 in a fine, community service, mandatory parenting program, mandatory family
174 counseling, or other penalties at the discretion of the Family Court [3 O.C. 308.6-
175 2].
 - 176 ii. Subsequent curfew violations that result in a minor being taken into custody by
177 OPD may result in the issuance of a citation which will require the attendance of
178 the minor and their parent, guardian, or legal custodian at a mandatory pre-hearing
179 with the Family Court. Additionally; subsequent violations of the Curfew law may
180 include a fine, mandatory or voluntary community service, mandatory parenting
181 program, mandatory family counseling, or any other penalty at the discretion of
182 the Family Court, as well as any conditional orders made by the Family Court [3
183 O.C. 308.6-3].
 - 184 iii. The Family Court may issue conditional orders at the mandatory pre-hearing until
185 the matter is resolved [3 O.C. 308.6-3(a)].
 - 186 iv. The Family Court may stay the enforcement any penalty issued as a result of a
187 curfew violation at its discretion [3 O.C. 308.7-2].

188 **E. Penalties of Curfew Violations [3.O.C. 308.7]**

- 189 • The following penalties may be issued to those that violate the law; focusing on specific
190 programs that aim to improve family dynamics and parenting; at the discretion of Family Court:
- 191 i. Fines (community service may be a substitute for all or part of fines at the
192 discretion of the Family Court);
 - 193 1. The Law contains detailed procedures related to fines issued under this
194 Law [3 O.C. 308.7-1(a)]. More detail is provided in Section 7 of this
195 analysis.
 - 196 ii. Community service;
 - 197 1. The Law contains detailed procedures related to community service
198 requirements [3 O.C. 308.7-1(b)]. More detail is provided in Section 7
199 of this analysis.
 - 200 iii. Family counseling;
 - 201 iv. Parenting programs; and/or
 - 202 v. Any other penalty deemed appropriate by the Family Court.
- 203 • The Family Court may seek to collect unpaid fines through the Nation’s garnishment and/or
204 per capita attachment process or any other collection process available to the Family Court [3
205 O.C. 308.7-1(a)(3)].
206

207 **SECTION 6. EFFECT ON EXISTING LEGISLATION**

208 **A. References to Other Laws.** The following laws of the Nation are referenced in this law and are required
209 to be followed:

- 210 • **Family Court [8 O.C. 806].** The Family Court law delegates authority to the Family Court
211 over all matters pertaining to the family, children and elders, except for probate matters [8 O.C.
212 806.4-1]. The Family Court has been delegated authority to make all orders and judgments as

213 may be necessary to carry into effect the powers and jurisdiction of the Court [8 O.C. 806.8-
214 I(c)]. The Family Court law governs the administration of law, justice, judicial procedures
215 and practices by the Oneida Family Court as it pertains to Oneida families and/or children to
216 create a knowledgeable, fair, and impartial forum for resolution of all family law matters that
217 come before it. The Family Court is delegated authority under this law to hear contested
218 citations, make conditional orders at the pre-hearing and issue penalties [3 O.C. 308.6-4(b) and
219 308.7-1]. All orders of the Family Court are appealable to the Court of Appeals [8 O.C. 806.6].

- 220 • **Per Capita** [1 O.C. 123]. The Family Court is considered an Oneida entity [1 O.C. 123.3-
221 I(n)] under the Per Capita law and has the authority to pursue attachments of any money owed
222 and any nonpayment of any citations issued to parents, guardians or legal custodians under this
223 law [3 O.C. 308.7-1(a)(3)]. An attachment means the citation is paid for from the debtors per
224 capita payment using the process contained in the Per Capita law [1 O.C. 123.4-9(a)(2)].
- 225 • **Garnishment** [2 O.C. 204]. The Family Court is considered an Oneida entity [2 O.C. 204.3-
226 I(p)] under the Garnishment law as a branch of the Judiciary and has the authority to initiate a
227 garnishment of employee wages to pursue payment from parents, guardians or legal custodians
228 who have failed to make the required payments for citations issued to them in accordance with
229 this law [3 O.C. 308.7-1(a)(3)]. Garnishment means the legal process in which the earnings of
230 the debtor are required to be withheld by the Nation for a payment of a debt [2 O.C. 204.3-1(j)]
231 using the process outlined in the Garnishment law.
232

233 **B. Other Laws of the Nation that Interact with this Legislation.** The following laws of the Nation
234 interact with this law and are required to be followed:

- 235 • **Family Court Rules** [8 O.C. 807]. The Family Court Rules supplement the Oneida Judiciary
236 Rules of Civil Procedure and govern appearances in Court, provides rules of decorum while
237 in Court, governs default judgments, as well as other aspects of the Family Court proceedings.
238 The Family Court Rules will govern behavior during curfew citation hearings.
- 239 • **Oneida Judiciary Rules of Civil Procedure** [8 O.C. 803]. The Oneida Judiciary Rules of
240 Civil Procedure create a consistent set of rules that govern the process of civil actions of the
241 Family Court and the Judiciary. The Oneida Judiciary Rules of Civil Procedures will govern
242 hearings for all curfew citation hearings.
- 243 • **Oneida Judiciary Rules of Evidence** [8 O.C. 804]. The Oneida Judiciary Rules of Evidence
244 apply to proceedings held in the Family Court, including curfew citation proceedings, and
245 govern the rules related to evidence presented to the Court.
- 246 • **Rules of Appellate Procedure** [8 O.C. 805]. The Rules of Appellate Procedure govern the
247 process for anyone who wishes to contest the determination of a lower Court's decision to
248 the Nation's Court of Appeals and will govern appeals the Family Court's decisions. All
249 orders of the Family Court are appealable to the Court of Appeals [8 O.C. 806.6].
- 250 • **Landlord-Tenant** [6 O.C. 611]. This law applies to all individuals (tenants) granted the
251 right to use or occupy a premises pursuant to a rental agreement with the Oneida Nation. All
252 tenants are required to follow all laws of the Nation [6 O.C. 611.6-3(b)(3)], including the
253 Curfew law; even if the tenant is not enrolled or eligible for enrollment with the Oneida
254 Nation or is not enrolled with another federally recognized tribe [3 O.C. 308.4-1].
255

256 SECTION 7. ENFORCEMENT AND ACCOUNTABILITY

- 257 **A.** The Law will be enforced by OPD utilizing existing resources.
- 258 **B.** Minors and parents, guardians and/or legal custodians who are issued citations under this law may
259 contest the citation at the mandatory citation pre-hearing at the Family Court [3 O.C. 308.6-3(c)].
- 260 **C.** Implementation of this Law is as follows:
 - 261 • OPD is responsible for implementing and enforcing this law and issuing citations which may
262 include fines and other penalties to both the minor and/or their parents, guardians or legal
263 custodians [3 O.C. 308.6-3].

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- The Family Court may, at its discretion, order penalties under this law to both minors and adults [3 O.C. 308.7]. Penalties include fines, community service, parenting programs, family counseling and any other penalties deemed appropriate by the Family Court. The Family Court may stay the enforcement of a penalty at its discretion [3 O.C. 308.7-2].
 - i. The Family Court may allow community service to be substituted for fines [3 O.C. 308.7-1(a)(5)].
 - ii. Community service may be ordered by the Court in lieu or in addition to a fine [3 O.C. 308.7-1(b)]. The individual will be responsible for finding his or her community service and getting approval from the Court [3 O.C. 308.7-1(b)(1)]. The Family Court will provide a written statement of the requirements of the community service assignment including the number of hours, the timeframe for completion, how hours will be reported and any other relevant information and the requirement that community service is monitored [3 O.C. 308.7-1(b)(2) and (3)].
 - iii. Family counseling or parenting programs may be required by the Family Court [3 O.C. 308.7-1(c)].
 1. Oneida Family Support Services Department offers family counseling, parenting classes and other programs. These programs may be an option for violators of this Law to fulfill the penalties issued by the Family Court.
 - a. Clientele of services offered by this Department are typically determined by enrollment or eligibility for enrollment with the Nation. Consideration is given to significant others or family members who are not eligible for enrollment [<https://oneida-nsn.gov/resources/child-family-services/>].
 2. Those who violate the Law may seek other services offered outside of the Oneida community to fulfill the penalties issued by the Family Court.
 - The OBC is responsible for adopting a fine schedule by resolution that determines specific fine amounts for violations of this law [3 O.C. 308.7-1(a)].

SECTION 8. OTHER CONSIDERATIONS

296 **A. Citations law.** A citation for a violation of this law will be processed in accordance with the procedure
297 contained in the Nation's laws and policies governing citations [3 O.C. 308.6-3(b)].

- There are currently no laws of the Nation governing citations. There is a Citations law on the
299 LOC's active files list that is currently being developed at the same time as this Curfew law.

300 **B. Fiscal Impact.** Please refer to the fiscal impact statement for any fiscal impacts.

- Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation
302 except emergency legislation [1 O.C. 109.6-1].
- A fiscal impact statement shall be submitted by any agencies as directed by the Legislative
304 Operating Committee and may be prepared by any agency who may receive funding if the
305 legislation is enacted, any agency who may administer a program if the legislation is enacted,
306 any agency who may have financial information concerning the subject matter of the
307 legislation, or by the Finance Office, upon request of the Legislative Operating Committee [1
308 O.C. 109.6-1(a) and (b)].

Research Citations

311 Grossman, E.R. and Miller, N.A. (2015). A Systematic Review of the Impact of Juvenile Curfew Laws
312 on Public Health and Justice Outcomes. *Am J Prev Med.* 49(6): 945-951.

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315 McDowell, D. Loftin C. and Wiersema, B. (2009). The Impact of Youth Curfew Laws on Juvenile Crime
316 Rates.
317 [https://www.researchgate.net/publication/249718752_The_Impact_of_Youth_Curfew_Laws_on_Juvenile](https://www.researchgate.net/publication/249718752_The_Impact_of_Youth_Curfew_Laws_on_Juvenile_Crime_Rates)
318 [_Crime_Rates](https://www.researchgate.net/publication/249718752_The_Impact_of_Youth_Curfew_Laws_on_Juvenile_Crime_Rates)
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320 Myers, D.L. (2016). Juvenile curfew laws: A consideration of something that “doesn’t work”.
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322 <https://www.ebpsociety.org/blog/education/206-juvenile-curfew-laws>
323
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328 Walsh, T.J. (2019). Adults Only: Returning 17 Year Olds to Juvenile Court. Wisconsin Lawyer.
329 <https://www.wisbar.org/NewsPublications/WisconsinLawyer/Pages/Article.aspx?ArticleID=23659>
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TO: Lawrence E. Barton, Chief Financial Officer
Ralinda R. Ninham-Lamberies, Assistant Chief Financial Officer
Rae M. Skenandore, Financial Management Analyst

FROM: David P. Jordan, Legislative Operating Committee Chairman

DATE: September 4, 2019

RE: Curfew Law Fiscal Impact Statement

The Legislative Operating Committee (LOC) is currently developing a Curfew law. The Legislative Procedures Act requires that a fiscal impact statement be provided for all proposed legislation of the Nation. [1 O.C. 109.6-1]. The fiscal impact statement is an estimate of the total fiscal year financial effects associated with the proposed legislation, and can include:

- startup costs;
- personnel;
- office costs;
- documentation costs; and
- an estimate of the amount of time necessary for an individual or agency to comply with the law after implementation. [1 O.C. 109.3-1(c)].

The fiscal impact statement must be completed and submitted to the LOC prior to the proposed legislation being forwarded to the Oneida Business Committee for consideration. [1 O.C. 109.6-2]. The fiscal impact statement provides the Oneida Business Committee information on what the potential adoption of the proposed legislation will cost the Nation, so that the Oneida Business Committee can determine if adoption of the proposed legislation is in the best interest of the Nation.

The Legislative Procedures Act grants the LOC the authority to direct the Finance Department or any agency who may administer a program if the legislation is enacted or may have financial information concerning the subject matter of the legislation to submit a fiscal impact statement. [1 O.C. 109.6-1]. For the proposed Curfew law, the LOC is directing the Finance Department to provide a fiscal impact statement by September 18, 2019.

A copy of the proposed Curfew law, as well as the legislative analysis, have been attached to this memorandum for your convenience.

Requested Action

Provide the LOC a fiscal impact statement of the proposed Curfew law by September 18, 2019.



Legislative Operating Committee
September 4, 2019

Sanctions and Penalties Law

Submission Date: 9/6/17	Public Meeting: 10/4/18
LOC Sponsor: Jennifer Webster	Emergency Enacted: n/a

Summary: *This item was carried over from the previous term. The original proposal was to develop a consistent process that would provide for members of the Oneida Business Committee and other Boards, Committees and Commissions to face sanctions for misconduct. Currently, the only penalty that OBC members may be subject to, is removal from office – meaning that less serious misconduct would either go unpunished or would result in a penalty that might be considered too extreme for a particular violation.*

9/6/17 LOC: Motion by Ernest Stevens III to add Sanctions and Penalties Law to the active files list with Jennifer Webster as the sponsor; seconded by Daniel Guzman King. Motion carried unanimously.

9/6/17: *Work Meeting.* Present: David P. Jordan, Jenny Webster Ernest Stevens III, Jennifer Falck, Clorissa Santiago, Candice Skenandore, Maureen Perkins, Tani Thurner. Drafting attorney provided an update on the status of the Sanctions and Penalties law. Next steps will be: 1) pull the current draft back, 2) hold community meetings to understand what sanctions/penalties the community is interested in, 3) meeting with the boards/committees/commissions for input, and 4) holding work meeting with LOC to make policy decisions and choose next steps.

11/1/17 LOC: Motion by Kirby Metoxen to approve the 60 day active files list update and continue development of all the items on the active files list; seconded by Ernie Stevens III. Motion carried unanimously.

11/1/17: *Work Meeting.* Present: Carol Silva, Bonnie Pigman, Ed Delgado, Rachel Hill, Matthew Denny, Reynold Danforth, Kirby Metoxen, Rosa Laster, Clorissa Santiago, Candice Skenandore, Maureen Perkins, Jennifer Falck. Representatives from all the B/C/C's were invited to this meeting to provide input on what a Sanctions & Penalties Law might look like.

12/6/17: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Ernest Stevens III, Daniel Guzman King, Clorissa Santiago, Jennifer Falck. The LOC reviewed and considered comments from the November 1, 2017, work meeting with boards, committees, and commissions. LOC began making policy decisions. Drafter will work on draft, and policy options, and bring materials back to LOC when ready.

3/9/18: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Clorissa Santiago, Brandon Wisneski, Rosa Laster, Laura Laitinen-Warren. LOC reviewed the first draft of the law, and directed that the LRO schedule a community meeting, with a special invitation to members of boards, committees, and commissions, to discuss the proposed law.

- 3/16/18:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Daniel Guzman, Ernest Stevens III, Clorissa Santiago, Brandon Wisneski, Cathy Bachhuber, Rosa Laster. The LOC reviewed the potential date for the community meeting, and directed the drafting attorney to schedule the community meeting for May 3, 2018, and to ensure the notice is published in the Kalihwisaks twice, an appointment is sent to all members of the LOC and boards, committees, and commissions, and that the Communications Department is included in the appointment so they can make efforts to communicate notice of the event.
- 4/2/18 LOC:** Motion by Jennifer Webster to accept the draft of the Sanctions and Penalties law and direct that a community meeting/potluck be held on May 3, 2018; seconded by Daniel Guzman King. Motion carried unanimously.
- 4/26/18:** *Work Meeting.* Present: Clorissa Santiago, Brandon Wisneski, Jennifer Falck. This was an LRO prep meeting to prepare a plan for the upcoming community meeting.
- 4/27/18:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Ernest Stevens III, Daniel Guzman King, Jennifer Falck, Clorissa Santiago, Brandon Wisneski, Rosa Laster, Cathy Bachhuber, Tani Thurner. The purpose of this work meeting was to prepare for the upcoming community meeting.
- 5/2/18:** *Work Meeting.* Present: Clorissa Santiago, Brandon Wisneski, Jennifer Falck, David P. Jordan, Jennifer Webster. The LOC continued to prepare and discuss the upcoming community meeting.
- 5/3/18:** *Community Meeting.* Present: David P. Jordan, Jennifer Webster, Kirby Metoxen, Ernest Stevens III, Jennifer Falck, Clorissa Santiago, Brandon Wisneski, Maureen Perkins, Carol Silva, Chad Wilson, Janice McLester, Gina Buenrostro, Winnifred Thomas, Brooke Doxtator, Ed Delgado, Oyanolu Adams, Michelle Braaten, Mark Powless, Cathy L. Metoxen, Carole Liggins, Madelyn Genskow. The purpose of this community meeting was to gain input on the proposed Sanctions and Penalties law.
- 5/11/18:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Kirby Metoxen, Ernest Stevens III, Daniel Guzman, Clorissa Santiago, Brandon Wisneski, Jennifer Falck. The purpose of this work meeting was to review the comments received during the community meeting, and to determine if any revisions should be made to the law. The drafting attorney will update the draft of the law based on this discussion.
- 5/16/18:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Daniel Guzman King, Kirby Metoxen, Ernest Stevens III, Jennifer Falck, Clorissa Santiago, Brandon Wisneski, Laura Laitinen-Warren. The purpose of this work meeting was to review and discuss the revisions to the draft made based on comments collected from the community meeting. Drafting attorney will update the draft.
- 6/6/18/ LOC:** Motion by Jennifer Webster to accept the draft of the Sanctions and Penalties law and direct that a legislative analysis be completed; seconded by Ernest Stevens III. Motion carried unanimously.
- 7/9/18:** *Work Meeting.* Present: Clorissa Santiago, Brandon Wisneski, Brooke Doxtator. The purpose of this work meeting was to review the BCSO's involvement in the Sanctions and Penalties law to ensure their role can be implemented as required by law.
- 7/18/18 LOC:** Motion by Kirby Metoxen to accept the legislative analysis for the Sanctions and Penalties Law and defer to a work meeting; seconded by Daniel Guzman King. Motion carried unanimously.
- 8/1/18:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Kirby Metoxen, Ernest Stevens III, Jennifer Falck, Clorissa Santiago, Brandon Wisneski, Kristen Hooker. The purpose of this work meeting was to review and consider the legislative analysis.

8/15/18 LOC: Motion by Jennifer Webster to approve the public meeting packet and forward the Sanctions and Penalties Law to a public meeting to be held on September 20, 2018; seconded by Kirby Metoxen. Motion carried unanimously.

Subsequent Motion by Jennifer Webster to forward the Sanctions & Penalties Law to the Finance Office for a fiscal analysis to be completed; seconded by Kirby Metoxen. Motion carried unanimously.

9/10/18: *Work Meeting.* Present: David P. Jordan, Ernest Stevens III, Jennifer Falck, Clorissa Santiago, Brandon Wisneski, Kristen Hooker, Cathy Bachhuber, Maureen Perkins. The purpose of this work meeting was to discuss the fact that the September 20, 2018 public meeting on the proposed law will have to be canceled due to the Kalihwisaks failing to publish the public meeting notice in the September 6, 2018, edition. The LOC determined the next steps for moving the public meeting forward – an e-poll of an updated public meeting notice will be completed and the appointment that was sent out changed to reflect the new date.

E-poll conducted.

9/19/18 LOC: Motion by Daniel Guzman King to enter the e-poll results into the record; seconded by Jennifer Webster. Motion carried unanimously.

10/4/18: Public Meeting Held.

10/17/18 LOC: Motion by Jennifer Webster to accept the public meeting memo comments and public meeting comment review memorandum and defer to a work meeting; seconded by Daniel Guzman King. Motion carried unanimously.

10/17/18: *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Daniel Guzman, Ernest Stevens III, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Kristen Hooker, Rosa Laster. The purpose of this work meeting was for the LOC to begin reviewing and considering the public comments that were received, and to make determinations on what revisions to the Law are necessary.

10/25/18: *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Kirby Metoxen, Ernest Stevens III, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Kristen Hooker. The purpose of this work meeting was for the LOC to continue reviewing and considering the public comments that were received, and to make determinations on what revisions to the Law are necessary. LRO will update the draft for the next LOC packet so a fiscal analysis can be requested.

11/7/18 LOC: Motion by Jennifer Webster to accept the public comment review memorandum and the updated draft; seconded by Daniel Guzman King. Motion carried unanimously.

11/30/18: *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Kirby Metoxen, Daniel Guzman, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was to review and approve the fiscal impact statement request memorandum to the Finance Department, and begin discussing a plan for the completion of this item.

12/5/18 LOC: Motion by Jennifer Webster to accept the updated legislative analysis, including the replacement of page 159 in the packet; seconded by Kirby Metoxen. Motion carried unanimously.

Motion by Kirby Metoxen to approve the fiscal impact statement memorandum and forward to the Finance Department directing that a fiscal impact statement of the proposed Sanctions and Penalties law be prepared for inclusion on the January 2, 2019 Legislative Operating Committee meeting agenda; seconded by Daniel Guzman King. Motion carried unanimously.

- 12/20/18:** *Work Meeting.* Present: Clorissa N. Santiago, Brandon Wisneski, Randall Cornelius. The purpose of this work meeting was to discuss traditional ways Oneida has sanctioned its leaders.
- 1/2/19:** *Work Meeting.* Present: Kirby Metoxen, Jennifer Webster, Ernest Stevens III, Daniel Guzman, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was to review the adoption packet and discuss any changes that should be made. LRO will update all adoption materials.
- 1/7/19 LOC:** Motion by Kirby Metoxen to approve the adoption packet for the proposed Sanctions and Penalties Law and forward to the Oneida Business Committee for inclusion on the tentatively scheduled February 24, 2019 General Tribal Council meeting agenda for the General Tribal Council’s consideration of adoption; seconded by Ernest Stevens III. Motion carried unanimously.
- 1/24/19:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Daniel Guzman, Clorissa N. Santiago, Brandon Wisneski, Kristen Hooker, Maureen Perkins. The purpose of this work meeting was to review and discuss an article to be included in the 2/7 Kalihwisaks edition.
- 1/29/19:** E-Poll conducted.
- 2/4/19:** *Work Meeting.* Present: Clorissa N. Santiago, Brandon Wisneski, Jennifer Falck, Nathan Wisneski, Xavier Horkman. The purpose of this work meeting was to discuss the creation of a promotional video for the Sanctions and Penalties law.
- Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Daniel Guzman, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was to review and discuss the script for the Sanctions and Penalties law PowerPoint presentation. The LOC also discussed filming a promotional video for the Sanctions and Penalties law.
- 2/6/19 LOC:** Motion by Jennifer Webster to enter the results of the January 29, 2019 e-poll entitled “E-poll Request: Sanctions and Penalties Law February 7, 2019 Kalihwisaks Article” into the record; seconded by Kirby Metoxen. Motion carried unanimously.
- 2/6/19:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Kristen Hooker, Maureen Perkins. The purpose of this work meeting was to practice the PowerPoint presentation for the upcoming GTC meeting, as well as review and approve the script for the promotional video.
- 2/8/19:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Jennifer Falck, Clorissa N. Santiago, Phil Wisneski. The purpose of this work meeting was to film the promotional video for the Sanctions and Penalties law.
- 2/14/19:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Ernest Stevens III, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Cathy Bachhuber. The purpose of this work meeting was to practice the PowerPoint presentation for the upcoming GTC meeting, as well as review the “FAQ” sheet.
- 2/20/19:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Ernest Stevens III, Daniel Guzman, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Kristen Hooker. The purpose of this work meeting was to practice the PowerPoint presentation for the upcoming GTC meeting, practice responding to potential questions, and review and approve the Sanctions and Penalties law promotional video.
- 3/1/19:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Ernest Stevens III, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was to review and discuss the engagement with the informational video, practice the LOC’s PowerPoint presentation, and prepare to answer potential questions that may be asked at the upcoming GTC meeting.

- 3/15/19:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Maureen Perkins. The purpose of this work meeting was to practice the LOC's PowerPoint presentation and prepare to answer potential questions that may be asked at the upcoming GTC meeting.
- 3/17/19 GTC:** Motion by Cathy L. Metoxen to table this item for sixty (60) days. Motion ruled out of order by Vice-Chairman Brandon Stevens; all the materials are available today in order to make a decision
- Motion by Becky Webster to adopt the resolution entitled Sanctions and Penalties Law on pages 5 and 6 of the meeting packet; with the amendment to the law to limit those who have standing to file a complaint to Tribal Members only. Seconded by Jamie Willis. Motion not voted on; item deferred, see amendment.
- Amendment to the main motion by Mike Debraska to defer item IV.A. for at least sixty (60) days for GTC to have additional time to consider it and have input. Seconded by Tina Danforth. Motion carried by show of hands.
- 3/20/19:** *Work Meeting.* Present: David P. Jordan, Ernest Stevens III, Daniel Guzman King, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was to debrief on the 3/17 GTC meeting, and begin discussing a plan for how to move this law forward, and the additional outreach we will conduct.
- 3/28/19:** *Work Meeting.* Present: David P. Jordan, Ernest Stevens III, Daniel Guzman King, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Rosa Laster. The purpose of this work meeting was to briefly discuss potential ideas for additional outreach videos that can be made before this item is presented to the GTC again for consideration. Ernie expressed interest in taking a larger role in the creation of development of these videos.
- 5/1/19:** *Work Meeting.* Present: David P. Jordan, Ernest Stevens III, Kirby Metoxen, Jennifer Webster, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was to discuss a plan for outreach events the LOC can hold, and a plan for when this item might be presented to GTC again. The LRO was directed to move forward with developing a Kalihwisaks article that discusses outreach and provides a schedule of the new outreach dates.
- 6/13/19:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Daniel Guzman King, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Destiny Prendiville, Laura Laitinen-Warren. The purpose of this work meeting was to review the community outreach notice that will be published in the Kalihwisaks and discuss the outreach plan.
- 6/19/19 LOC:** Motion by Jennifer Webster to approve the community outreach notice for the Sanctions & Penalties law with one noted change, and forward to the Kalihwisaks for publication in the July 3, 2019 Kalihwisaks edition; seconded by Ernest Stevens III. Motion carried unanimously.
- 7/11/19:** *Community Outreach Event.* The Legislative Operating Committee held a community outreach event at the Radisson Hotel and Conference Center. The LOC had a booth set up with a poster of information as well as a flyer, copy of the law, and FAQs. LRO staff members Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Destiny Prendiville and Maureen Perkins were available to answer questions and take comments. Although flyers and the provided information were taken from the booth or passed out to people, no input as to the law was collected.
- 7/17/19:** *Community Outreach Event.* The Legislative Operating Committee held a community outreach event at the Norbert Hill Center's Business Committee Conference room. The LOC had a booth set up with a poster of information as well as a flyer, copy of the law, and FAQs. LOC member David P. Jordan, Kirby Metoxen, Jennifer Webster, Ernest Stevens III, and Daniel Guzman King, as well as LRO staff members Jennifer Falck, Clorissa N.

Santiago, Brandon Wisneski, and Destiny Prendiville were available to answer questions and take comments. No one attended this community outreach event.

8/9/19: *Community Outreach Event.* The Legislative Operating Committee held a community outreach event at the Veteran's Breakfast. Staff in attendance included David P. Jordan, Kirby Metoxen, Clorissa N. Santiago, Brandon Wisneski, Maureen Perkins. Kirby gave an introduction and then held discussion with the community members in attendance at the Veteran's Breakfast.

8/15/19: *Community Outreach Event.* The Legislative Operating Committee held a community outreach event at the Oneida Farmer's Market. Staff in attendance included David P. Jordan, Jennifer Webster, Daniel Guzman King, Ernest Stevens III, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski. The LOC had a booth at the farmer's market with a poster of information as well as a flyer, copy of the law, and FAQs.

8/21/19: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Ernest Stevens III, Jennifer Webster, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was to discuss the outreach efforts that have occurred, and determine whether the LOC is interested in holding more outreach events. The LOC determined that two more outreach events will be held,

Next Steps:

- Approve the community outreach notice and article for the Sanctions and Penalties law, and forward to the Kalihwisaks for publication in the September 19, 2019 Kalihwisaks edition.

LEGISLATIVE OPERATING COMMITTEE COMMUNITY OUTREACH EVENTS

SANCTIONS AND PENALTIES LAW

At the March 17, 2019, General Tribal Council meeting the General Tribal Council directed that the consideration of the adoption of the proposed Sanctions and Penalties law be deferred until the General Tribal Council has additional time to consider it and have input.



Join the Legislative Operating Committee (LOC) at the following community outreach events to share ideas, ask questions, and provide input on the proposed Sanctions and Penalties law:

DATE	TIME	LOCATION
October 7, 2019	12:00 p.m.—1:00p.m.	Elder Congregate Meal Site 2901 S. Overland Road Oneida, WI 54115
October 18, 2019	11:00 a.m.—1:00 p.m.	SEOTS Building 5233 W. Morgan Avenue Milwaukee, WI 53220

Additional Opportunity for Input on the Sanctions and Penalties Law

If you are unable to attend a community outreach event to provide input, the LOC is offering the additional opportunity to provide comments and input through written submissions. The LOC will be accepting written thoughts and comments from the community until **October 31, 2019**. Written comments can be submitted via e-mail to LOC@oneidanation.org or in person to the Legislative Reference Office located in the Norbert Hill Center.



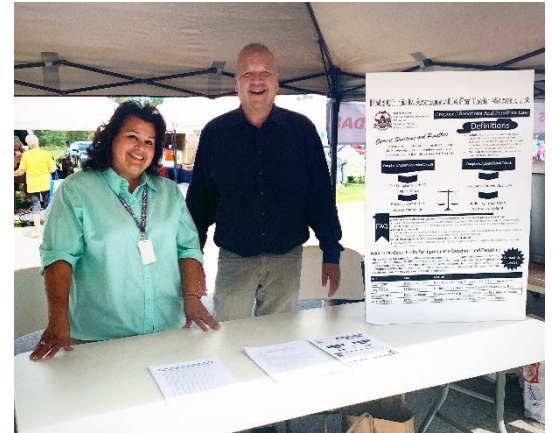
-FOR MORE INFORMATION-

www.oneida-nsn.gov/Register/FeaturedLegislation or contact Oneida Nation Legislative Reference Office
located in the Norbert Hill Center, PO Box 365, Oneida, Wisconsin 54155
Email: LOC@oneidanation.org Phone: 920-869-4376

Sanctions and Penalties Law: Outreach Efforts

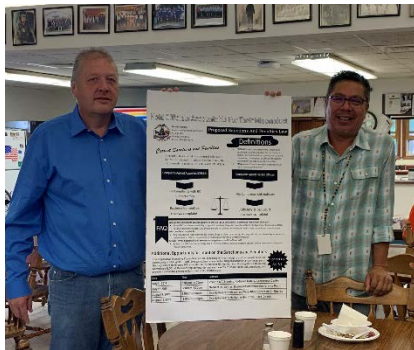
By the Legislative Operating Committee

On March 17, 2019, the Legislative Operating Committee (LOC) presented a proposed Sanctions and Penalties law to the General Tribal Council (GTC). GTC was asked to consider the adoption of this Sanctions and Penalties law which would establish a set of sanctions and penalties that may be imposed upon all elected and appointed officials of the Nation, including the Oneida Business Committee, for misconduct in office. After discussion on the proposed Sanctions and Penalties law, the GTC adopted a motion to defer this item for at least sixty (60) days for GTC to have additional time to consider it and have input.



LOC Chairman David P. Jordan and Councilwoman Jennifer Webster at the Oneida Farmer's Market.

What opportunities for input did the LOC provide before March 17, 2019? Prior to presenting the Sanctions and Penalties law to GTC on March 17, 2019, the LOC provided various opportunities for members of the community to provide input. On November 1, 2017, the LOC invited all members of boards, committees, and commissions of the Nation to attend a work meeting to provide input on what the Sanctions and Penalties law should address. The LOC then held a community meeting on the proposed Law on May 3, 2018. This community meeting was a potluck style meeting where those community members in attendance shared input, questions, and concerns regarding the Law. On October 4, 2018, the LOC held a public meeting, as required by the Legislative Procedures Act, where members of the community can provide oral testimony of views or questions on the proposed law. For those who were unable to attend the public meeting in person, the LOC held open a comment period until October 11, 2019, which is a timeframe where written comments on the Law were accepted. Notices for community meetings and public meetings were published in the Kalihwisaks, on the Nation's website, and on Facebook.



LOC Chairman David P. Jordan and Councilman Kirby Metoxen at the Oneida Veteran's Breakfast.

The proposed Sanctions and Penalties law was on eleven (11) LOC meeting agendas prior to the March 17, 2019, GTC meeting. The LOC holds meetings on the first and third Wednesday of every month at 9:00 a.m. in the Norbert Hill Center Business Committee Conference Room and encourages members of the community to attend and participate by asking questions and/or providing input during those meetings.

Leading up to the March 17, 2019, GTC meeting the LOC published an informational article in the February 7, 2019, Kalihwisaks edition in an effort to provide the community background on why this Law was created and information on what the Law would do. This was an effort by the LOC to encourage the community to be prepared to discuss and consider this item. The article included the LOC's email address and encouraged individuals to contact the

LOC with any questions or concerns. The LOC then developed an informational video that was shared on Facebook on February 21, 2019, which provided information on the purpose of the Law and included a link to the Nation's website for additional information, including "frequently asked questions." This video was viewed nearly 4,000 times.

What opportunities for input has the LOC provided since the March 17, 2019, directive? Since the March 17, 2019, GTC directive to allow additional time for members of GTC to consider the Law and have input, the LOC has held four (4) outreach events. Notices for these community outreach events were published in the July 3, 2019, Kalihwisaks editions and published on the Nation's website. The first outreach event was held just prior to the start of the July 11, 2019, General Tribal Council meeting. The LOC set up a booth outside the meeting check-in area with informational flyers, draft of the law, and a frequently asked questions document for people to take to learn more. Staff from the Legislative Reference Office were also available at the booth to answer questions or collect input. On July 17, 2019, the LOC held a community outreach event during the lunch hour at the Norbert Hill Center and invited members of the community to come meet with the LOC, share ideas and input, and ask questions. The LOC then held a community outreach event during the Oneida Veteran's Breakfast on August 9, 2019, where the LOC set up a table and had open discussion on the proposed law with those in attendance. The LOC finished off the first round of community outreach events by holding a community outreach event at the Oneida Farmer's Market on August 15, 2019. The LOC members had a booth at the Farmer's Market and were available to engage with those members of the community who wanted to learn more or provide input. Understanding that not everyone is available to attend community outreach events in person, the LOC also allowed for written comments on the proposed Sanctions and Penalties law to be submitted up until August 31, 2019.



Councilman Ernest Stevens III and Councilman Daniel Guzman King at the Oneida Farmer's Market.

What are the next steps? The LOC will be holding two (2) more community outreach events. The LOC will be holding a community outreach event at the Elder Congregate Meal Site on October 7, 2019. Then on October 18, 2019, the LOC will be holding a community outreach event at the South Eastern Oneida Tribal Services (SEOTS) building in Milwaukee. If you are unable to attend these outreach events, the LOC will also accept written comments or questions until October 31, 2019. Written comments can be submitted to LOC@oneidanation.org or in person to the Legislative Reference Office at the Norbert Hill Center.

Once the LOC finishes holding these outreach events, the LOC will prepare a memorandum of information collected for presentation to the GTC at the January 2020 annual meeting for GTC to determine the next steps regarding the proposed Sanctions and Penalties law.

Please feel free to contact LOC@oneidanation.org with any questions or concerns.



TO: Legislative Operating Committee (LOC)
FROM: Clorissa N. Santiago, Legislative Reference Office Staff Attorney *CNS*
DATE: September 4, 2019
RE: Certification of Family Court law Rule No. 1 – Family Court Rules

The Legislative Reference Office has reviewed the certification packet provided by the Oneida Family Court for the Family Court law Rule No. 1 – Family Court Rules (“the Rule”). The Family Court Rules were initially adopted by the Oneida Business Committee through resolution BC-04-09-14-E. This Rule makes amendments to the original Rule and supplements the Oneida Judiciary Rules of Civil Procedure and other laws governing the Family Court.

The Rule would become effective upon adoption by the Oneida Business Committee.

Administrative Record

The certification packet contains all documentation required by the Administrative Rulemaking law for a complete administrative record. The certification packet contains:

- Memorandum from the Honorable Marcus Zelenski and the Honorable Robert Collins II, containing the Rule’s procedural timeline;
- Final draft of the Rule;
- Summary Report;
- Statement of Effect;
- Financial analyses showing no financial impact from the Oneida Judiciary;
- Memorandum reviewing and considering the public comments that were submitted on the Rule;
- Public Meeting Notices as it appeared in the Kalihwisaks; and
- Draft of the Rule considered at the public meeting.

Procedural Requirements

The certification packet demonstrates that the promulgation of the rule complies with the procedural requirements contained in the Administrative Rulemaking law.

In accordance with the Administrative Rulemaking law:

- A public meeting notice for the Rule was published in the Kalihwisaks on July 3, 2019;
- A public meeting for the Rule was held on July 22, 2019;
- The public comment period was held open until July 29, 2019;
- Written comments received during the public meeting comment period were reviewed and considered on July 30, 2019;

- The Oneida Family Court Judges approved the Rule on August 5, 2019.

Rulemaking Authority

The Family Court law delegates authority to the Family Court to create rules of pleading, practice, and procedure to regulate all hearings conducted before it. [8 O.C. 806.9-2]. The Rule did not exceed the rulemaking authority granted under the law for which the Rule is being promulgated.

Conclusion

Promulgation of the Family Court law Rule No. 1 – Family Court Rule complies with all requirements of the Administrative Rulemaking law.

MEMORANDUM

TO: Legislative Operating Committee (LOC)
FROM: Hon. Marcus S. Zelenski, Family Court *MZ*
Hon. Robert J. Collins II, Family Court *RJC*
DATE: August 5, 2019
RE: Family Court Rules

This memorandum is being provided by the Family Court to outline the dates that the procedural timelines outlined in the Administrative Rulemaking law were complied with.

Those dates are as follows:

- Notice published in Kalihwisaks and on the Oneida Register: July 3, 2019.
- Public meeting: July 22, 2019.
- Close of public comment period: July 29, 2019.

The supporting documents submitted with this memorandum include:

- Draft of the rule.
- Summary Report.
- Statement of Effect.
- Financial Analysis.
- Memorandum addressing public comments.
- Public meeting notice.

We are requesting that the proposed Family Court Rules become a rule under 8 O.C. Chapter 806 and that the current version of 8 O.C. Chapter 807 be repealed.

We are further requesting that the effective date of the rule be the date the Oneida Business Committee adopts the rule pursuant to section 106.8-2 of the Administrative Rulemaking law.



Title 8. Judiciary – Chapter 806 FAMILY COURT Rule # 1 – Family Court Rules

1.1 Purpose	1.11 Children in the Courtroom
1.2 Adoption and Authority	1.12 Witnesses
1.3 Definitions	1.13 Evidence on an Electronic Device
1.4 Rules of Decorum	1.14 Ex Parte Communication
1.5 Appearances	1.15 Written Decisions
1.6 Counsel	1.16 Filing Fees
1.7 Notice of Appearance	1.17 Divorce Proceedings
1.8 Notice by Publication	1.18 Paternity Proceedings
1.9 Continuances	1.19 Child Support Proceedings
1.10 Default Judgment	1.20 Guardian ad Litem

1.1. Purpose

1.1-1. The purpose of these rules is to supplement the Oneida Judiciary Rules of Civil Procedure and other laws governing the Family Court.

1.2. Adoption and Authority

1.2-1. These rules were created by the Family Court and approved by the Oneida Business Committee in accordance with 8 O.C. 806.9-2 and 1 O.C. Chapter 106.

1.2-2. These rules may be amended or repealed pursuant to the procedures set out in the Family Court and Administrative Rulemaking laws.

1.2-3. Should a provision of these rules or the application thereof to any person or circumstance be held as invalid, such invalidity shall not affect other provisions of these rules which are considered to have legal force without the invalid portions.

1.2-4. In the event of a conflict between a provision of these rules and a provision of another law, the provisions of the other law shall control. In the event of a conflict between a provision of these rules and a provision of another rule, the provisions of these rules shall control.

1.2-5. These rules shall supersede all prior rules of pleading, practice, and procedure relating to the Family Court law.

1.3. Definitions

1.3-1. This section shall govern the definitions of words and phrases used within these rules. All words not defined herein shall be used in their ordinary and everyday sense.

(a) “Continuance” means the postponement of a hearing, court trial, or other scheduled court proceeding at the request of either or both parties in the matter, or by the Judge.

(b) “Counsel” means an attorney or lay advocate that is admitted to practice before the Judiciary.

(c) “Court” means the Family Court.

(d) “Ex parte communication” means any contact with the Judge regarding a pending case where the opposing party has not received notice, is not present, and has not consented to the communication.

(e) “Guardian ad litem” means a person appointed by the Court to appear at any peacemaking, mediation, or hearing and tasked with representing the best interest of the person appointed for.

(f) “Judge” means the Family Court Judge.

(g) “Relative” means husband, wife, mother, father, son, daughter, brother, sister,

grandparent, grandchild, aunt, uncle, niece, nephew, mother-in-law, father-in-law, daughter-in-law, son-in-law, brother-in-law, sister-in-law, first or second cousin, step-parent, or someone who is recognized by the Oneida General Tribal Council and/or its delegate as a member of an interested party's extended family.

1.4. Rules of Decorum

1.4-1. All electronic devices shall be turned off or silenced as to not disrupt the court proceedings.

1.4-2. All persons are prohibited from using an electronic device or any other means to take pictures, take videos, or make audio recordings during the court proceedings without permission from the Judge.

1.4-3. Unless otherwise approved by the Judge, all persons shall remove their hats or headwear during the court proceedings, except those worn for religious or medical purposes.

1.4-4. No chewing gum, food, or drink shall be permitted in the courtroom without permission from the Judge.

1.4-5. All parties, counsel, and witnesses shall refrain from interrupting or talking over one another during the court proceedings.

1.4-6. With the exception of on-duty security and law enforcement officers, no weapon of any type shall be taken, carried, or introduced into the courthouse. All persons entering the courthouse may be searched and examined by electronic detection equipment.

1.4-7. Security officers, law enforcement officers, and Oneida Judiciary staff are authorized to open and inspect any item carried into the courthouse.

1.4-8. All persons shall identify themselves when asked by security officers, law enforcement officers, and Oneida Judiciary staff.

1.4-9. Distracting or disorderly conduct may result in removal from the courthouse by security officers or law enforcement officers.

(a) Individuals may be removed from the courthouse for attempting to listen in or eavesdrop on a closed Court proceeding.

1.5. Appearances

1.5-1. The parties shall appear in person for all hearings.

1.5-2. In circumstances where it is difficult or impossible for a party to appear in person, the party may contact the Court Clerk to request an appearance by telephone or videoconference.

(a) It is the responsibility of the party to provide the Court with a contact number where the party may be reached for the telephone or videoconference appearance.

(b) It is the responsibility of the party appearing by telephone or videoconference to be available for the hearing.

1.6. Counsel

1.6-1. Parties have a right to retain an attorney or lay advocate at their own expense.

1.6-2. A party may bring a domestic violence advocate to Court with them; however, the domestic violence advocate shall not speak on behalf of the party unless the advocate is admitted to practice in the Oneida Judiciary. The Court shall not assume the existence of any facts based on the presence of the domestic violence advocate.

1.7. Notice of Appearance

1.7-1. The attorney or lay advocate whose name, address, and telephone number appears on a document presented for filing is considered counsel of record, and a separate notice of appearance need not be filed.

(a) If the name of more than one (1) attorney or lay advocate is shown on the document, the attorney or lay advocate who is counsel of record shall be clearly identified.

1.7-2. An attorney or lay advocate representing a party who will not be filing a document shall enter a separate notice of appearance as counsel of record indicating the name of the party represented and the case number, if known.

1.7-3. Counsel may not withdraw from a case where a motion is pending or a hearing has been scheduled except upon motion and order of the Court.

1.7-4. A separate notice of appearance shall also be entered whenever an attorney or lay advocate is substituted as counsel of record in a case. Court approval is not required for substitution of counsel.

1.8. Notice by Publication

1.8-1. The Court Clerk may assist parties with obtaining a quote regarding a Court-approved notice by publication.

(a) Parties shall submit payment to the Court Clerk prior to the notice being submitted for publication.

(1) The Court shall not be responsible for any fees associated with the notice by publication.

(2) Fee waivers are not available from the Court for notice by publication.

1.9. Continuances

1.9-1. Continuances shall only be granted by the Court based on a written request or motion of a party, a stipulation of the parties, or on the Court's own motion.

1.9-2. A request for a continuance shall be decided on a case-by-case basis in light of the circumstances present at the time of the request. Examples of acceptable reasons for a continuance may include, but are not limited to, the following:

(a) Failure of a party to receive proper or sufficient notice;

(b) Emergency involving the Judge, Court staff, and/or parties;

(c) Unavailability of the courtroom;

(d) A one-time request to obtain counsel;

(e) To allow more time for settlement negotiations or peacemaking; and

(f) Absence or unavailability of a material witness.

1.9-3. The Court may impose conditions upon the granting of a continuance, such as requiring a party to provide documentation regarding a medical emergency.

1.10. Default Judgment

1.10-1. If a party fails to appear at any Court hearing, the Court shall verify that proper notice was provided prior to finding the party in default.

1.10-2. If the Court finds that proper notice was not provided, the matter may be dismissed or rescheduled. If the matter is rescheduled, the Court may make orders or give instructions regarding notice that shall occur prior to the rescheduled hearing.

1.11. Children in the Courtroom

1.11-1. Subject to the exceptions listed below, children shall not be present in the courtroom during court proceedings or participate in proceedings as a witness.

1.11-2. A child may participate in a proceeding upon a finding by the Court that it will not be harmful to the child or disruptive to the Court for the child to participate.

(a) Disruptive children shall remain in the lobby and shall be accompanied by an adult.

Court staff, including security officers, will not care for children during court proceedings.

1.11-3. The Judge shall retain the discretion on the competency of a witness and a determination whether testifying is in the best interest of a child.

1.12. Witnesses

1.12-1. Witnesses shall be examined from the counsel table, except when handling exhibits. Persons examining witnesses may either stand or remain seated while examining a witness from counsel table. In no case shall a witness be crowded during examination.

1.12-2. Witnesses shall be examined with courtesy and respect, and their good faith presumed until the contrary appears.

1.12-3. The fees of witnesses shall be as follows:

(a) Lay witnesses appearing in response to a subpoena shall not be paid by the party calling them.

(b) Expert witnesses who testify may be paid by the party calling them at a rate agreed upon by the expert witness and the party.

1.13. Evidence on an Electronic Device

1.13-1. Parties shall print out a copy of all emails, texts, social media messages, photographs, and other contents of their electronic device that they wish to offer as evidence. Audio and video recordings shall be duplicated onto media that is compatible with the Court's equipment and that can be provided to and retained by the Court (e.g. USB flash drive).

1.14. Ex Parte Communication

1.14-1. Ex parte communication, unless otherwise permitted by law, is forbidden subject to the following exceptions:

(a) When a party fails to appear at a court hearing where the parties have been properly noticed, the Court may speak on the record with the party or parties who appear.

(b) When a party believes that sharing the communication with the other party or parties would place a party, a child, or Oneida Judiciary staff in danger of physical harm.

1.15. Written Decisions

1.15-1. The Court shall send a copy of the written decision to the last known address of the parties upon completion of the decision.

(a) Parties are responsible for providing their current mailing address to the Court Clerk.

(b) Parties may request that the Court Clerk provide a copy of the written decision by email. The party shall provide their current email address to the Court Clerk.

1.16. Filing Fees

1.16-1. The Court shall charge a filing fee consistent with the fee schedule maintained on the Judiciary's website.

(a) No filing fees shall be charged for documents filed by the Oneida Nation Child Support Agency and the Oneida Indian Child Welfare Department.

1.16-2. If a party is unable to afford the filing fee, the party may file a fee waiver with the Court requesting the Court to waive the fee. It is at the Court's discretion to waive the fee or not.

1.16-3. Unless otherwise approved by the Judge, all filing fees shall be non-refundable.

1.17. Divorce Proceedings

1.17-1. After the petitioner completes the divorce paperwork and pays any applicable filing fees, a pre-trial hearing shall be scheduled.

1.17-2. At the pre-trial hearing, the Court may address the following topics:

- (a) Jurisdiction;
- (b) Notice;
- (c) Peacemaking;
- (d) Temporary orders;
- (e) Title Report;
- (f) Appointment of a guardian ad litem;
- (g) Distribution of the financial disclosure form, marital settlement agreement, and tribal divorce/annulment worksheet;
- (h) Scheduling the next court date; and/or
- (i) Other issues as warranted.

1.17-3. At the final hearing, the parties shall either inform the Court of the terms of the settlement agreement or proceed to a contested hearing. The parties may agree on some issues and request the Court to resolve disputed issues.

1.18. Paternity Proceedings

1.18-1. After a petition related to paternity has been filed, the Court shall schedule a pre-trial hearing.

1.18-2. The pre-trial hearing is an opportunity for the Court and the parties to address preliminary issues, including ordering genetic tests. If there are no preliminary issues, the Court may proceed immediately to a final paternity hearing.

1.18-3. The Court may address the following issues at the final paternity hearing:

- (a) Paternity;
- (b) Child support;
- (c) Legal custody;
- (d) Physical placement;
- (e) Health care expenses for the child(ren);
- (f) Claiming the child(ren) for tax purposes; and/or
- (g) Other issues as warranted.

1.19. Child Support Proceedings

1.19-1. If the Court receives a motion to modify child support from an incarcerated party or in a case where the other party's address is protected due to domestic abuse, the Court may serve a copy of the motion on the responding party by first class mail in accordance with 8 O.C. 803.5-6(b).

1.20. Guardian ad Litem

1.20-1. This rule governs the appointment, conduct, duties, and powers of a guardian ad litem in cases where it is appropriate and authorized under the Oneida Code of Laws.

1.20-2. A guardian ad litem shall be an attorney or certified advocate. Before being recognized as certified by the Court, a guardian ad litem shall demonstrate an understanding of the role of the guardian ad litem. Such understanding may be demonstrated by completing guardian ad litem training provided by the Court, another Indian Tribe, or a state; being recognized as a certified guardian ad litem by another jurisdiction; or such other means determined to be appropriate by the Court.

- (a) A guardian ad litem that is recognized as certified by the Court does not need to go through the process to be admitted to practice before the Court.
 - (b) The Court shall have the duty of administering the guardian ad litem list for family law and child welfare cases. Should the Court decide that a guardian ad litem assigned to a particular case has an actual, apparent, or potential conflict of interest or is not acting in the best interest of the child, the Court may remove the the guardian ad litem from the case.
- 1.20-3. A guardian ad litem shall represent the best interest of the person for whom he or she is appointed. The guardian ad litem shall consider the wishes of the person for whom he or she is appointed; however, representation of best interests may be inconsistent with those wishes.
- (a) A guardian ad litem shall communicate to the Court the wishes of the person for whom he or she is appointed, unless that person asks the guardian ad litem to do otherwise.
- 1.20-4. A guardian ad litem shall maintain independence, objectivity, and the appearance of fairness in dealings with parties and professionals, both in and out of the courtroom.
- (a) The guardian ad litem shall not advocate on behalf of or advise any party so as to create in the mind of a reasonable person the appearance of representing that party as an attorney or lay advocate.
 - (b) A guardian ad litem shall identify himself or herself as a guardian ad litem when contacting individuals in the course of a particular case and inform individuals contacted in a particular case about the role of the guardian ad litem at the earliest practicable time. A guardian ad litem shall advise information sources that the documents and information obtained may become part of the record in the court proceeding.
- 1.20-5. A guardian ad litem shall maintain the ethical principles set forth in these rules and is subject to discipline by the Court for violating these rules and other laws applicable to a guardian ad litem.
- (a) If the Court receives a written complaint regarding the conduct of a guardian ad litem, the Court shall do one (1) of the following:
 - (1) The Court may hold a hearing and issue a decision regarding the complaint against the guardian ad litem after all parties have been given an opportunity to be heard;
 - (2) The Court may, in its discretion or at the request of the parties, resolve the complaint against the guardian ad litem through receipt of briefs and issuance of a written decision rather than holding a hearing; or
 - (3) The Court may screen out and take no action on complaints that are frivolous or repetitive. The Court shall communicate in writing any such decision with the parties.
 - (b) The Court may issue an order for discipline which may include, but is not limited to: additional training requirements, private reprimand, public reprimand, removal from a case, or removal from the guardian ad litem list.
- 1.20-6. No person who has an interest in the outcome of the proceeding, appears as counsel in a proceeding on behalf of any party, or is a relative or representative of an interested party may be appointed guardian ad litem in that proceeding. A guardian ad litem shall:
- (a) Avoid any actual, apparent, or potential conflict of interest or impropriety in the performance of guardian ad litem responsibilities.
 - (b) Avoid self-dealing or association from which a guardian ad litem might directly or indirectly benefit in cases they are appointed, other than for compensation as guardian ad litem.

- (c) Take action immediately to resolve any potential conflict or impropriety.
 - (d) Advise the Court and the parties of the action taken, resign from the case, or seek Court direction as may be necessary to resolve the conflict or impropriety.
 - (e) Not accept or maintain appointment if the performance of the duties of guardian ad litem may be materially limited by the guardian ad litem's responsibilities to another client or a third person, or by the guardian ad litem's own interests.
- 1.20-7. A guardian ad litem is an officer of the Court and as such shall at all times treat the parties with respect, courtesy, fairness, and good faith.
- 1.20-8. A guardian ad litem shall make reasonable efforts to become informed about the facts of the case and to contact all parties. A guardian ad litem shall examine material information and sources of information, taking into account the positions of the parties.
- 1.20-9. A guardian ad litem shall not require any evaluations or tests of the parties except as authorized by law or court order issued following notice and opportunity to be heard.
- 1.20-10. Unless otherwise approved by the Judge, a guardian ad litem shall file a written report with the Court and the parties as required by law or court order no later than five (5) business days prior to a hearing for which a report is required.
- 1.20-11. A guardian ad litem shall comply with the Court's instructions as set out in the order appointing the guardian ad litem, and shall not provide or require services beyond the scope of the Court's instruction unless by motion and on adequate notice to the parties or upon receipt of additional instruction from the Court.
- 1.20-12. The guardian ad litem shall be given notice of all hearings and proceedings. A guardian ad litem shall appear at any hearing for which the duties of a guardian ad litem or any issues substantially within a guardian ad litem's duties and scope of appointment are to be addressed.
- (a) A guardian ad litem shall not be called as a witness in any proceeding or hearing in which he or she is a guardian ad litem, except where, with the Court's permission, clarification is requested regarding the guardian ad litem report. In such case, testimony shall be restricted to that which is needed to clarify such report.
 - (b) While appearing in person is preferred, a guardian ad litem may seek permission from the Court to appear by telephone.
- 1.20-13. A guardian ad litem shall not have ex parte communications concerning the case with the Court except as permitted by court rule or law.
- (a) After completion of the case, the Court may provide a performance evaluation to the guardian ad litem and respond to any questions or concerns.
- 1.20-14. As an officer of the Court, a guardian ad litem shall make no disclosures about the case or the investigation except in reports to the Court or as necessary to perform the duties of a guardian ad litem. A guardian ad litem shall not disclose the parties' address information when there are known allegations of domestic violence or a safety risk to a party or child. The guardian ad litem may recommend that the Court seal the report or a portion of the report of the guardian ad litem to preserve the privacy, confidentiality, or safety of the parties or the person for whom the guardian ad litem was appointed.
- 1.20-15. A guardian ad litem shall perform responsibilities in a prompt and timely manner, and, if necessary, request timely court reviews and judicial interventions in writing with notice to parties or affected agencies.
- 1.20-16. A guardian ad litem shall maintain documentation to substantiate recommendations and conclusions and shall keep records of actions taken by the guardian ad litem.

1.20-17. A guardian ad litem shall keep accurate records of the time spent, services rendered, and expenses incurred in each case and file an itemized statement and accounting with the Court and provide a copy to each party or other entity responsible for payment. The Court may adopt internal operating procedures addressing guardian ad litem fees and expenses.

1.20-18. At contested hearings, and at other times when appropriate, the guardian ad litem shall provide a written report to the Court with his or her recommendations. While the Court is not bound to follow the recommendations of the guardian ad litem, the Court shall consider such recommendations. The recommendations shall be based upon a full and independent investigation of the facts. The report shall include:

- (a) The sources of the information used by the guardian ad litem;
- (b) What home visits were done by the guardian ad litem and the results of the visits;
- (c) Who the guardian ad litem interviewed including parents, relatives, and professionals;
- (d) Whether the guardian ad litem had contact with the child(ren);
- (e) Relevant standards and factors included in the law; and
- (f) The guardian ad litem's recommendation on the contested issues.

1.20-19. As an officer of the Court, a guardian ad litem has only such authority conferred by the order of appointment or by law. A guardian ad litem shall also have the following authority:

- (a) Unless circumstances warrant otherwise, a guardian ad litem shall have access to the persons for whom a guardian ad litem is appointed and to all information relevant to the issues for which a guardian ad litem was appointed. The access of a guardian ad litem to the person for whom he or she is appointed shall not be unduly restricted by any person or agency. When the guardian ad litem seeks contact with a party who is represented by an attorney or lay advocate, the guardian ad litem shall notify the attorney or lay advocate of such contact. The guardian ad litem's contact with the represented party shall be as permitted by the party's attorney or lay advocate, unless otherwise ordered by the Court.
- (b) Until discharged by a court order, a guardian ad litem shall be timely furnished copies of all relevant pleadings, documents, and reports by the party which served or submitted them.
- (c) A guardian ad litem shall be timely notified of all court hearings and other proceedings concerning the case by the person or agency scheduling the proceeding.
- (d) A guardian ad litem shall be given notice of, and an opportunity to indicate his or her agreement or objection to any proposed agreement of the parties governing issues substantially related to the duties of a guardian ad litem.
- (e) Within the scope of the appointment, a guardian ad litem shall have access to all relevant court files. Access to sealed or confidential files shall be by separate order. A guardian ad litem's report shall inform the Court and parties if the report contains information from sealed or confidential files. The Court Clerk shall provide a certified copy of the order of appointment to the guardian ad litem upon request and without charge.

1.20-20. In every case in which a guardian ad litem is appointed, a guardian ad litem shall have the rights and powers set forth below. These rights and powers are subject to all applicable ordinances and court rules.

- (a) A guardian ad litem shall have the right to file pleadings, motions, notices, briefs, and other documents, and may, subject to the Court's discretion, engage in the discovery process.
- (b) A guardian ad litem shall have the right to make motions and request hearings before the Court as appropriate to the best interest of the person for whom he or she is appointed.

(c) A guardian ad litem shall have the right, subject to the Court's discretion, to introduce exhibits, subpoena witnesses, and conduct direct and cross examination of witnesses.

(d) A guardian ad litem shall have the right to fully participate in the proceedings through submission of written reports and may, subject to the Court's discretion, present oral argument.

1.20-21. For good cause shown, a guardian ad litem may petition the Court for additional authority.

1.20-22. Unless otherwise ordered by the Court, the appointment of a guardian ad litem terminates upon the entry of the Court's final order or upon the termination of any appeal in which the guardian ad litem participates.

End.

Adopted – BC-04-09-14-E

Amended – BC-_____

Summary Report for Family Court Rules

Original effective date: 04/09/2014

Amendment effective date: N/A

Name of Rule: Family Court Rules

Name of law being interpreted: Family Court law

Rule Number: 1

Other Laws or Rules that may be affected: N/A

Summary of the proposed rule: The purpose of these rules is to supplement the Oneida Judiciary Rules of Civil Procedure and other laws governing the Family Court.

Statement of Effect: Obtained after requesting from the Legislative Reference Office.

Financial Analysis: See Attached.

Note: *In addition- the agency must send a written request to each entity which may be affected by the rule- asking that they provide information about how the rule would financially affect them. The agency must include each entity's response in the financial analysis. If the agency does not receive a response within 10 business days after the request is made, the financial analysis can note which entities did not provide a response.*



Oneida Nation
 Oneida Business Committee
 Legislative Operating Committee
 PO Box 365 • Oneida, WI 54455-0365
 Oneida-nsn.gov



Statement of Effect
Family Court Law Rule No. 1 – Family Court Rules

Summary

The Family Court law Rule No. 1 – Family Court Rules supplements the Oneida Judiciary Rules of Civil Procedure and other laws governing the Family Court.

Submitted by: Clorissa N. Santiago, Staff Attorney, Legislative Reference Office
Date: April 25, 2019

Analysis by the Legislative Reference Office

The Family Court law delegates authority to the Family Court to create rules of pleading, practice, and procedure to regulate all hearings conducted before it. [8 O.C. 806.9-2]. The Family Court Rules were initially adopted by the Oneida Business Committee through resolution BC-04-09-14-E.

Family Court law Rule No. 1 – Family Court Rules (“the Rule”) supplements the Oneida Judiciary Rules of Civil Procedure and other laws governing the Family Court. The Rule provides provisions regarding the following:

- Rules of decorum [see Rule 1.4];
- Appearances [see Rule 1.5];
- Counsel [see Rule 1.6];
- Notice of appearance [see Rule 1.7];
- Notice by publication [see Rule 1.8];
- Continuances [see Rule 1.9];
- Default judgment [see Rule 1.10];
- Children in the courtroom [see Rule 1.11];
- Witnesses [see Rule 1.12];
- Evidence on electronic devices [see Rule 1.13];
- Ex parte communication [see Rule 1.14];
- Written decisions [see Rule 1.15];
- Filing fees [see Rule 1.16];
- Divorce proceedings [see Rule 1.17];
- Paternity proceedings [see Rule 1.18];
- Child support proceedings [see Rule 1.19]; and
- Guardians ad litem [see Rule 1.20].

Section 1.4-6 of the Rule regarding the prohibition of weapons in the courthouse, with the exception of on-duty security and law enforcement officers is consistent with Oneida Business Committee resolution BC-10-26-11-C which prohibits a person from carrying a weapon, whether in the open or concealed, on Tribal public property, including in any Tribal building, gaming or

retail business, facility, construction site, vehicle or at any Tribally sponsored event, except for individuals who are actually engaged in the performance of the duties of their employment requiring them to carry a weapon, including sworn law enforcement officers or vendors who transport and/or distribute cash.

Section 1.5 of the Rule provides for the appearances of parties at hearings. The Rule requires that all parties appear in person for all hearings, except in circumstances where it is difficult or impossible for a party to appear in person and the party contacts the Court Clerk to request an appearance by telephone or videoconference. *[see Rule 1.5-1, 1.5-2]*. The requirement for a party to appear before the Court at any scheduled hearing or proceeding is already provided for in the Oneida Judiciary Rules of Civil Procedure. *[8 O.C. 803.29-1]*. Additionally, the Oneida Judiciary Rules of Civil Procedure provides that the Court may allow a party to appear by telephone if requested in writing and submitted at least seven (7) days before a hearing or proceeding. *[8 O.C. 803.29-1(c)]*. Although the Rule does not specifically require the request to appear by telephone to be submitted in writing at least seven (7) days before a hearing, these provisions are still required by the Oneida Judiciary Rules of Civil Procedure.

Section 1.6 of the Rule clarifies that a party has a right to retain an attorney or lay advocate at his or her own expense for any matter that comes before the Family Court. Currently, there are some laws of the Nation, but not all, that discuss a party's right to retain an attorney or lay advocate for a matter before the Family Court, such as the Children's Code's provisions on advocates *[7 O.C. 708.9-1]*, and the Divorce, Annulment, and Legal Separation law's discussion on attorneys and advocates *[7 O.C. 702.5-1]*. Section 1.6 of the Rule sets this right of a party before the Family Court as a standard for the Family Court.

Section 1.7-3 of the Rule provides that counsel may not withdraw from a case where a motion is pending, or a hearing has been scheduled except upon motion and order of the Court. The Professional Conduct for Attorneys and Advocates law provides the conditions for when counsel may withdraw from representing a client. *[8 O.C. 810.14-2]*. Additionally, the Professional Conduct for Attorneys and Advocates law provides that counsel must comply with applicable court rules requiring notice to or permission of the Judiciary when terminating a representation. *[8 O.C. 810.14-3]*.

Section 1.8-1 of the Rule provides information regarding service by publication. The Judiciary Rules of Civil Procedures provides that service by publication may be used as a last resort when personal service and service by mail have not been possible. *[8 O.C. 803.5-6]*. Section 1.8-1 of the Rule provides that the Court Clerk may assist parties with obtaining a quote regarding a court approved notice by publication, and how fees related to service by publication are handled.

Section 1.9 of the Rule provides information on continuances. The Oneida Judiciary Rules of Civil Procedure only discusses continuances in regard to amending pleading based on an objection at trial and provides that the Court may grant a continuance to enable the objecting party to provide evidence to satisfy the Court that the evidence would prejudice their action or defense on the merits. *[8 O.C. 803.11-2(a)]*. Section 1.9 of the Rule provides when the Court can grant a continuance, acceptable reasons for a continuance, and the ability of the Court to impose conditions upon the granting of a continuance.

Section 1.10 of the Rule discusses default judgments. Defaults judgments have been addressed by the Oneida Judiciary Rules of Civil Procedure. The Oneida Judiciary Rules of Civil Procedure provides that if a party against whom a judgment for relief is sought has failed to appear, plead or otherwise defend as required in this Law or elsewhere, a default judgment may be granted by the Court upon the receipt of whatever evidence is deemed necessary to establish the claim. [8 O.C. 803.29-2]. Additionally, the Oneida Rules of Civil Procedure provides that when a party who has filed a claim fails to appear, plead, or prosecute said claim as provided in this Law or elsewhere, a dismissal, which is treated as a default, may be granted by the Court, on its own or on a party's motion, dismissing the claim. [8 O.C. 803.29-3]. The Rule provides additional requirements for a default judgment by requiring that the Court verify that proper notice was provided prior to finding the party in default. The Rule provides that if proper notice was not provided, the matter may be dismissed or rescheduled, and if the matter is rescheduled, the Court may make orders or give instructions regarding notice that shall occur prior to the rescheduled hearing.

Section 1.12 of the Rule provides details regarding witnesses. Testimony by witnesses is briefly discussed in the Oneida Judiciary Rules of Civil Procedure in which requirements that witness testimony be taken in open Court unless a law or rules adopted by the Nation [8 O.C. 803.23-1], that a solemn affirmation suffices for an oath [8 O.C. 803.23-2], and that the Court may appoint an interpreter [8 O.C. 803.23-4]. The Oneida Judiciary Rules of Evidence goes into greater detail regarding witnesses. [8 O.C. 804.9]. The Oneida Judiciary Rules of Evidence contains provisions regarding:

- The competency of a witness to testify in general [8 O.C. 804.9-1];
- The need for personal knowledge [8 O.C. 804.9-2];
- The requirement of an oath or affirmation to testify truthfully [8 O.C. 804.9-3];
- The use of an interpreter [8 O.C. 804.9-4];
- A judge's competency as a witness [8 O.C. 804.9-5];
- The impeachment of a witness [8 O.C. 804.9-6];
- A witness's character for truthfulness or untruthfulness [8 O.C. 804.9-7];
- Impeachment by evidence of a criminal conviction [8 O.C. 804.9-8];
- Religious beliefs or opinions [8 O.C. 804.9-9];
- The mode and order of examining witnesses and presenting evidence [8 O.C. 804.9-10];
- Writing used to refresh a witness's memory [8 O.C. 804.9-11];
- A witness's prior statements [8 O.C. 804.9-12];
- The Court's calling or examining a witness [8 O.C. 804.9-13]; and
- Excluding witnesses [8 O.C. 804.9-14].

The Oneida Judiciary Rules of Evidence specifically provides that the Court shall exercise reasonable control over the mode and order of examining witnesses as to make those procedures effective for determining the truth, avoid wasting time, and protect witnesses from harassment or undue embarrassment. [8 O.C. 804.9-10(a)(1)-(3)]. Section 1.12-1 of the Rule provides that a witness shall be examined from the counsel table, except when handling exhibits, and that a witness shall not be crowded during examination. Section 1.12-2 of the Rule then provides that witnesses shall be examined with courtesy and respect, and their good faith presumed until the contrary appears. Both sections of the Rule further the Oneida Judiciary Rules of Evidence's requirement that the court protect witnesses from harassment or undue embarrassment.

Section 1.14 of the Rule addresses ex parte communication. The Oneida Tribal Judiciary Canons of Judicial Conduct provide requirements for judges to follow in regard to ex parte communication. [8 O.C. 802 1.12.2]. A judge is not allowed to initiate, permit, condone, or consider ex parte communications with parties, counsel or interested persons, or other communications made to the Judge outside the presence of the parties and their lawyers, concerning a pending or impending matter, except that the following types of ex-parte communications may be allowed, if in accordance with adopted Judiciary regulations:

- Deliberations with other Judges seated on the same panel of Judges, if applicable.
- Communication for non-substantive matters such as for scheduling, administrative, or emergency purposes.
- Consultation with court staff and court officials whose functions are to aid the Judge in carrying out the Judge's adjudicative responsibilities.
- Consultation with other Judges on pending matters, but not with any Judge that has been disqualified from hearing the matter, or that would have appellate jurisdiction over the matter.
- Communications with a party or attorney where the matter does not and would not involve adversarial proceedings (e.g. name changes).
- Written advice from a disinterested expert on law or tribal custom or tradition, or on other sources of applicable law; where the parties are given written notice and afforded a reasonable opportunity to object and/or respond to such information.
- A Judge may consult ethics advisory committees, outside counsel, or legal experts concerning compliance with these Canons, or regarding the compliance of any lawyer or advocate with applicable Rules of Conduct or Ethics.
- Other communications as allowed by specialized local rules; for example, in Peacemaking, where the Peacemaker has a more involved role. [8 O.C. 802-1.12.2].

Section 1.14-1 of the Rule provides specialized local rules as referenced in the Oneida Tribal Judiciary Canons of Judicial Conduct. The Rule confirms that ex parte communication, unless otherwise permitted by law, is forbidden, but then provides exceptions to the prohibition of ex parte communication. Section 1.14-1(a) of the Rule provides an exception to the prohibition of ex parte communication when a party fails to appear at a court hearing where the parties have been properly noticed, and then allows the Court to speak on the record with the party or parties who appear. Additionally, Section 1.14-1(b) of the Rule provides an exception for when a party believes that sharing the communication with the other party or parties would place a party, a child, or Oneida Judiciary staff in danger of physical harm. The Oneida Tribal Judiciary Canons of Judicial Conduct further states that a judge may disclose information where disclosure is necessary to protect the health or safety of the Judge or another person. [8 O.C. 802 1.9.2].

Section 1.15-1 of the Rule details on written decisions. The Oneida Judiciary Rules of Civil Procedure provides that all decisions rendered, unless specified otherwise, shall be in writing and include the findings of fact and conclusions of law. [8 O.C. 803.31-1(f)]. The Court is required to complete a written decision within thirty (30) days of the completion of the hearing or trial but can extend this time period to not more than an additional thirty (30) days from the original due date upon written notice to all parties. [8 O.C. 803.31-1(f)(1)(a)]. The Rule states that the Court will send the copy of the written decision to the last known address of the parties upon completion of

the decision, and clarifies that the parties are responsible for providing their current mailing address to the Court Clerk. The Rule also provides that parties may request that the Court Clerk provide a copy of the written decision by email if the parties provide their current email address to the Court Clerk.

Section 1.16 of the Rule provides for filing fees. The Oneida Judiciary Rules of Civil Procedures states that a civil action shall be commenced upon the filing of a complaint and payment of a filing fee or other fee where specified by law or Court rule. [7 O.C. 803.5-1]. The Rule provides that the filing fee the Family Court charges shall be consistent with the fee schedule maintained on the Judiciary's website, but the Oneida Nation Child Support Agency and the Oneida Indian Child Welfare Department shall not be charged filing fees. [see Rule 1.16-1]. The Rule also provides details on filing fee waivers, and the nonrefundable nature of filing fees.

Section 1.17 of the Rule provides additional information regarding divorce proceedings that is not provided for in the Divorce, Annulment, Legal Separation law, [7 O.C. 702]. The Divorce, Annulment, Legal Separation law provides information regarding jurisdiction, summons and petitions, peacemaking and mediation, affirmation and annulment, legal separation and divorce, and property division and maintenance. [7 O.C. 702]. Section 1.17 of the Rule states that a pre-trial hearing will be scheduled and provides more specific details on when the pre-trial hearing will be scheduled, what topics will be addressed at the pre-trial hearing, and the final hearing. The Oneida Judiciary Rules of Civil Procedure allows for the Court to schedule a pre-trial meeting. [8 O.C. 803.12-1(a)]. Additionally, the Oneida Judiciary Rules of Civil Procedure requires that after any pre-trial meeting or hearing the Court shall issue an order reciting the action taken, which will control the course of the action unless the Court modifies it. [8 O.C. 803.12-3].

Section 1.18 of the Rule provides additional information regarding paternity proceedings that is not provided for in the Paternity law. [7 O.C. 703]. Section 1.18 of the Rule states that a pre-trial hearing will be scheduled to address preliminary issues, and if no preliminary issues exist the Court may proceed to a final hearing. The Oneida Judiciary Rules of Civil Procedure allows for the Court to schedule a pre-trial meeting. [8 O.C. 803.12-1(a)]. Additionally, the Oneida Judiciary Rules of Civil Procedure requires that after any pre-trial meeting or hearing the Court shall issue an order reciting the action taken, which will control the course of the action unless the Court modifies it. [8 O.C. 803.12-3]. Section 1.18-3 of the Rule provides for the issues that the Court may address at the final paternity hearing including paternity, child support, legal custody, physical placement, health care expenses, claiming the child for tax purposes, and any other issues as warranted. The Paternity law provides what information the judgment or order determining the paternity of the child shall contain, including an adjudication of paternity of the child, legal custody, physical placement, support and/or health care expenses of the child, and the father's obligation to pay or contribute to the reasonable expenses of the mother's pregnancy and the child's birth. [7 O.C. 703.6-9(a)-(c)]. Although both section 1.18 of the Rule and the Paternity law are substantially similar in the description of what may be addressed at a final paternity hearing, each provides slightly different possibilities as to what may be addressed by the Court.

Section 1.19 of the Rule provides information on child support proceedings, particularly in regard to modifying child support for an incarcerated parent. The Child Support law provides for the modification of child support orders. [7 O.C. 704.10]. The Child Support law allows a

modification of the child support order to be sought by the Nation's Child Support Agency or either party if there has been a substantial change of circumstances. [7 O.C. 704.10-1, 704.10-2]. Section 1.19-1 of the Rule states that if the Court receives a motion to modify child support from an incarcerated party or in a case where the other party's address is protected due to domestic abuse, the Court may serve a copy of the motion on the responding party by first class mail in accordance with section 803.5-6(b) of the Oneida Judiciary Rules of Civil Procedure. The Oneida Judiciary Rules of Civil Procedures provides that although service of all papers made by mail from any party are required to be by certified mail with return receipt, the Court may provide service by first class mail. [8 O.C. 803.5-6(b)].

Section 1.20 of the Rule provides information on guardians ad litem. Provisions regarding guardians ad litem are extensively provided for by the Oneida Judiciary Rules of Civil Procedure. [8 O.C. 803.37]. The Oneida Judiciary Rules of Civil Procedure governs the appointment, conduct, duties and powers of guardian's ad litem where it is appropriate and authorized under a law of the Nation, and applies in every situation where a guardian ad litem is necessary, except where other laws of the Nation are more specific regarding guardians ad litem, then those laws shall supersede. [8 O.C. 803.37-1]. Section 1.20 of the Rule duplicates the information that is contained in section 803.37 of the Oneida Judiciary Rules of Civil Procedure and then provides additional information regarding:

- The recognition that a certified guardian ad litem does not need to be admitted to practice before the Court [see Rule 1.20-2(a)];
- The authority of the Court to administer the guardian ad litem list for family law and child welfare cases [see Rule 1.20-2(b)];
- The responsibility of a guardian ad litem to communicate to the Court the wishes of the person for whom he or she is appointed, unless that person asks the guardian ad litem to do otherwise [see Rule 1.20-3(a)];
- A complaint and discipline process for guardians ad litem [see Rule 1.20-5];
- The authority for the guardian ad litem to seek permission from the Court to appear by telephone [see Rule 1.20-12-(b)];
- The authority of the Court to provide a performance evaluation to the guardian ad litem and respond to any questions or concerns after completion of a case [see Rule 1.20-13(a)]; and
- The requirement of the Court to consider recommendations from a guardian ad litem, even though the Court is not bound to follow the recommendations [see Rule 1.20-18].

In addition to the Oneida Judiciary Rules of Civil Procedure, the Child Custody, Placement, and Visitation law provides provisions regarding guardians ad litem specific to the appointment, qualifications, responsibilities, status hearing, and compensation specific to that law. [7 O.C. 705.8].

Conclusion

Adoption of the Family Court law Rule No. 1 – Family Court Rules would not conflict with any of the Nation's laws.

Financial Analysis for Family Court Rules

Type of Cost	Description/Comment	Dollar Amount
Start Up Costs		\$0
Personnel		\$0
Office		\$0
Documentation Costs		\$0
Estimate of time necessary for an individual or agency to comply with the rule after implementation		\$0
Other, please explain		N/A
Total Cost (Annual)		\$0

MEMORANDUM

TO: Legislative Operating Committee (LOC)
 FROM: Hon. Marcus S. Zelenski, Family Court *MZ*
 Hon. Robert J. Collins II, Family Court *RJC*
 DATE: July 30, 2019
 RE: Family Court Rules: Public Meeting Comment Review

On July 22, 2019, a public meeting was held regarding the proposed Family Court Rules. This memorandum is submitted as a review of the oral and written comments that were presented at the public meeting and submitted within the public comment period.

Comment 1.

Shana M. Parker – Written Comment: The purpose of this letter is to inform and bring awareness. My name is Shana Parker and my father was Daniel Parker. You presided over his divorce hearing (case No: 15-DI-026) in January of 2016. Apparently, my aunt who was also his self-appointed caregiver was allowed to assist my father in the court room because he was hard of hearing. Without background knowledge of the situation or knowledge of my late father, this would seem like a harmless action.

My aunt Connie Skenandore was invested in the outcome of that divorce and I am pretty sure she had also ensured that my father was intoxicated and was very responsible for the implementation of the whole process. I of course know that she was benefitting from living in my father's house, but during that time, she had drawn up power of attorney paperwork, that he unwittingly signed. She had drawn up his will for him and signed herself as 100% beneficiary, (she also signed as a witness, so it made the whole thing null and void in the eyes of Brown County Court) and forged his name on life insurance beneficiary forms, totaling \$50,000+. One of which was a pre-existing life insurance policy that his ex-wife was main beneficiary, until the divorce, by Wisconsin law. My lawyer helped me get access to his bank accounts, which led me to the numerous life insurance policies, which led me to the fake will and the access she attempted to have to his social security checks, post mortem. She even attempted to use his information for utility bills, cares, etc. after his death. There were countless red flags. It took me two years and some funds in federal court and county court to ensure that Connie did not continue to benefit off of her dead brother.

My suggestion for new rules would be that our Oneida Family Court find other ways to accommodate for hard-of-hearing individuals and individuals with other disabilities. Family members are the biggest perpetrators when it comes to undue influence and exploitation of our elders and disabled and we cannot assume that they were there to speak on anyone else's behalf, other than themselves. Also, ensure that the people in court are not intoxicated. Hindsight is 20/20, but there was a lot of undue influence in that relationship of my late father and his sister while she posed as a concerned advocate and doting care-giver.

I had initially started this letter after the federal court case that involved the forgery had finally ceased. I saw in the Kalihwisaks that there was a comment period in regards to the Family Court

Page 2
July 30, 2019

Rules, so I am completing this letter and sending it in on the deadline to plead that the following suggestions be taken into consideration. 1. Accommodations for communication to include deaf/hard of hearing may not include relatives speaking on the behalf of elders and our people with disabilities. 2. Ensure that people do not show up obviously intoxicated for hearings.

Response:

The court ensures due process by making sure that each participant in a court proceeding can effectively communicate. A party may request reasonable accommodations. For instance, the court may provide an interpreter in accordance with 8 O.C. 803.23-4. An individual may also be represented by an attorney or advocate at their own expense.

If an individual showed up for a hearing intoxicated, the court would adjourn the matter and possibly find the individual in contempt pursuant to 8 O.C. 803.26-1.

In the situation referenced above, the relative did not speak on the individual's behalf and there were no signs that the individual was intoxicated or unable to understand. As the concerns are addressed elsewhere in the Oneida Code of Laws, there are no recommended changes to the draft based on this comment.

www.kalihwisaks.com

Local

July 3, 2019 • Áhsá Niwáshá Áhsá 33

Biking for Babies takes off from Champion Shrine

(Champion, Wis.) ~ The National Shrine of Our Lady of Good Help will serve as the starting point for the northern route for the 2019 Biking for Babies event. Biking for Babies is an apostolate dedicated to renewing the culture of life and raising awareness and funds for pregnancy resource centers.

"We're very blessed to have Champion Shrine be part of this year's Biking for Babies," said Father John Broussard, CPM, Shrine Rector. "The Biking for Babies program provides tremendous support for pregnancy resource centers and those who seek their services."

The Northern Missionary Team in the Biking for Babies event features 11 members, both riders and support crew; all are from Wisconsin. They will gather at Champion Shrine on Sunday, July 7, for the kick-off of the weeklong bike trip. In 2018, Biking for Babies raised \$82,000 that was provided to 33 pregnancy resource centers in the United States.

"Our missionary riders complete four routes and more than 2,500 miles to raise awareness for America's pregnancy resource centers," said Nikki Biese, Biking for Babies Executive Director. "Our missionaries prepare spiritually, physically and mentally to ride around 120 miles per day in support of the pregnancy centers' clients, services and material needs."

Dr. Robin Goldsmith will be the guest speaker for the Biking for Babies event at Champion Shrine. Goldsmith will provide information about pregnancy resource center during her luncheon talk beginning at 12 p.m.

More information about Biking for

Babies is available at www.bikingforbabies.com.

The National Shrine of Our Lady of Good Help is located at 4047 Chapel Drive in Champion, Wisconsin, and said to her, "Gather the children in this wild country and teach them what they should know for salvation. Teach them their catechism, how to sign themselves with the Sign of the Cross and how to approach the sacraments; that is what I wish you to do. Go and fear nothing. I will help you." In 2010, Bishop David Ricken granted formal Church approval to the Marian apparition at the Shrine of Our Lady of Good Help. In 2016, it was designated as a National Shrine by the U.S. Catholic Conference of Bishops. It is the first and only confirmed appearance of the Blessed Virgin Mary in the United States.

About the Shrine: On Oct. 9, 1859, the Queen of Heaven appeared to Adele Brise in Champion, Wisconsin, and said to her, "Gather the children in this wild country and teach them what they should know for salvation. Teach them their catechism, how to sign themselves with the Sign of the Cross and how to approach the sacraments; that is what I wish you to do. Go and fear nothing. I will help you." In 2010, Bishop David Ricken granted formal Church approval to the Marian apparition at the Shrine of Our Lady of Good Help. In 2016, it was designated as a National Shrine by the U.S. Catholic Conference of Bishops. It is the first and only confirmed appearance of the Blessed Virgin Mary in the United States.

Mass is held at the National Shrine daily at 11 a.m. and at 8:30 a.m. on Tuesday and Saturday. Confession is at 10 a.m. Sunday - Friday and 9:15 a.m. on Saturday. Devotions take place Wednesday at 4:30 p.m., during the Sunday Holy Hour at 2 p.m., Saturday and Sunday at 3 p.m. and the first Saturday of the month after the 8:30 a.m. Mass.

NOTICE OF

PUBLIC MEETING

TO BE HELD

July 22, 2019 at 9:00 a.m.

IN

Courtroom B of the Oneida Judiciary

LOCATED AT

2630 W. Mason Street, Green Bay, WI 54303

In accordance with the Family Court and Administrative Rulemaking laws, the Family Court is hosting this Public Meeting to gather feedback from the community regarding the following rule:

TOPIC: Family Court Rules

This is a proposal to amend the rules that supplement the Oneida Judiciary Rules of Civil Procedure and other laws governing the Family Court.

To obtain copies of the Public Meeting documents for this proposal, please visit <https://oneida-nsn.gov/government/register/public-meetings/>.

PUBLIC COMMENT PERIOD OPEN UNTIL July 29, 2019.

During the Public Comment Period, all interested persons may submit written comments. These may be submitted to the Family Court by U.S. mail, interoffice mail, e-mail or fax.

Oneida Judiciary - Family Court
PO Box 19

Oneida, WI 54155

Email: pdegrand@oneidanation.org

Telephone: (920) 496-7200

Fax: (920) 496-7229

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Title 8. Judiciary – Chapter 806 FAMILY COURT Rule # 1 – Family Court Rules

1.1 Purpose	1.11 Children in the Courtroom
1.2 Adoption and Authority	1.12 Witnesses
1.3 Definitions	1.13 Evidence on an Electronic Device
1.4 Rules of Decorum	1.14 Ex Parte Communication
1.5 Appearances	1.15 Written Decisions
1.6 Counsel	1.16 Filing Fees
1.7 Notice of Appearance	1.17 Divorce Proceedings
1.8 Notice by Publication	1.18 Paternity Proceedings
1.9 Continuances	1.19 Child Support Proceedings
1.10 Default Judgment	1.20 Guardian ad Litem

1.1. Purpose

1.1-1. The purpose of these rules is to supplement the Oneida Judiciary Rules of Civil Procedure and other laws governing the Family Court.

1.2. Adoption and Authority

1.2-1. These rules were created by the Family Court and approved by the Oneida Business Committee in accordance with 8 O.C. 806.9-2 and 1 O.C. Chapter 106.

1.2-2. These rules may be amended or repealed pursuant to the procedures set out in the Family Court and Administrative Rulemaking laws.

1.2-3. Should a provision of these rules or the application thereof to any person or circumstance be held as invalid, such invalidity shall not affect other provisions of these rules which are considered to have legal force without the invalid portions.

1.2-4. In the event of a conflict between a provision of these rules and a provision of another law, the provisions of the other law shall control. In the event of a conflict between a provision of these rules and a provision of another rule, the provisions of these rules shall control.

1.2-5. These rules shall supersede all prior rules of pleading, practice, and procedure relating to the Family Court law.

1.3. Definitions

1.3-1. This section shall govern the definitions of words and phrases used within these rules. All words not defined herein shall be used in their ordinary and everyday sense.

(a) “Continuance” means the postponement of a hearing, court trial, or other scheduled court proceeding at the request of either or both parties in the matter, or by the Judge.

(b) “Counsel” means an attorney or lay advocate that is admitted to practice before the Judiciary.

(c) “Court” means the Family Court.

(d) “Ex parte communication” means any contact with the Judge regarding a pending case where the opposing party has not received notice, is not present, and has not consented to the communication.

(e) “Guardian ad litem” means a person appointed by the Court to appear at any peacemaking, mediation, or hearing and tasked with representing the best interest of the person appointed for.

(f) “Judge” means the Family Court Judge.

(g) “Relative” means husband, wife, mother, father, son, daughter, brother, sister,

grandparent, grandchild, aunt, uncle, niece, nephew, mother-in-law, father-in-law, daughter-in-law, son-in-law, brother-in-law, sister-in-law, first or second cousin, step-parent, or someone who is recognized by the Oneida General Tribal Council and/or its delegate as a member of an interested party's extended family.

1.4. Rules of Decorum

1.4-1. All electronic devices shall be turned off or silenced as to not disrupt the court proceedings.

1.4-2. All persons are prohibited from using an electronic device or any other means to take pictures, take videos, or make audio recordings during the court proceedings without permission from the Judge.

1.4-3. Unless otherwise approved by the Judge, all persons shall remove their hats or headwear during the court proceedings, except those worn for religious or medical purposes.

1.4-4. No chewing gum, food, or drink shall be permitted in the courtroom without permission from the Judge.

1.4-5. All parties, counsel, and witnesses shall refrain from interrupting or talking over one another during the court proceedings.

1.4-6. With the exception of on-duty security and law enforcement officers, no weapon of any type shall be taken, carried, or introduced into the courthouse. All persons entering the courthouse may be searched and examined by electronic detection equipment.

1.4-7. Security officers, law enforcement officers, and Oneida Judiciary staff are authorized to open and inspect any item carried into the courthouse.

1.4-8. All persons shall identify themselves when asked by security officers, law enforcement officers, and Oneida Judiciary staff.

1.4-9. Distracting or disorderly conduct may result in removal from the courthouse by security officers or law enforcement officers.

(a) Individuals may be removed from the courthouse for attempting to listen in or eavesdrop on a closed Court proceeding.

1.5. Appearances

1.5-1. The parties shall appear in person for all hearings.

1.5-2. In circumstances where it is difficult or impossible for a party to appear in person, the party may contact the Court Clerk to request an appearance by telephone or videoconference.

(a) It is the responsibility of the party to provide the Court with a contact number where the party may be reached for the telephone or videoconference appearance.

(b) It is the responsibility of the party appearing by telephone or videoconference to be available for the hearing.

1.6. Counsel

1.6-1. Parties have a right to retain an attorney or lay advocate at their own expense.

1.6-2. A party may bring a domestic violence advocate to Court with them; however, the domestic violence advocate shall not speak on behalf of the party unless the advocate is admitted to practice in the Oneida Judiciary. The Court shall not assume the existence of any facts based on the presence of the domestic violence advocate.

1.7. Notice of Appearance

1.7-1. The attorney or lay advocate whose name, address, and telephone number appears on a document presented for filing is considered counsel of record, and a separate notice of appearance need not be filed.

(a) If the name of more than one (1) attorney or lay advocate is shown on the document, the attorney or lay advocate who is counsel of record shall be clearly identified.

1.7-2. An attorney or lay advocate representing a party who will not be filing a document shall enter a separate notice of appearance as counsel of record indicating the name of the party represented and the case number, if known.

1.7-3. Counsel may not withdraw from a case where a motion is pending or a hearing has been scheduled except upon motion and order of the Court.

1.7-4. A separate notice of appearance shall also be entered whenever an attorney or lay advocate is substituted as counsel of record in a case. Court approval is not required for substitution of counsel.

1.8. Notice by Publication

1.8-1. The Court Clerk may assist parties with obtaining a quote regarding a Court-approved notice by publication.

(a) Parties shall submit payment to the Court Clerk prior to the notice being submitted for publication.

(1) The Court shall not be responsible for any fees associated with the notice by publication.

(2) Fee waivers are not available from the Court for notice by publication.

1.9. Continuances

1.9-1. Continuances shall only be granted by the Court based on a written request or motion of a party, a stipulation of the parties, or on the Court's own motion.

1.9-2. A request for a continuance shall be decided on a case-by-case basis in light of the circumstances present at the time of the request. Examples of acceptable reasons for a continuance may include, but are not limited to, the following:

(a) Failure of a party to receive proper or sufficient notice;

(b) Emergency involving the Judge, Court staff, and/or parties;

(c) Unavailability of the courtroom;

(d) A one-time request to obtain counsel;

(e) To allow more time for settlement negotiations or peacemaking; and

(f) Absence or unavailability of a material witness.

1.9-3. The Court may impose conditions upon the granting of a continuance, such as requiring a party to provide documentation regarding a medical emergency.

1.10. Default Judgment

1.10-1. If a party fails to appear at any Court hearing, the Court shall verify that proper notice was provided prior to finding the party in default.

1.10-2. If the Court finds that proper notice was not provided, the matter may be dismissed or rescheduled. If the matter is rescheduled, the Court may make orders or give instructions regarding notice that shall occur prior to the rescheduled hearing.

1.11. Children in the Courtroom

1.11-1. Subject to the exceptions listed below, children shall not be present in the courtroom during court proceedings or participate in proceedings as a witness.

1.11-2. A child may participate in a proceeding upon a finding by the Court that it will not be harmful to the child or disruptive to the Court for the child to participate.

(a) Disruptive children shall remain in the lobby and shall be accompanied by an adult. Court staff, including security officers, will not care for children during court proceedings.

1.11-3. The Judge shall retain the discretion on the competency of a witness and a determination whether testifying is in the best interest of a child.

1.12. Witnesses

1.12-1. Witnesses shall be examined from the counsel table, except when handling exhibits. Persons examining witnesses may either stand or remain seated while examining a witness from counsel table. In no case shall a witness be crowded during examination.

1.12-2. Witnesses shall be examined with courtesy and respect, and their good faith presumed until the contrary appears.

1.12-3. The fees of witnesses shall be as follows:

(a) Lay witnesses appearing in response to a subpoena shall not be paid by the party calling them.

(b) Expert witnesses who testify may be paid by the party calling them at a rate agreed upon by the expert witness and the party.

1.13. Evidence on an Electronic Device

1.13-1. Parties shall print out a copy of all emails, texts, social media messages, photographs, and other contents of their electronic device that they wish to offer as evidence. Audio and video recordings shall be duplicated onto media that is compatible with the Court's equipment and that can be provided to and retained by the Court (e.g. USB flash drive).

1.14. Ex Parte Communication

1.14-1. Ex parte communication, unless otherwise permitted by law, is forbidden subject to the following exceptions:

(a) When a party fails to appear at a court hearing where the parties have been properly noticed, the Court may speak on the record with the party or parties who appear.

(b) When a party believes that sharing the communication with the other party or parties would place a party, a child, or Oneida Judiciary staff in danger of physical harm.

1.15. Written Decisions

1.15-1. The Court shall send a copy of the written decision to the last known address of the parties upon completion of the decision.

(a) Parties are responsible for providing their current mailing address to the Court Clerk.

(b) Parties may request that the Court Clerk provide a copy of the written decision by email. The party shall provide their current email address to the Court Clerk.

1.16. Filing Fees

1.16-1. The Court shall charge a filing fee consistent with the fee schedule maintained on the Judiciary's website.

(a) No filing fees shall be charged for documents filed by the Oneida Nation Child Support Agency and the Oneida Indian Child Welfare Department.

1.16-2. If a party is unable to afford the filing fee, the party may file a fee waiver with the Court requesting the Court to waive the fee. It is at the Court's discretion to waive the fee or not.

1.16-3. Unless otherwise approved by the Judge, all filing fees shall be non-refundable.

1.17. Divorce Proceedings

1.17-1. After the petitioner completes the divorce paperwork and pays any applicable filing fees, a pre-trial hearing shall be scheduled.

1.17-2. At the pre-trial hearing, the Court may address the following topics:

- (a) Jurisdiction;
- (b) Notice;
- (c) Peacemaking;
- (d) Temporary orders;
- (e) Title Report;
- (f) Appointment of a guardian ad litem;
- (g) Distribution of the financial disclosure form, marital settlement agreement, and tribal divorce/annulment worksheet;
- (h) Scheduling the next court date; and/or
- (i) Other issues as warranted.

1.17-3. At the final hearing, the parties shall either inform the Court of the terms of the settlement agreement or proceed to a contested hearing. The parties may agree on some issues and request the Court to resolve disputed issues.

1.18. Paternity Proceedings

1.18-1. After a petition related to paternity has been filed, the Court shall schedule a pre-trial hearing.

1.18-2. The pre-trial hearing is an opportunity for the Court and the parties to address preliminary issues, including ordering genetic tests. If there are no preliminary issues, the Court may proceed immediately to a final paternity hearing.

1.18-3. The Court may address the following issues at the final paternity hearing:

- (a) Paternity;
- (b) Child support;
- (c) Legal custody;
- (d) Physical placement;
- (e) Health care expenses for the child(ren);
- (f) Claiming the child(ren) for tax purposes; and/or
- (g) Other issues as warranted.

1.19. Child Support Proceedings

1.19-1. If the Court receives a motion to modify child support from an incarcerated party or in a case where the other party's address is protected due to domestic abuse, the Court may serve a copy of the motion on the responding party by first class mail in accordance with 8 O.C. 803.5-6(b).

1.20. Guardian ad Litem

1.20-1. This rule governs the appointment, conduct, duties, and powers of a guardian ad litem in cases where it is appropriate and authorized under the Oneida Code of Laws.

1.20-2. A guardian ad litem shall be an attorney or certified advocate. Before being recognized as certified by the Court, a guardian ad litem shall demonstrate an understanding of the role of the guardian ad litem. Such understanding may be demonstrated by completing guardian ad litem training provided by the Court, another Indian Tribe, or a state; being recognized as a certified guardian ad litem by another jurisdiction; or such other means determined to be appropriate by the Court.

- (a) A guardian ad litem that is recognized as certified by the Court does not need to go through the process to be admitted to practice before the Court.
- (b) The Court shall have the duty of administering the guardian ad litem list for family law and child welfare cases. Should the Court decide that a guardian ad litem assigned to a particular case has an actual, apparent, or potential conflict of interest or is not acting in the best interest of the child, the Court may remove the the guardian ad litem from the case.
- 1.20-3. A guardian ad litem shall represent the best interest of the person for whom he or she is appointed. The guardian ad litem shall consider the wishes of the person for whom he or she is appointed; however, representation of best interests may be inconsistent with those wishes.
- (a) A guardian ad litem shall communicate to the Court the wishes of the person for whom he or she is appointed, unless that person asks the guardian ad litem to do otherwise.
- 1.20-4. A guardian ad litem shall maintain independence, objectivity, and the appearance of fairness in dealings with parties and professionals, both in and out of the courtroom.
- (a) The guardian ad litem shall not advocate on behalf of or advise any party so as to create in the mind of a reasonable person the appearance of representing that party as an attorney or lay advocate.
- (b) A guardian ad litem shall identify himself or herself as a guardian ad litem when contacting individuals in the course of a particular case and inform individuals contacted in a particular case about the role of the guardian ad litem at the earliest practicable time. A guardian ad litem shall advise information sources that the documents and information obtained may become part of the record in the court proceeding.
- 1.20-5. A guardian ad litem shall maintain the ethical principles set forth in these rules and is subject to discipline by the Court for violating these rules and other laws applicable to a guardian ad litem.
- (a) If the Court receives a written complaint regarding the conduct of a guardian ad litem, the Court shall do one (1) of the following:
- (1) The Court may hold a hearing and issue a decision regarding the complaint against the guardian ad litem after all parties have been given an opportunity to be heard;
 - (2) The Court may, in its discretion or at the request of the parties, resolve the complaint against the guardian ad litem through receipt of briefs and issuance of a written decision rather than holding a hearing; or
 - (3) The Court may screen out and take no action on complaints that are frivolous or repetitive. The Court shall communicate in writing any such decision with the parties.
- (b) The Court may issue an order for discipline which may include, but is not limited to: additional training requirements, private reprimand, public reprimand, removal from a case, or removal from the guardian ad litem list.
- 1.20-6. No person who has an interest in the outcome of the proceeding, appears as counsel in a proceeding on behalf of any party, or is a relative or representative of an interested party may be appointed guardian ad litem in that proceeding. A guardian ad litem shall:
- (a) Avoid any actual, apparent, or potential conflict of interest or impropriety in the performance of guardian ad litem responsibilities.
 - (b) Avoid self-dealing or association from which a guardian ad litem might directly or indirectly benefit in cases they are appointed, other than for compensation as guardian ad litem.

- (c) Take action immediately to resolve any potential conflict or impropriety.
 - (d) Advise the Court and the parties of the action taken, resign from the case, or seek Court direction as may be necessary to resolve the conflict or impropriety.
 - (e) Not accept or maintain appointment if the performance of the duties of guardian ad litem may be materially limited by the guardian ad litem's responsibilities to another client or a third person, or by the guardian ad litem's own interests.
- 1.20-7. A guardian ad litem is an officer of the Court and as such shall at all times treat the parties with respect, courtesy, fairness, and good faith.
- 1.20-8. A guardian ad litem shall make reasonable efforts to become informed about the facts of the case and to contact all parties. A guardian ad litem shall examine material information and sources of information, taking into account the positions of the parties.
- 1.20-9. A guardian ad litem shall not require any evaluations or tests of the parties except as authorized by law or court order issued following notice and opportunity to be heard.
- 1.20-10. Unless otherwise approved by the Judge, a guardian ad litem shall file a written report with the Court and the parties as required by law or court order no later than five (5) business days prior to a hearing for which a report is required.
- 1.20-11. A guardian ad litem shall comply with the Court's instructions as set out in the order appointing the guardian ad litem, and shall not provide or require services beyond the scope of the Court's instruction unless by motion and on adequate notice to the parties or upon receipt of additional instruction from the Court.
- 1.20-12. The guardian ad litem shall be given notice of all hearings and proceedings. A guardian ad litem shall appear at any hearing for which the duties of a guardian ad litem or any issues substantially within a guardian ad litem's duties and scope of appointment are to be addressed.
- (a) A guardian ad litem shall not be called as a witness in any proceeding or hearing in which he or she is a guardian ad litem, except where, with the Court's permission, clarification is requested regarding the guardian ad litem report. In such case, testimony shall be restricted to that which is needed to clarify such report.
 - (b) While appearing in person is preferred, a guardian ad litem may seek permission from the Court to appear by telephone.
- 1.20-13. A guardian ad litem shall not have ex parte communications concerning the case with the Court except as permitted by court rule or law.
- (a) After completion of the case, the Court may provide a performance evaluation to the guardian ad litem and respond to any questions or concerns.
- 1.20-14. As an officer of the Court, a guardian ad litem shall make no disclosures about the case or the investigation except in reports to the Court or as necessary to perform the duties of a guardian ad litem. A guardian ad litem shall not disclose the parties' address information when there are known allegations of domestic violence or a safety risk to a party or child. The guardian ad litem may recommend that the Court seal the report or a portion of the report of the guardian ad litem to preserve the privacy, confidentiality, or safety of the parties or the person for whom the guardian ad litem was appointed.
- 1.20-15. A guardian ad litem shall perform responsibilities in a prompt and timely manner, and, if necessary, request timely court reviews and judicial interventions in writing with notice to parties or affected agencies.
- 1.20-16. A guardian ad litem shall maintain documentation to substantiate recommendations and conclusions and shall keep records of actions taken by the guardian ad litem.

1.20-17. A guardian ad litem shall keep accurate records of the time spent, services rendered, and expenses incurred in each case and file an itemized statement and accounting with the Court and provide a copy to each party or other entity responsible for payment. The Court may adopt internal operating procedures addressing guardian ad litem fees and expenses.

1.20-18. At contested hearings, and at other times when appropriate, the guardian ad litem shall provide a written report to the Court with his or her recommendations. While the Court is not bound to follow the recommendations of the guardian ad litem, the Court shall consider such recommendations. The recommendations shall be based upon a full and independent investigation of the facts. The report shall include:

- (a) The sources of the information used by the guardian ad litem;
- (b) What home visits were done by the guardian ad litem and the results of the visits;
- (c) Who the guardian ad litem interviewed including parents, relatives, and professionals;
- (d) Whether the guardian ad litem had contact with the child(ren);
- (e) Relevant standards and factors included in the law; and
- (f) The guardian ad litem's recommendation on the contested issues.

1.20-19. As an officer of the Court, a guardian ad litem has only such authority conferred by the order of appointment or by law. A guardian ad litem shall also have the following authority:

- (a) Unless circumstances warrant otherwise, a guardian ad litem shall have access to the persons for whom a guardian ad litem is appointed and to all information relevant to the issues for which a guardian ad litem was appointed. The access of a guardian ad litem to the person for whom he or she is appointed shall not be unduly restricted by any person or agency. When the guardian ad litem seeks contact with a party who is represented by an attorney or lay advocate, the guardian ad litem shall notify the attorney or lay advocate of such contact. The guardian ad litem's contact with the represented party shall be as permitted by the party's attorney or lay advocate, unless otherwise ordered by the Court.
- (b) Until discharged by a court order, a guardian ad litem shall be timely furnished copies of all relevant pleadings, documents, and reports by the party which served or submitted them.
- (c) A guardian ad litem shall be timely notified of all court hearings and other proceedings concerning the case by the person or agency scheduling the proceeding.
- (d) A guardian ad litem shall be given notice of, and an opportunity to indicate his or her agreement or objection to any proposed agreement of the parties governing issues substantially related to the duties of a guardian ad litem.
- (e) Within the scope of the appointment, a guardian ad litem shall have access to all relevant court files. Access to sealed or confidential files shall be by separate order. A guardian ad litem's report shall inform the Court and parties if the report contains information from sealed or confidential files. The Court Clerk shall provide a certified copy of the order of appointment to the guardian ad litem upon request and without charge.

1.20-20. In every case in which a guardian ad litem is appointed, a guardian ad litem shall have the rights and powers set forth below. These rights and powers are subject to all applicable ordinances and court rules.

- (a) A guardian ad litem shall have the right to file pleadings, motions, notices, briefs, and other documents, and may, subject to the Court's discretion, engage in the discovery process.
- (b) A guardian ad litem shall have the right to make motions and request hearings before the Court as appropriate to the best interest of the person for whom he or she is appointed.

September 2019

September 2019

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October 2019

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SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Sep 1	2	3	4 9:00am LOC (BC_Conf_Room) - LOC 9:00am LOC Meeting (BC_Conf_Room) 9:00am LOC Meeting	5	6	7
8	9	10	11	12	13 9:00am LOC Work Session (BC_Exec_Conf_Room) - Clorissa N. Santiago	14
15	16	17	18 9:00am LOC Meeting (BCCR) - LOC	19	20	21
22	23	24	25	26 9:00am LOC Work Session (BC_Exec_Conf_Room) - Clorissa N. Santiago	27	28
29	30	Oct 1	2	3	4	5

October 2019

October 2019						
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13	14	15	16 9:00am LOC Meeting (BCCR) - LOC	17	18	19
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27	28	29	30	31 9:00am LOC Work Session (BC_Exec_Conf_Room) - Clorissa N. Santiago	Nov 1	2

November 2019

November 2019

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December 2019

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SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
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