



LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA

Business Committee Conference Room-2nd Floor Norbert Hill Center

December 18, 2019

9:00 a.m.

- I. Call to Order and Approval of the Agenda**
- II. Minutes to be Approved**
December 4, 2019 LOC Meeting Minutes (pg. 2)
- III. Current Business**
 1. Child Support Amendments (pg. 4)
 2. Citations Law (pg. 112)
 3. Vehicle Driver Certification and Fleet Management Amendments (pg. 135)
 4. Children's Burial Fund Policy Amendments (pg. 183)
 5. Oneida Food Service Code Amendments (pg. 189)
- IV. New Submissions**
- V. Additions**
- VI. Administrative Updates**
 1. E-Poll Results: Sanctions and Penalties law - Rescission of 12/4/19 LOC Action (pg. 239)
 2. E-Poll Results: Sanctions and Penalties law - Approval of Public Meeting (pg. 289)
- VII. Executive Session**
- VIII. Recess/Adjourn**



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

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

Excused: Daniel Guzman King

Others Present: Maureen Perkins, Brandon Wisneski, Clorissa Santiago, Kristen Hooker, Jennifer Falck, Rae Skenandore, Bonnie Pigman, Jameson Wilson, Lee Cornelius, Nicolas Reynolds

I. Call to Order and Approval of the Agenda

David P. Jordan called the December 4, 2019, Legislative Operating Committee meeting to order at 9:00 a.m.

Motion by Jennifer Webster to adopt the agenda; seconded by Kirby Metoxen. Motion carried unanimously.

II. Minutes to be Approved

Motion by Ernest Stevens III to approve the November 20, 2019, Legislative Operating Committee meeting minutes and forward to the Business Committee for consideration; seconded by Kirby Metoxen. Motion carried unanimously.

III. Current Business

1. Vehicle Driver Certification and Fleet Management Amendments (1:24-40:09)

Motion by Ernest Stevens III to approve the draft and legislative analysis of the amendments to the Vehicle Driver Certification and Fleet Management law and forward to a work meeting for further discussion; seconded by Kirby Metoxen. Motion carried unanimously.

2. Oneida Food Service Code Amendments (40:11-56:38)

Motion by Jennifer Webster to approve the draft of the amendments to the Oneida Food Service Code with one change and direct a legislative analysis to be completed; seconded by Kirby Metoxen. Motion carried unanimously.

3. Sanctions and Penalties Law (56:40-1:11:02)

Motion by Jennifer Webster to approve the January 20, 2020 General Tribal Council Meeting materials with one change and forward to the Oneida Business Committee; seconded by Ernest Stevens III. Motion carried unanimously.

IV. New Submissions

V. Additions



VI. Administrative Items

VII. Executive Session

VIII. Adjourn

Motion by Kirby Metoxen to adjourn the December 04, 2019, Legislative Operating Committee meeting at 10:10 a.m.; seconded by Ernest Stevens III. Motion carried unanimously.



Legislative Operating Committee
December 18, 2019

Child Support Law Amendments

Submission Date: 3/7/18	Public Meeting: 10/17/19
LOC Sponsor: David P. Jordan	Emergency Enacted: n/a

Summary: *This item was submitted to the LOC by the Child Support Agency's attorney. Currently the Child Support Law is accompanied by two rules. The Child Support Agency want to create more rules and proposed amending the law to include expanded rulemaking authority.*

3/7/18LOC: Motion by Kirby Metoxen to add the Child Support Amendments to the active files list as a high priority and assign David P. Jordan as the sponsor; seconded by Daniel Guzman King. Motion carried unanimously.

4/5/18: *Work Meeting.* Present: Trina Schuyler, Lisa Peck, Clorissa Santiago, Brandon Wisneski, Michelle Gordon. The purpose of this work meeting was to review potential amendments to the Child Support law.

4/18/18: *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Kirby Metoxen, Daniel Guzman King, Jennifer Falck, Clorissa Santiago, Brandon Wisneski, Laura Laitinen-Warren. The purpose of this work meeting was to discuss the Child Support Department's request for amendments, and determine if administrative rulemaking should be utilized. The drafting attorney will schedule a meeting with the LOC and the Child Support Department to begin discussing policy.

5/17/18: *Work Meeting.* Present: Clorissa Santiago, Brandon Wisneski, Trina Schuyler, Lisa Peck, Michelle Gordon. The purpose of this work meeting was to discuss and determine specific policy amendments the Child Support Department is seeking, and to discuss and determine a plan to move this legislative item forward.

6/8/18: *Work Meeting.* Present: Clorissa Santiago, Brandon Wisneski, Trina Schuyler, Lisa Peck, Michelle Gordon, Hon. Marcus Zielinski. The purpose of this work meeting was to begin discussing the reality of implementing bench warrants and other enforcement mechanisms.

Work Meeting. Present: Clorissa Santiago, Brandon Wisneski, Trina Schuyler, Lisa Peck, Michelle Gordon. The purpose of this work meeting is to begin discussing the potential amendments the Child Support Department wants the LOC to consider.

6/22/18: *Work Meeting.* Present: Clorissa Santiago, Brandon Wisneski, Trina Schuyler, Lisa Peck. The purpose of this work meeting was to continue discussing potential amendments to the Child Support law.

7/13/18: *Work Meeting.* Present: Clorissa Santiago, Brandon Wisneski, Trina Schuyler, Lisa Peck, Mike Hoelt. The purpose of this work meeting was to continue discussing potential amendments to the Child Support law.

- 8/9/18:** *Work Meeting.* Present: Clorissa Santiago, Brandon Wisneski, Trina Schuyler, Lisa Peck, Michelle Gordon, Hon. Marcus Zielinski, Hon. Robert Collins III, Rich Vanboxtel, Eric Boulanger. The purpose of this work meeting was to discuss the potential of utilizing bench warrants in regard to child support matters.
- 8/17/18:** *Work Meeting.* Present: Clorissa Santiago, Brandon Wisneski, Trina Schuyler, Lisa Peck, Michelle Gordon. The purpose of this work meeting was to continue discussing potential amendments to the review, review requested data regarding enforcement of child support, and determine next steps to moving this legislative item forward.
- 9/18/18:** *Work Meeting.* Present: Clorissa Santiago, Brandon Wisneski, Trina Schuyler, Lisa Peck. The purpose of this work meeting was to continue discussing potential amendments to the law.
- 10/12/18:** *Work Meeting:* Present: Brandon Wisneski, Trina Schuyler. The purpose of this work meeting was to prepare for and discuss an upcoming work meeting with the LOC.
- 10/26/18:** *Work Meeting.* Present: Clorissa Santiago, Brandon Wisneski, Trina Schuyler, Tami Busch. The purpose of this work meeting was to review the power point and handouts for the upcoming meeting with the LOC.
- 10/31/18:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Kirby Metoxen, Daniel Guzman, Jennifer Falck, Clorissa Santiago, Brandon Wisneski, Trina Schuyler. During this work meeting Trina gave PowerPoint presentation on Oneida's Child Support Department. The LOC was then presented with policy considerations for proposed amendments regarding enforcement tools and modification of a child support order for an incarcerated parent. The LOC considered the proposed ideas, and directed the LRO to move forward pursuing research and drafting.
- 11/9/18:** *Work Meeting.* Present: Clorissa Santiago, Brandon Wisneski, Trina Schuyler, Tami Busch. The purpose of this work meeting was to discuss the LOC's decisions regarding potential amendments, plan the next steps for moving forward, and plan an upcoming meeting with OPD.
- 12/6/18:** *Work Meeting.* Present: Clorissa Santiago, Brandon Wisneski, Trina Schuyler, Tami Busch, Michelle Gordon. The purpose of this work meeting was to review drafted enforcement tools language and determine what information needs to be discussed with OPD in an upcoming work meeting scheduled for 12/10/18.
- 12/10/18:** *Work Meeting.* Present: Clorissa Santiago, Brandon Wisneski, Trina Schuyler, Tami Busch, Michelle Gordon, Eric Boulanger. The purpose of this work meeting was to review drafted enforcement tools language and determine what information needs to be included in the Law. The LRO staff will bring the information collected during this work meeting to the LOC for their consideration.
- 12/19/18:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Kirby Metoxen, Ernest Stevens III, Jennifer Falck, Clorissa Santiago, Brandon Wisneski. The purpose of this work meeting was to discuss the 12/10/18 work meeting with Child Support and OPD, and reconsider policy considerations regarding enforcement tools.
- 1/4/19:** *Work Meeting.* Present: Clorissa Santiago, Brandon Wisneski, Trina Schuyler, Tami Busch, Michelle Gordon. The purpose of this work meeting was to discuss the LOC's recent decision to not pursue the addition of proposed enforcement tools, and to begin reviewing the draft from the beginning to discuss other potential amendments.

- 2/1/19:** *Work Meeting.* Present: Clorissa Santiago, Brandon Wisneski, Trina Schuyler, Tami Busch, Michelle Gordon. The purpose of this work meeting was to continue reviewing the law line by line to discuss potential amendments.
- 3/1/19:** *Work Meeting.* Present: Clorissa Santiago, Brandon Wisneski, Trina Schuyler, Tami Busch, Michelle Gordon, Porsche Skenandore-Wheelock. The purpose of this work meeting was to finish reviewing the law line by line to discuss potential amendments. LRO will update the draft with all the proposed revisions.
- 4/5/19:** *Work Meeting.* Present: Clorissa Santiago, Brandon Wisneski, Trina Schuyler, Tami Busch, Porsche Skenandore-Wheelock. The purpose of this work meeting was to review the updated draft to ensure it adequately reflects decisions that were made regarding proposed amendments to the law.
- 4/30/19:** *Work Meeting.* Present: Clorissa Santiago, Brandon Wisneski, Trina Schuyler, Tami Busch, Porsche Skenandore-Wheelock. The purpose of this work meeting was to continue reviewing the updated draft to ensure it adequately reflects the decisions and recommendations that were made regarding the proposed amendments to the law. Department will continue to review the proposed language for compliance, and we will finish the review of the last portion of the draft during the next meeting.
- 5/16/19:** *Work Meeting.* Present: Jennifer Falck, Clorissa Santiago, Brandon Wisneski, Trina Schuyler, Tami Busch, Michelle Gordon, JoAnne House, Tsyoshaht Delgado. The purpose of this work meeting was to complete the review of the updated draft to ensure it adequately reflects the decisions and recommendations that were made regarding the proposed amendments to the law. LRO will now update the draft and bring it to the LOC for review and consideration.
- 7/17/19:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Kirby Metoxen, Daniel Guzman King, Ernest Stevens III, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was to begin reviewing and making decisions to the proposed amendments to the Law.
- 7/18/19:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Kirby Metoxen, Daniel Guzman King, Ernest Stevens III, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was to continue reviewing and making decisions as to the proposed amendments to the Law.
- 7/25/19:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Kirby Metoxen, Daniel Guzman King, Ernest Stevens III, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was to continue reviewing and making decisions as to the proposed amendments to the Law.
- 8/7/19 LOC:** 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.
- 8/20/19:** *OBC Work Session.* Present: Tehassi Hill, Patricia King, David P. Jordan, Kirby Metoxen, Ernest Stevens III, Jo Anne House, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Melinda Danforth, Candice Skenandore, Lisa Liggins, Brian Doxtator. The purpose of this meeting was to discuss potential use of incarceration for child support. OBC designated a team to include representatives from Self Governance, Intergovernmental Affairs, Oneida Police Department, Oneida Law Office, and the Judiciary to work on this issue and report to the OBC during OBC work sessions every three months.

8/21/19: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Ernest Stevens III, Jennifer Webster, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Trina Schuyler, Tami Busch, Michelle Gordon. The purpose of this work meeting was to fulfill the August 7, 2019 directive and allow the Agency one final work meeting to discuss potential amendments.

9/18/19 LOC: Motion by Jennifer Webster to approve the updated draft and legislative analysis; seconded by Ernest Stevens III. Motion carried unanimously.

Motion by Ernest Stevens III to approve public meeting and forward to the Child Support law to a public meeting to be held on October 17, 2019; seconded by Jennifer Webster. Motion carried unanimously.

10/17/19: *Public Meeting Held.* Present: Jennifer Webster, Daniel Guzman King, Clorissa N. Santiago, Brandon Wisneski, Lee Cornelius, Rae Skenandore, Michelle Gordon, Trina Schuyler, Tami Bush, Bonnie Pigman. Two (2) individuals gave public comment during this public meeting.

10/24/19: *Public Comment Period Closed.* One (1) person submitted written comments during this public comment period.

11/6/19 LOC: Motion by Jennifer Webster to accept the public comments and public comment review memorandum and forward to a work meeting for further consideration; seconded by Ernest Stevens III. Motion carried unanimously.

11/6/19: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Daniel Guzman King, Ernest Stevens III, Clorissa N. Santiago, Brandon Wisneski, Jameson Wilson. The purpose of this work meeting was to review and consider the public comments that were received for the proposed amendments to the Child Support law.

11/20/19 LOC: Motion by Kirby Metoxen to accept the updated public comments review memorandum, draft, and legislative analysis; seconded by Daniel Guzman King. Motion carried unanimously.

Motion by Ernest Stevens III to approve the Child Support law amendments fiscal impact statement request memorandum and forward to the Finance Department requesting that a fiscal impact statement be prepared and submitted to the Legislative Operating Committee by December 06, 2019; seconded by Daniel Guzman King. Motion carried unanimously.

Next Steps:

- Approve the adoption packet for the Child Support law amendments and forward to the Oneida Business Committee for consideration.



TO: Oneida Business Committee
FROM: David P. Jordan, LOC Chairperson
DATE: January 8, 2020
RE: Child Support Law Amendments

Please find the following attached backup documentation for your consideration of the proposed amendments to the Child Support law:

1. Resolution: Amendments to the Child Support Law
2. Statement of Effect: Amendments to the Child Support Law
3. Child Support Law Amendments Legislative Analysis
4. Child Support Law Amendments (Redline)
5. Child Support Law Amendments (Clean)
6. Child Support Law Amendments Fiscal Impact Statement

Overview

On March 7, 2018, the Legislative Operating Committee decided to pursue amendments to the Child Support law. The purpose of the Child Support law is to establish the legal responsibility of parents to provide financially for their children's general well-being; make support payments more equitable by ensuring consistent treatment of persons in similar circumstances; make support payments based on the real earning capability of parents; and improve the efficiency of child support establishment and enforcement. [7 O.C. 704.1-1].

This resolution adopts amendments to the Child Support law which will:

- Create a process to suspend or modify child support orders for parents incarcerated for one hundred and eighty (180) days or more [7 O.C. 704.11];
- Update notice requirements and timelines for initiating an action by the Agency [7 O.C. 704.5-2], sending appointment letters for noncompliance [7 O.C. 704.12-2], sending notice of delinquency [7 O.C. 704.13-3], sending notice of enforcement action [7 O.C. 704.13-4], and sending income withholding orders [7 O.C. 704.9-3(a)];
- Clarify how the Family Court may redact addresses and identifying information from court documents to ensure safety of a party [7 O.C. 704.5-5(b)];
- Make updates to how child support obligations are calculated in certain special circumstances, such as:
 - updating the date when legal obligation for child support is incurred for a non-marital child of a serial family obligor [7 O.C. 704.8-1];
 - updating how overnights and equivalent care are calculated for shared-placement parents [7 O.C. 704.8-2];
 - updating the formula for calculating child support obligations of split-placement parents [7 O.C. 704.8-3];

- Update what constitutes a “substantial change in circumstance” that warrants a modification of a child support order [7 O.C. 704.10-2(b)];
- Repeal Child Support Rule No. 1 - Deviation from Child Support and Rule No. 2 - Enforcement Tools and move the contents of the rules into the body of the law itself; and
- Make additional updates and clarify language throughout the law.

The Legislative Operating Committee developed the proposed amendments to the Child Support law through collaboration with representatives from the Oneida Child Support Agency, Oneida Law Office, Oneida Family Court, and Oneida Police Department. The Legislative Operating Committee also reviewed various laws of the Nation, as well as seven (7) child support laws from other tribes and the State of Wisconsin.

In accordance with the Legislative Procedures Act, a public meeting on the Curfew law was held on October 17, 2019. Two (2) people provided oral comments during the public meeting. The public comment period was then held open until October 24, 2019. The Legislative Operating Committee received one (1) submission of written comments during the public comment period. All public comments received were accepted, reviewed, and considered by the Legislative Operating Committee on November 6, 2019. Any changes made based on those comments have been incorporated into this draft.

Requested Action

Approve the Resolution: Amendments to the Child Support Law

Oneida Nation

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

BC Resolution # _____ Amendments to the Child Support Law

- 1
2
3 **WHEREAS,** the Oneida Nation is a federally recognized Indian government and a treaty tribe
4 recognized by the laws of the United States of America; and
5
6 **WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Nation; and
7
8 **WHEREAS,** the Oneida Business Committee has been delegated the authority of Article IV, Section 1,
9 of the Oneida Tribal Constitution by the Oneida General Tribal Council; and
10
11 **WHEREAS,** the Child Support law ("the Law") was adopted by the Oneida Business Committee through
12 resolution BC-06-24-09-B and amended by resolutions BC-02-24-10-G, BC-02-23-11-E,
13 BC-06-22-11-K, BC-10-10-12-C, BC-08-13-14-E, and
14
15 **WHEREAS,** the purpose of the Law is to establish the legal responsibility of parents to provide
16 financially for their children's general well-being; make support payments more equitable
17 by ensuring consistent treatment of persons in similar circumstances; make support
18 payments based on the real earning capability of parents; and improve the efficiency of
19 child support establishment and enforcement; and
20
21 **WHEREAS,** the Legislative Operating Committee worked collaboratively with representatives from the
22 Oneida Child Support Agency, Oneida Family Court, Oneida Police Department, and
23 Oneida Law Office to develop the amendments to this Law; and
24
25 **WHEREAS,** the amendments to the Law create a process to suspend or modify child support orders for
26 parents incarcerated for one hundred and eighty (180) days or more; and
27
28 **WHEREAS,** the amendments to the Law update notice requirements and timelines for initiating an
29 action by the Agency, sending appointment letters for noncompliance, sending notice of
30 delinquency, sending notice of enforcement action, and sending income withholding
31 orders; and
32
33 **WHEREAS,** the amendments to the Law clarify how the Family Court may redact addresses and
34 identifying information from court documents to ensure the safety of a party; and
35
36 **WHEREAS,** the amendments to the Law make updates to how child support obligations are calculated
37 in certain special circumstances; and
38
39 **WHEREAS,** the amendments to the Law update what constitutes a "substantial change in
40 circumstance" that warrants a modification of a child support order; and
41

42 **WHEREAS,** the amendments to the Law repeal Child Support Law Rule No. 1 - Deviation from Child
43 Support and Child Support Law Rule No. 2 - Enforcement Tools and move the contents of
44 the rules into the body of the law itself; and
45

46 **WHEREAS,** the amendments to the Law make other minor drafting revisions; and
47

48 **WHEREAS,** in accordance with the Legislative Procedures Act a legislative analysis and fiscal impact
49 statement were completed for the amendments to the Law; and
50

51 **WHEREAS,** a public meeting on the proposed amendments to this Law was held on October 17, 2019,
52 in accordance with the Legislative Procedures Act, and the public comment period was
53 held open until October 24, 2019; and
54

55 **WHEREAS,** the Legislative Operating Committee accepted, reviewed, and considered the public
56 comments received on November 6, 2019; and
57

58 **NOW THEREFORE BE IT RESOLVED,** that the amendments to the Child Support law are hereby adopted
59 and shall be effective on January 22, 2020.
60

61 **BE IT FINALLY RESOLVED,** that Child Support Law Rule No. 1 - Deviation from Child Support and Child
62 Support Law Rule No. 2 - Enforcement Tools are hereby repealed effective January 22, 2019.
63



Statement of Effect

Amendments to the Child Support Law

Summary

This resolution adopts amendments to the Child Support law.

Submitted by: Clorissa N. Santiago, Staff Attorney, Legislative Reference Office

Date: December 18, 2019

Analysis by the Legislative Reference Office

The Legislative Procedures Act (“the LPA”) was adopted by the General Tribal Council through resolution GTC-01-07-13-A for the purpose of providing a process for the adoption of laws of the Nation. [1 O.C. 109.1-1]. This resolution adopts amendments to the Child Support law which comply with all processes and procedures required by the LPA, including the development of a legislative analysis, a fiscal analysis, and the opportunity for public review during a public meeting and public comment period. [1 O.C. 109.6, 109.7, 109.8].

The Child Support law was adopted by the Oneida Business Committee for the purpose of establishing the legal responsibility of parents to provide financially for their children’s general well-being; making support payments more equitable by ensuring consistent treatment of persons in similar circumstances; making support payments based on the real earning capability of parents; and improving the efficiency of child support establishment and enforcement. [7 O.C. 704.1-1].

The amendments to the Child Support law will:

- Create a process to suspend or modify child support orders for parents incarcerated for one hundred and eighty (180) days or more [7 O.C. 704.11];
- Update notice requirements and timelines for initiating an action by the Agency [7 O.C. 704.5-2], sending appointment letters for noncompliance [7 O.C. 704.12-2], sending notice of delinquency [7 O.C. 704.13-3], sending notice of enforcement action [7 O.C. 704.13-4], and sending income withholding orders [7 O.C. 704.9-3(a)];
- Clarify how the Family Court may redact addresses and identifying information from court documents to ensure the safety of a party [7 O.C. 704.5-5(b)];
- Make updates to how child support obligations are calculated in certain special circumstances, such as:
 - updating the date when legal obligation for child support is incurred for a non-marital child of a serial family obligor [7 O.C. 704.8-1];
 - updating how overnights and equivalent care are calculated for shared-placement parents [7 O.C. 704.8-2];
 - updating the formula for calculating child support obligations of split-placement parents [7 O.C. 704.8-3]; and
- Update what constitutes a “substantial change in circumstance” that warrants a modification of a child support order [7 O.C. 704.10-2(b)].

Other additional minor changes are made to the draft to update the language and ensure compliance with drafting style and formatting requirements.

The resolution also repeals Child Support Rule No. 1 - Deviation from Child Support and Rule No. 2 - Enforcement Tools. The Law was amended to remove the prior reference that “any Agency requirements which would affect individuals outside the Agency and do not relate to the internal management of the Agency shall require Oneida Business Committee approval in the form of a law or rule.” [7 O.C. 704.2-6 of Law adopted through BC-08-13-14-E]. Instead, the contents of those rules have been incorporated directly into the body of the Law itself.

In accordance with the LPA, a public meeting on the proposed amendments to the Child Support law was held on October 17, 2019. Two (2) individuals provided oral comments during the public meeting. The public comment period was then held open until October 24, 2019. The Legislative Operating Committee received one (1) submission of written comments during the public comment period. All public comments received were accepted, reviewed, and considered by the Legislative Operating Committee on November 6, 2019. Any changes made based on those comments have been incorporated into this draft.

Conclusion

Adoption of this resolution would not conflict with any of the Nation’s laws.



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They watch over the children

AMENDMENTS TO CHILD SUPPORT LAW LEGISLATIVE ANALYSIS

SECTION 1. EXECUTIVE SUMMARY

REQUESTER: Oneida Child Support Agency	SPONSOR: David P. Jordan	DRAFTER: Clorissa N. Santiago	ANALYST: Brandon Wisneski
Intent of the Amendments	<ul style="list-style-type: none"> ▪ To create a process to suspend or modify child support orders for parents incarcerated for one hundred and eighty (180) days or more; ▪ To update notice requirements and timelines for initiating an action by the Agency, sending letters of noncompliance, sending notice of delinquency, sending notice of enforcement action, and sending income withholding orders; ▪ To clarify how the Family Court may redact addresses and identifying information from court documents to ensure safety of a party; ▪ To make updates to how child support obligations are calculated in certain special circumstances, such as: <ul style="list-style-type: none"> ○ updating how overnights and equivalent care are calculated for shared-placement parents; ○ updating the formula for calculating child support obligations of split-placement parents; ○ updating the date when legal obligation for child support is incurred for a non-marital child of a serial family obligor; ▪ To update what constitutes a “substantial change in circumstance” that warrants a modification of a child support order; ▪ To repeal Child Support Rule #1 Deviation from Child Support and Rule #2 Enforcement Tools and move the contents of the rules into the body of the law itself; ▪ To make additional updates and clarify language throughout the law. 		
Purpose	<p>The purpose of this law is to establish the legal responsibility of parents to provide financially for their children’s general well-being; make support payments more equitable by ensuring consistent treatment of persons in similar circumstances; make support payments based on the real earning capability of parents; and improve efficiency of child support establishment and enforcement [7 O.C. 704.1-1].</p>		
Affected Entities	<p>Oneida Child Support Agency, Oneida Family Court, Oneida Court of Appeals, Oneida license-issuing agencies such as Oneida Licensing and Oneida Conservation, and any individuals with child support cases that fall under the jurisdiction of the Oneida Family Court [7 O.C. 704.4].</p>		
Public Meeting	<p>A public meeting was held on October 17, 2019.</p>		
Fiscal Impact	<p>A fiscal impact statement was prepared by the Finance Dept. on December 6, 2019.</p>		

What Is Child Support?

“When parents separate, they still have shared rights and responsibilities as to their children. The most basic of these responsibilities is supporting their children so they have food, clothing, shelter and health care. Child support is a payment made by one parent to another for the support of a child. The amount of the payment is based on a percentage, determined by law, of the paying parent’s income.” *Source: Oneida Child Support Agency FAQ.*

“Child support is the financial support paid by parents to support a child or children of whom they do not have full custody. Child support can be entered into voluntarily, by court order or by an administrative agency (the process depends on the state or tribe). The noncustodial parent or obligor—the parent who does not have primary care, custody, or control of the child or children—often has an obligation to the custodial parent or obligee—the parent who has primary care, custody and control of the child or children.” *Source: National Association of State Legislatures (NCSL).*

SECTION 2. LEGISLATIVE DEVELOPMENT

- A. The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 gave tribal nations the authority to establish child support agencies. Wisconsin (WI) Statute 801.54 allows WI circuit courts to transfer civil actions to tribal courts in matters where tribal nations have concurrent jurisdiction, such as child support cases.
- B. The Oneida Child Support Agency was established by the Oneida Business Committee on June 20, 2007. Oneida Nation’s application for a child support services grant was approved by the U.S. Department of Health and Human Services on April 4, 2008.
- C. The Oneida Nation’s Child Support law was first adopted by emergency amendment on June 30, 2008 and permanently adopted on June 24, 2009 by the Oneida Business Committee. It was most recently amended on August 13, 2014.
- D. At the end of 2008, the Oneida Child Support Agency had 482 cases. As of 2018, the Oneida Child Support Agency now handles over 3,050 cases and has completed case transfers from Brown and Outagamie counties.
- E. On February 28, 2018, the Oneida Child Support Agency submitted a request to amend the Oneida Child Support law. The LOC added the Child Support Law amendments to the Active Files List on March 7, 2018. Since that time, the LOC has worked with Child Support Agency to review the law and develop potential amendments.

SECTION 3. CONSULTATION AND OUTREACH

- A. Representatives from the following departments or entities participated in the development of this law and legislative analysis: Oneida Child Support Agency, Oneida Law Office, Oneida Police Department, and Oneida Judiciary Family Court.
- B. The following laws were reviewed in the drafting of this analysis: Administrative Rulemaking law; Paternity law; Per Capita law; Oneida Judiciary Rules of Civil Procedure; Rules of Appellate Procedure; Workers Compensation law; Garnishment law; Family Court law; Family Court Rules; Per Capita law; Children’s Code; Divorce, Annulment and Legal Separation; Child Custody, Placement and Visitation law. In addition, the following laws from other tribal nations and the state of Wisconsin were reviewed:
 - Ho Chunk Nation - Child Support Code 4HCC7
 - Forest County Potawatomi - Child Support Law
 - Lac Du Flambeau - Child Support Law Ch 31

- 34 ▪ Menominee Nation – Financial Support of Children Law
- 35 ▪ Stockbridge Munsee Child Support Law
- 36 ▪ White Earth Child Support Act
- 37 ▪ State of Wisconsin Child Support Administrative Enforcement – Chapters DCF 150 & 152.
- 38 C. In addition, the following documents or articles were reviewed in the drafting of this analysis:
- 39 ▪ Child Support Enforcement: Tribal Programs – Congressional Research Service Report. July
- 40 5, 2016.
- 41 ▪ Final Rule: Flexibility, Efficiency, and Modernization in Child Support Enforcement
- 42 Programs, Federal Register, Volume 81, Number 244. December 20, 2016.
- 43 ▪ Child Support Final Rule Fact Sheet: Flexibility, Efficiency and Modernization in Child
- 44 Support Enforcement Programs. Office of Child Support Enforcement, Administration for
- 45 Children and Families, Dept. of Health and Human Services. January 5, 2017. DCL-17-01.
- 46

47 **SECTION 4. PROCESS**

- 48 A. Thus far, amendments to this law have followed the process set forth in the Legislative Procedures Act
- 49 (LPA).
- 50 B. The law was added to the Active Files List on March 7, 2018.
- 51 C. A public meeting was held on October 17, 2019. The public comment period was held open until October
- 52 24, 2019.
- 53 C. At the time this legislative analysis was developed, a total of twenty-seven (27) work meetings were
- 54 held regarding the development of this law and legislative analysis, including twenty-one (21) work
- 55 meetings with the Oneida Child Support Agency:
- 56 ▪ April 5, 2018: Work meeting with Child Support.
- 57 ▪ April 18, 2018: Work meeting with LOC.
- 58 ▪ May 17, 2018: Work meeting with Child Support.
- 59 ▪ June 8, 2018: Work meeting with Child Support.
- 60 ▪ June 22, 2018: Work meeting with Child Support.
- 61 ▪ July 13, 2018: Work meeting with Child Support.
- 62 ▪ August 9, 2018: Work meeting with Child Support, Family Court and Oneida Police Department.
- 63 ▪ August 17, 2018: Work meeting with Child Support.
- 64 ▪ September 18, 2018: Work meeting with Child Support.
- 65 ▪ October 12, 2018: Work meeting with Child Support.
- 66 ▪ October 26, 2018: Work meeting with Child Support.
- 67 ▪ October 31, 2018: Work meeting with LOC and Child Support.
- 68 ▪ November 9, 2018: Work meeting with Child Support.
- 69 ▪ December 6, 2018: Work meeting with Child Support.
- 70 ▪ December 10, 2018: Work meeting with Child Support and Oneida Police Department.
- 71 ▪ December 19, 2018: Work meeting with LOC.
- 72 ▪ January 4, 2019: Work meeting with Child Support.
- 73 ▪ February 1, 2019: Work meeting with Child Support.
- 74 ▪ March 3, 2019: Work meeting with Child Support.
- 75 ▪ April 4, 2019: Work meeting with Child Support.
- 76 ▪ April 30, 2019: Work meeting with Child Support.
- 77 ▪ May 16, 2019: Work meeting with Child Support & Law Office.
- 78 ▪ July 17, 2019: Work meeting with LOC.
- 79 ▪ July 18, 2019: Work meeting with LOC.
- 80 ▪ July 25, 2019: Work meeting with LOC.
- 81 ▪ August 21, 2019: Work meeting with LOC and Child Support.
- 82 ▪ November 6, 2019: Work meeting with LOC.
- 83

84 **SECTION 5. CONTENTS OF THE LEGISLATION**

85 *The following provides a summary of the changes proposed in the amendments to the Child Support Law:*

86
87 **A. *Moving Child Support Rules into the Law.*** The Child Support Law currently includes two (2) rules:
88 Rule #1 Deviation from Child Support and Rule #2 Enforcement Tools. Both rules became effective
89 June 24, 2009, prior the adoption of the Nation’s Administrative Rulemaking law [1 O.C. 106]. The
90 proposed amendments delete the rules and move the contents of both Rule #1 and Rule #2 into the body
91 of the law itself.

92 ■ *Rule #1 Deviation from Child Support.* The information from Rule #1 Deviation from Child
93 Support, unless otherwise noted in this analysis, has been moved to the following sections:

- 94 ○ 704.7 Determining Child Support Obligation
- 95 ○ 704.8 Determining the Child Support Obligation in Special Circumstances
- 96 ○ 704.9 Child Support Order

97 ■ *Rule #2 Enforcement Tools.* The information from Rule #2 Enforcement Tools, unless otherwise
98 noted in this analysis, has been moved to the following sections:

- 99 ○ 704.12 Compliance Plan
- 100 ○ 704.13 Enforcement of an Order
- 101 ○ 704.14 Alternative Payment Plans
- 102 ○ 704.15 Administrative Enforcement Action
- 103 ○ 704.16 Family Court Contempt Action

104 ■ *Deleted Examples.* Rule #1 contained example calculations and scenarios to illustrate how to
105 determine child support in special circumstances. These examples have been deleted. Such
106 examples could be provided in a separate document or worksheet by the Agency.

107 **B. *Notice for Initiation of Action by Oneida Child Support Agency.***

108 ■ *Requesting Services.* When the Oneida Child Support Agency receives an application or referral
109 for services, the Agency is required to send notice to the non-custodial parent. The non-custodial
110 parent is the parent who does not hold primary care, custody or control of the child.

111 ■ *Current Notice Requirements.* Within five (5) business days of receiving a referral or application,
112 the Agency is currently required to send two (2) letters to the non-custodial parent before initiating
113 a hearing in the Family Court. The purpose of the letters is to request information and attempt to
114 negotiate a stipulation, or voluntary agreement, between the parents. If the non-custodial parent
115 does not respond to the letters, then the Agency will initiate a hearing in the Family Court.

116 ■ *Changes to Notice Requirements.* [7 O.C. 704.5-2].

- 117 ○ *Meeting with Custodial Parent Prior to Sending Notice.* The Agency will now be required
118 to meet with the custodial parent (the parent who has primary custody of the child) within
119 thirty (30) days of receiving a referral or application. Only after meeting with the custodial
120 parent will the Agency send the notice letter to the non-custodial parent.

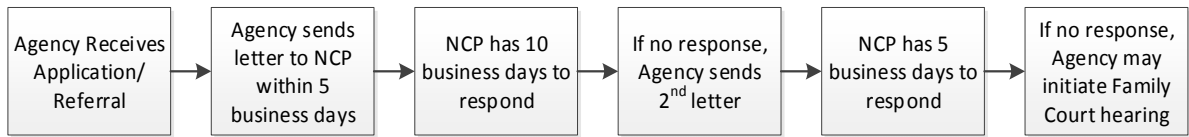
- 121 ● *Effect.* This change reflects the Agency’s current practice. The Agency reports that
122 most child support cases begin as referrals from other agencies rather than an
123 application from the custodial parent. The Agency reports that meeting with the
124 custodial parent first ensures that the Agency has the information it needs before
125 contacting the non-custodial parent and/or initiating an action.

- 126 ○ *Deadline for Agency to Send Letter.* The Agency will now have seven (7) business days
127 rather than five (5) business days to send the Letter of Request for Support and Financial
128 Disclosure form to the non-custodial parent.

- 129 ○ *Number of Letters.* Rather than sending two (2) letters, the Agency is now only required to
130 send one (1) letter before initiating a hearing. This will allow for child support hearings to
131 be scheduled more quickly. Rather than waiting at least fifteen (15) days as the law
132 currently requires, the Agency can now request a hearing after ten (10) days.

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Chart 1. Current Notice Requirements – Initiating an Action by Child Support Agency.



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Chart 2. Proposed Notice Requirements – Initiating an Action by Child Support Agency.

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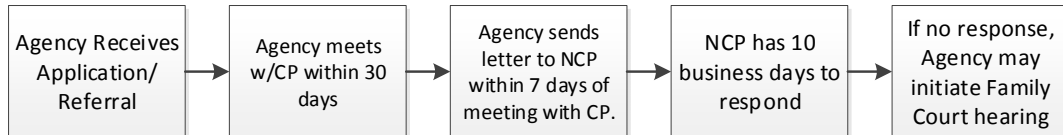
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*CP = Custodial Parent. NCP = Non-Custodial Parent.

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C. **Requirements of the Petition.** If the parents do not enter into a voluntary agreement, then a petition to establish child support may be filed with the Family Court. Currently, the petition only requires the name, date of birth and address of the petitioner and respondent and a separate form with the child's identifying information. These new amendments require more detailed information to be included on the petition. This was added at the request of the Child Support Agency to reflect current petition forms [7 O.C. 704.5-5(a)].

152

- **New Information Required on Petition:** Name, date of birth, address and tribal affiliation of the petitioner and respondent; with whom the child currently resides; when and how paternity was established; information regarding other children of the parties and the child support obligation for those children; information about any state or tribal benefits either party receives; whether any other action to determine child support is pending or has been entered by another court; financial information such as the parties' income; the relief the petitioner is requesting; and a separate confidential form that includes the child's identifying information.

159

D. **Nondisclosure of Information in Protected Cases.** A new provision has been added giving the Family Court judge authority to limit access to the child or party's address or other identifying information [7 O.C. 704.5-5(b)(1)(B)].

162

- **Limiting Address or Identifying Information.** The Family Court may limit disclosure if the health, safety or liberty of a child or party would be unreasonably put at risk. This change was made to address safety concerns for individuals who do not wish to have their address included in court documents.

166

E. **Child Support Hearings.**

167

- **Factual Determinations at Hearings.** Currently, factual determinations made at child support hearings are limited to "the income and expense information necessary to determine the appropriate level of support" in accordance with the law. These amendments remove this limitation. Now, factual determinations at child support hearings shall include, "but not be limited to," income and expense information [7 O.C. 704.6-1].

172

- **Effect.** The Family Court may make factual determinations on issues other than income and expenses during a Child Support hearing. This is an expansion of the Family Court's authority during these particular hearings.

175

- **Closed Hearings and Records for Child Support Cases.** The current Child Support law already states that Child Support Hearings in the Family Court are closed to anyone other than those necessary to the action or proceeding. A new provision has been added stating that the records of child support proceedings will also be kept confidential [7 O.C. 704.6-6].

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- 179 ○ *Confidential Case Records*. Records may only be viewed by the parties, legal guardians,
180 the parties' attorney or advocate, guardian ad litem, Judges and staff assigned to the case,
181 and those with written authorization from a party to view the material in the record.
182 ○ *Existing Law*. The Nation's Rules of Civil Procedure already state: "At the request of any
183 party or on its own motion, the Court may seal any part of a case file, preventing public
184 disclosure. A file or part of a file may only be sealed where the safety of a party, witness
185 or other individual may be in jeopardy if the material is not placed under seal" [8 O.C.
186 803.32-2(b)(3)]. Now, rather than being optional, the court will automatically keep records
187 of child support cases confidential.
- 188 **F. Authority of Family Court to Order Parent to Search for a Job or Participate in Job Training**
189 **Program**. Typically, a child support order is based on a percentage of a parent's income. When a
190 parent's income is less than their earning capacity or unknown, the court may "impute," or "estimate"
191 the parent's earning capacity based on available evidence.
- 192 ▪ *Order Parent to Search for Job or Participate in Job Training*. For these cases, a new provision
193 has been added allowing the Family Court to order a parent to search for a job or participate in a
194 work experience or job training program [7 O.C. 704.7-4(b)].
 - 195 ▪ *Comparison to WI*. This language is similar to updates made to Wisconsin (WI) regulations utilized
196 by county child support agencies. However, unlike WI, Oneida's Family Court may order a job
197 search or job training program "in addition to" imputed income, rather than as "an alternative" to.
- 198 **G. Formula for Determining Child Support Obligations When the Child Receives Social Security**
199 **Benefits**. The Nation's current Child Support law includes a provision to account for a child's social
200 security benefits when calculating a parent's child support obligation.
- 201 ▪ *Updates to Formula*. These amendments add a new formula to specifically address shared-
202 placement parents whose child receives social security benefits. The intent of this new formula is
203 to ensure that Child Support orders accurately take this income into account in these unique cases
204 [7 O.C. 704.7-6(a)].
 - 205 ▪ *Comparison to WI*. This updated formula mirrors recent updates to Wisconsin regulations.
- 206 **H. Claiming Children for Tax Purposes**. A provision from Child Support Rule #1 regarding the
207 "dependency exemption" for federal tax purposes [1.3-7] is deleted. The dependency exemption was
208 eliminated by Congress as a result of the Tax Cuts and Jobs Act of 2017, also known as the "tax reform
209 bill." In its place, these amendments add a new provision regarding claiming children for tax purposes
210 [7 O.C. 704.7-7].
- 211 ▪ *New provision*. This new provision gives the Family Court authority to address who may claim a
212 child for tax purposes. It also gives the Family Court authority to accept a stipulation entered into
213 by the parties regarding children and taxes. This change was recommended by the Family Court
214 and Child Support Agency Attorney.
- 215 **I. Determining Child Support for Serial Family Obligor**. When one parent has multiple children in
216 separate families, that parent is known as a "serial family obligor." In these cases, the court must
217 determine the order of the parent's child support obligations, because the order determines how much
218 support is owed for each child.
- 219 ▪ *New Date for Non-Marital Children*. For a non-marital child, the legal obligation for child support
220 will now be incurred on the date that paternity was legally established rather than the date that the
221 child support order is entered [7 O.C. 704.8-1(b)(2)]. This change was recommended by the
222 Agency to reflect their current practice and mirror Wisconsin regulations.
- 223 **J. Determining Child Support for Shared-Placement Parents**.
- 224 ▪ *Changes to Overnights and Equivalent Care*. At the recommendation of the Agency, changes have
225 been made to how overnights and periods of equivalent care calculated. These changes now give
226 more consideration to periods of time a parent cares for the child that is not technically an overnight,
227 but where the court determines that a parent is still assuming basic support costs that are equivalent

- 228 to what a parent would spend to care for that child overnight. These changes are consistent with
229 updates to Wisconsin regulations [7 O.C. 704.3-1(o) and 704.8-2(a)(1)].
- 230 ○ *Effect.* The number of overnights and periods of equivalent care are important in
231 determining the percentage of time each parent is caring for the child. That information is
232 one of the factors used by the Court to determine the amount of child support ordered for
233 shared placement parents.
 - 234 ■ *Change in Variable Costs.* A new provision has been added that states that a change in the child’s
235 variable costs will not, in and of itself, be considered a “substantial change in circumstances” to
236 justify a modification of a child support order. These changes are consistent with updates to
237 Wisconsin regulations [7 O.C. 704.8-2(b)(7)].
 - 238 ○ *What are Variable Costs?* “Variable costs” are the reasonable costs above basic support
239 costs incurred by or on behalf of a child, such as the cost of child care, tuition, special needs
240 or other activities [7 O.C. 704.3(mm)].
 - 241 ○ *Effect.* In other words, a change to a child’s variable costs (such as child care) will not, by
242 itself, justify modifying the amount of a child support order. Ultimately, the decision as to
243 whether a change in circumstances justify modification of an order will be up to the Family
244 Court.
- 245 **K. *Determining Child Support Obligations of Split-Placement Parents.*** The formula for calculating child
246 support obligation for a split-placement parent has been clarified. The split-placement formula may be
247 applied when parents have two (2) or more children and each parent has placement of at least one, but
248 not all, of the children.
- 249 ■ *Change to Formula.* The Agency reported that the wording of the formula in the current rule [1.4-
250 3] is unclear, resulting in different interpretations of how to calculate support in these cases. These
251 changes were recommended by the Agency to clarify the formula so that support is calculated
252 correctly and uniformly. [7 O.C. 704.8-3(b)].
- 253 **L. *Expression of Ordered Support.*** The Child Support amount must be expressed as a fixed sum. This
254 means that the child support order must include the specific dollar amount the parent is required to pay.
255 [7 O.C. 704.9-1].
- 256 ■ *Option to Agree to Percentage Deleted.* Previously, parents had the option to agree to a percentage
257 of the obligor’s income instead of a specific dollar amount if both parties agreed through a
258 stipulation. This option has been deleted. Oneida Child Support Agency reports that ordering a
259 specific dollar amount is the standard practice for child support orders.
 - 260 ■ *Modifying an Order.* If the fixed sum in the child support order needs to be modified due to a
261 change in circumstances (for example, a change in income), the parties may request to modify the
262 child support order in accordance with the process included in this law [7 O.C. 704.10].
- 263 **M. *How to Send Income-Withholding Orders.*** After an order to withhold income has been issued, the
264 Child Support Agency is required to send a copy of the order to the obligor’s payor (typically their
265 employer) within three (3) business days. This notifies the payor to start withholding a portion of the
266 obligor’s income for child support.
- 267 ■ *Method for Sending Orders.* Previously, the law stated the order could be sent “by any business
268 method acceptable to the payor” and that the order is binding upon notice through service by
269 personal delivery or certified mail. Now the order can be sent “by mail, fax or electronic means.”
270 [7 O.C. 704.9-3(a)].
 - 271 ■ *Comparison to Other Agencies.* Agencies in the state of Wisconsin send income withholding
272 notices by mail, fax or through the Electronic Income Withholding system known as “e-IWO.”
- 273 **N. *Non-Cash Payment Options.*** The current law states that non-cash payment options may be used to
274 satisfy part or all of a child support order if both parties and the Family Court agree to allow non-cash
275 payments. Examples of non-cash payments include clothing, groceries, child care, deer/venison, wood,
276 transportation and skilled trades and services. The list of non-cash options has been updated to add “gift
277 cards” at the recommendation of the Child Support Agency [7 O.C. 704.9-9(b)].

- 278 ▪ *Comparison.* The Agency reports that tribal nations, such as Oneida, have the option to issue non-
279 cash support orders while county agencies in Wisconsin cannot.
- 280 **O. *Modification of Child Support Order.*** The language in this section has been clarified at the request of
281 the Agency to clearly state when and how a modification of a child support order may occur. There are
282 two ways that a Child Support order may be modified: [7 O.C. 704.10-2].
- 283 ▪ *Modification Sought by Agency.* Every two (2) years, the Oneida Child Support Agency will
284 conduct a review of each child support order. If there is a substantial change in circumstances, the
285 Agency will request an order from the Family Court to modify the child support order.
- 286 ○ *Comparison to WI.* WI Child Support agencies review child support orders every 33
287 months. Oneida Child Support Agency reviews more often in an effort to ensure accurate
288 child support orders.
- 289 ▪ *Modification Sought by Parties.* In addition to the two-year reviews automatically conducted by
290 the Agency, either parent may file a motion for modification of a child support order at any time if
291 there has been a substantial change in circumstances.
- 292 **P. *Substantial Change in Circumstance.*** In order to modify a child support order, there must be a
293 “substantial change in circumstance.” The law includes several examples of what qualifies as a
294 substantial change of circumstance, including a “significant change in finances” [7 O.C. 704.10-2].
- 295 ▪ *Change to “Significant Change in Finances.”*
- 296 ○ *Current Definition.* The current law states that “a significant change in finances” that
297 would lead to a change in child support is “more than fifteen percent (15%) or fifty dollars
298 (\$50.00) per month.”
- 299 ○ *Proposed Definition.* In the amendments, this has been changed to “more than fifteen
300 percent (15%) and fifty dollars (\$50.00) per month.” [704.10-2(b) and 704.3-1(oo)].
- 301 ▪ *Effect.* This change sets a higher threshold to modify a child support order. This means that small
302 changes in finances that do not meet both thresholds will not justify changing a child support order.
303 This change was requested by the Oneida Child Support Agency.
- 304 **Q. *Modification of Child Support for Incarcerated Parent.*** A new section regarding incarcerated parents
305 has been added to the law. This new provision allows for the temporary suspension or modification of
306 a child support order for an incarcerated parent who has been sentenced to at least one hundred and
307 eighty (180) days in jail or prison. In other words, the incarcerated parent will not be required to make
308 child support payments (or may make smaller child support payments) while they are serving time in
309 jail or prison [7 O.C. 704.11].
- 310 ▪ ***Who Qualifies for Modification of Child Support Order?*** An obligor who has been sentenced to
311 180 days or more in jail or prison. The obligor must notify the Agency of his or her incarceration.
312 The obligor’s income level while incarcerated will determine whether the order is suspended or
313 modified [7 O.C. 704.11-1]:
- 314 ○ *Temporary Suspension:* If the obligor has an income of less than \$200 dollars per month,
315 the Child Support order may be temporarily suspended.
- 316 ○ *Temporary Modification:* If the obligor has an income of \$200 per month or more, the
317 Child Support order may be temporarily modified based on the obligor’s income.
- 318 • *Example:* An obligor who continues to receive large per capita payments while
319 incarcerated or who participates in a work release program.
- 320 ○ *Exceptions.* Child Support orders will not be suspended for individuals incarcerated for the
321 following crimes, regardless of the length of sentence or monthly income:
- 322 • Felony failure to pay support;
- 323 • Crime against a child; or
- 324 • Crime against the obligee (i.e., the other parent).
- 325 ○ *Past Due Arrears.* Past due child support debt or arrears will not be suspended or reduced
326 without stipulation (agreement) by both parties. In other words, incarceration does not wipe
327 out any previous child support debt incurred before being sentenced to jail or prison.

Why Modify Child Support Orders for Incarcerated Parents?

Incarcerated parents have little or no ability to earn income during their sentence. This results in accumulation of high levels of child support debt. The Office of Child Support Enforcement (OFCSE) reports that incarcerated parents leave prison with an average of \$20,000 or more in unpaid child support with no means to pay upon release. “This accumulated child support debt is rarely paid.”

The goal of child support is to increase consistent child support payments for children by setting realistic orders based on the parent’s ability to pay. OFCSE reports that “setting and modifying realistic child support obligations for incarcerated parents can improve their ability to provide consistent support for their children upon release from prison... Formerly incarcerated parents will be more likely to meet their child support obligations, benefitting their children by improving child support compliance and reliability.”

In addition, setting realistic child support orders may also reduce “underground employment activity” and increase contact between children and their parents. According to the Office of Child Support Enforcement, “children do not benefit when their parents engage in a cycle of nonpayment, underground income generation, and re-incarceration.”

On December 20, 2016, the OFCSE issued federal rule AT-16-06, “Flexibility, Efficiency, and Modernization in Child Support Enforcement Actions,” which created a standard process for the suspension or modification of child support orders for incarcerated parents. Since then, child support agencies and courts nationwide have implemented this rule.

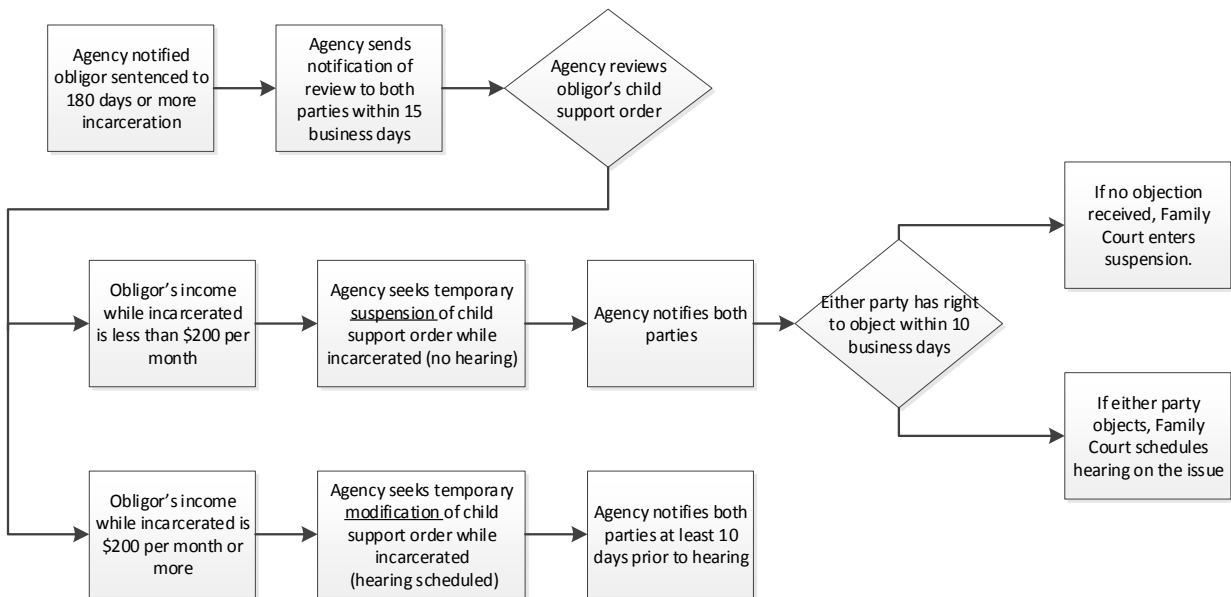
The Oneida Family Court already modifies child support orders for incarcerated parents. The Oneida Child Support Agency supports incorporating this process into Oneida Nation’s Child Support Law. The intent of adding a standard process to the Nation’s Child Support law is to ensure that all incarcerated parents and impacted parties are treated uniformly.

Source: Final Rule Fact Sheets: Flexibility, Efficiency and Modernization in Child Support Enforcement Programs. Office of Child Support Enforcement, Administration for Children and Families, U.S. Dept. of Health and Human Services. January 5, 2017. DCL-17-01. https://www.acf.hhs.gov/sites/default/files/programs/css/fem_final_rule_incarceration.pdf

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- **What is the Process to Suspend or Modify the Order?** The Agency will use the following process to suspend or modify child support orders for incarcerated obligors:
 - *Notice to Both Parties.* Within fifteen (15) business days of receiving verification of the obligor’s incarceration, the Agency will send notice to both parties informing them of the obligor’s right to have his or her child support obligation reviewed, and the Agency’s intent to review the order [7 O.C. 704.11-2].
 - *Agency Review.* The agency will review the incarcerated obligor’s child support order and determine whether the obligor’s monthly income is less than or greater than \$200 per month while incarcerated [7 O.C. 704.11-3].
 - *Suspension of Order by Agency.* If the obligor is sentenced to 180 days or greater with an income of less than \$200 per month, the Agency will file a motion and order to suspend with the Family Court without a request for a hearing [7 O.C. 704.11-4].

- 340 • *Notice & Right to Object.* Notice shall be sent to all parties. Either party may file
- 341 written objection with the Family Court within ten (10) business days. If no
- 342 objection is received, the Family Court will enter the order as proposed. If an
- 343 objection is received, the Family Court will hold a hearing on the issue.
- 344 ○ *Modification of Order by Agency.* If the obligor is sentenced to 180 days or greater with an
- 345 income of \$200 per month or more, the Agency will file a motion with the Family Court
- 346 to modify the child support order [7 O.C. 704.11-5].
- 347 • *Notice & Right to Object.* The Family Court will schedule a hearing and the
- 348 Agency will provide notice to all parties at least ten (10) business days prior to the
- 349 hearing.

351 *Chart 3. Modifying or Suspending Child Support Order for Incarcerated Parent*



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- 357 ■ ***How is the Original Child Support Order Reinstated after the Incarcerated Parent is Released?***
- 358 Sixty (60) days after the obligor is released from jail or prison, the original child support order prior
- 359 to the individual's incarceration will be reinstated by the Agency. [7 O.C. 704.11-8].
- 360 ■ ***What Happens if the Obligor's Probation or Extended Supervision is Revoked?*** If the obligor is
- 361 released from incarceration and is later sentenced to another one hundred and eighty (180) days or
- 362 more in jail or prison, the Agency will use the provisions of this section to determine if another
- 363 suspension or modification of the child support order is appropriate [7 O.C. 704.11-9].
- 364 **R. Compliance Plans.** At any point when the Agency believes an obligor is or may become non-compliant
- 365 with their child support payments, the Agency can work with the obligor to develop a compliance plan.
- 366 ■ ***Purpose of Compliance Plan.*** The purpose of a compliance plan is to address barriers to making
- 367 regular payments so that a parent can once again make regular payments and meet their child
- 368 support obligations [7 O.C. 704.12].
- 369 ■ ***Components of Compliance Plan.*** A compliance plan may include requirements to participate in
- 370 employment and training programs, social service and mental health services, physical and learning
- 371 disability programs, tribal traditions and customs, and family counseling. The agency may suspend
- 372 enforcement actions if the party successfully completes the compliance plan. Failure to complete
- 373 the compliance plan will result in enforcement action [7 O.C. 704.12-2(c)].

- 374 ○ *New Components.* These amendments add parenting programs and “any other programs
 375 deemed necessary” to the list of acceptable programs that can be included in a compliance
 376 plan. The intent is to increase flexibility for the Oneida Child Support Agency to address
 377 unique needs of each obligor.
- 378 ■ *Changes to Timelines and Notice Letters.* The following changes have been made to more
 379 accurately reflect the Child Support Agency’s practices regarding notices and timelines for
 380 initiating compliance plans [7 O.C. 704.12].

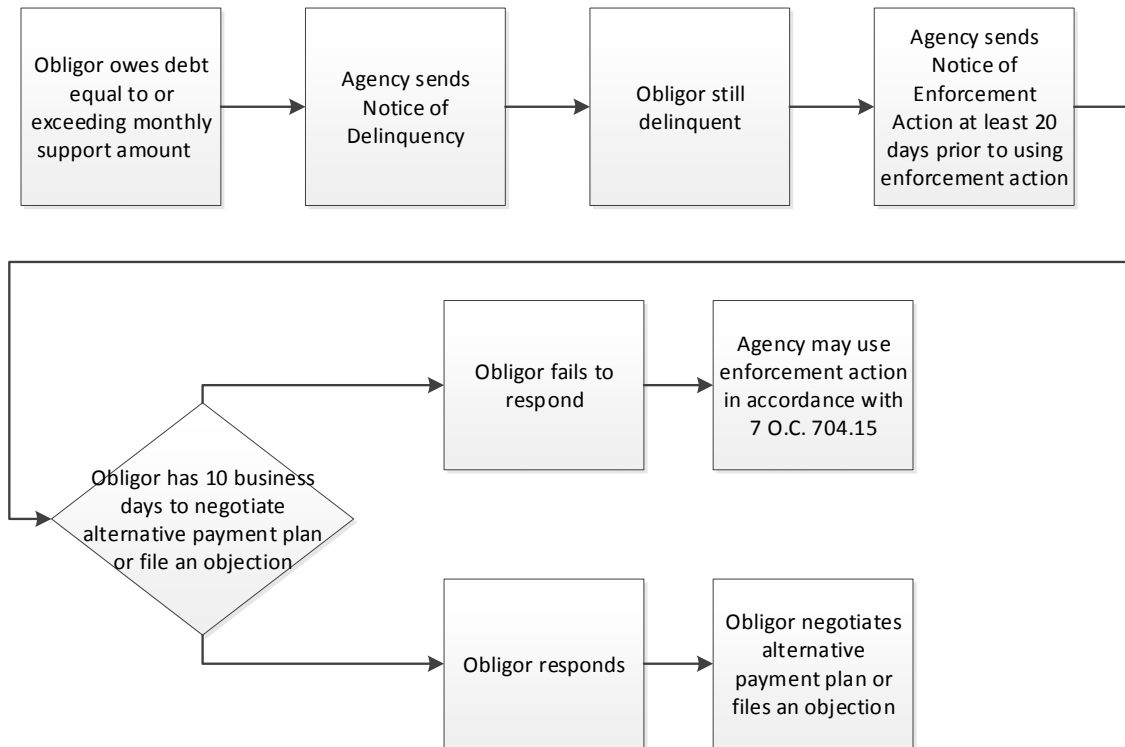
382 *Chart 4. Notice and Timelines for Compliance Plans.*

	Current Law	Proposed Amendments
<i>When is first letter sent?</i>	Within five (5) days of learning of the obligor’s failure to pay.	At any time deemed appropriate, but at least thirty (30) days prior to initiating any enforcement action.
<i>How many days to respond to first letter?</i>	Five (5) days.	Five (5) days.
<i>Agency required to send a 2nd letter?</i>	Yes, agency must send a 2 nd letter regarding the compliance plan.	No, agency not required to send a 2 nd letter regarding the compliance plan.

- 383
- 384 **S. *Notice of Delinquency and Notice of Enforcement.*** When an obligor fails to make their ordered child
 385 support payments, the Agency is required to send notices to the obligor informing them that they are
 386 delinquent. The Oneida Child Support Agency uses a state software system known as “KIDS” to
 387 monitor child support payments and arrears. This system allows the Agency to track and send notices
 388 to delinquent obligors. The Agency suggested the following changes to the notices to more accurately
 389 reflect their practices and ensure compliance:
- 390 ■ *Notice of Delinquency:* The Agency will send this notice to an obligor in the event that the obligor
 391 owes a debt equal to or exceeding the monthly amount. In other words, if the obligor is a month
 392 behind on their payments. This notice will include the total amount of the delinquency and the
 393 enforcement action that may be taken if they do not pay [7 O.C. 704.13-3].
 - 394 ■ *Notice of Enforcement Action.* The Agency will send this notice after the “Notice of Delinquency”
 395 and at least twenty (20) days prior to an enforcement action being used against an obligor. This
 396 notice is more detailed, and will include the total amount of the delinquency, the enforcement action
 397 that may be taken, notice that the obligor may request to negotiate an alternative payment plan
 398 within ten (10) business days in order to stay an enforcement action, and notice that the obligor has
 399 ten (10) business days to file an objection [7 O.C. 704.13-4].
 - 400 ■ *Use of Mail for Notices.* The Agency is required to send notices to the last known-mailing address
 401 provided by the obligor. If notice to that address is returned undeliverable, the Agency must send
 402 notice to the current employer’s mailing address provided by the obligor. If that notice is also
 403 returned, the Agency is then required to use all resources available to identify the obligor’s current
 404 mailing address before they can proceed with an enforcement action [7 O.C. 704.13-5].
 - 405 ○ *Time frame.* Currently, Agency must spend at least sixty (60) days attempting to identify
 406 an obligor’s current mailing address before they can proceed with an enforcement action
 407 [2.4-3 in Rule #2]. These amendments shorten this timeframe to thirty (30) days. This
 408 means that the Agency will be able to use enforcement actions more quickly in cases where
 409 the obligor’s address cannot be determined.

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Chart 5. Notice of Delinquency & Notice of Enforcement Prior to Enforcement Action.



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T. Alternative Payment Plans.

- 419 ■ *Obligors with Cases in Multiple Jurisdictions.* A provision in the law regarding obligors that negotiate alternative payment plans in other jurisdictions (i.e., other County or Tribal child support agencies) has been deleted. This provision informs the reader of requirements of other agencies. The Law Office advises that this is unnecessary within the law and can be incorporated into the Child Support Agency’s internal processes [2.9-10 in Rule #2].
- 424 ■ *Amount of Payment Required to Suspend Enforcement Action.* Currently, the law states that if an obligor makes a “full” arrear payment, an administrative enforcement action will be suspended. This has been changed to “an arrear payment agreeable to the Agency.” The Agency does not require a “full” arrear payment, as this may be tens of thousands of dollars. The Agency may suspend enforcement action in cases where partial payments are made and may work with obligors in arrears to establish alternative payment plans [7 O.C. 704.14-6(a)].

U. Administrative Enforcement Actions. The current Child Support law already contains enforcement actions the Agency has the authority to use if the obligor is at least one (1) month delinquent in paying his or her child support obligations. These current enforcement actions are listed below, with any changes noted: [7 O.C. 704.15].

- 434 ■ *Liens.* The Agency will place the obligor on the lien docket if the obligor owes a debt equal to or exceeding the monthly amount due or five hundred (\$500) dollars, whichever is greater [7 O.C. 704.15-2].
- 437 ■ *Seizure of Property.* The Agency has the authority to seizure property, including accounts and personal property. The Agency may initiate account seizure if the lien amount in the obligor’s case equal or exceeds 300% of the monthly amount due or one thousand dollars (\$1000), whichever is greater. The Agency may initiate seizure of personal property if the lien amount equals or exceeds 600% of the monthly amount due [7 O.C. 704.15-3].

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- 442 ▪ *Attachment of Per Capita Payments.* The Agency may initiate the attachment or seizure of per
443 capita payments of members of the Nation in accordance with the Nation’s Per Capita law [7 O.C.
444 704.15-4].
- 445 ▪ *License Suspension.* The Agency may initiate the suspension or denial of both state and Oneida
446 issued licenses if there is a lien against an obligor that equals or exceeds 300% of the monthly
447 amount due or one thousand dollars (\$1000), whichever is greater [7 O.C. 704.15-5].
- 448 ○ *Types of licenses:* The types of licenses that the Agency may initiate suspension or denial
449 of include, but are not limited to, vendor, professional, occupational, hunting, fishing,
450 recreational and/or motor vehicle licenses.
- 451 ○ *Change to License Suspension as Last Resort:* A provision stating that “suspension of an
452 occupational and/or motor vehicle license shall be pursued only as a last resort” has been
453 deleted [2-7(2)(a) in Rule #2]. This will give the Agency the ability to pursue license
454 suspension more readily.
- 455 ▪ *Lump-Sum Pension Payments, Judgments and Settlement Intercepts.* Once an obligor has been
456 placed on the lien docket, the Agency may initiate the intercept of lump-sum pension payments,
457 judgments and/or settlements [7 O.C. 704.15-6].
- 458 ▪ *Tax and Lottery Intercepts.* The Agency may coordinate with federal or state agencies to enforce a
459 child support order through tax or lottery intercept [7 O.C. 704.15-7].
- 460 ▪ *Passport Denial.* If a federal tax intercept is in place and the obligor owes \$2500 or more in arrears,
461 an obligor may be denied a passport [7 O.C. 704.15-8].
- 462 ○ *Change to Threshold.* The threshold for denying a passport has been lowered from \$5,000
463 to \$2,500 to be consistent with recent changes to this threshold by the federal government.
464 This allows this enforcement tool to be used more readily.
- 465 ▪ *Denial of State Issued Grants and Loans.*
- 466 ○ *Deleted Provision.* A provision stating that Wisconsin state agencies may deny state-issued
467 grants and loans has been deleted. The Law Office recommended deleting this item as it
468 was unnecessary, as it is informing the reader of what the State of Wisconsin, not Oneida
469 Nation, may do [2.5-6 in Rule #2].
- 470 **V. Contempt.** In addition to the administrative actions listed above, the current child Support Law also
471 gives the Family Court authority to order certain enforcement actions. An obligor who disobeys a lawful
472 child support order will be subject to punishment for contempt of court. A definition for “contempt”
473 has been added, which means “a willful disregard of the authority of the court or disobedience to its
474 lawful orders” [7 O.C. 704.3-1(j)]. The following enforcement actions already appear in the current
475 law but have now been moved under the “Contempt” section. The intent is to clarify that the obligor
476 must first be found in contempt by the Family Court before the court can proceed with the following
477 enforcement actions:
- 478 ▪ *Community Service.* The Family Court may order an obligor to perform community service [7 O.C.
479 704.16-2(a)].
- 480 ▪ *Fines.* An obligor found in contempt of court may be fined no more than \$1,000 per act of contempt,
481 not to exceed \$5,000 in total [7 O.C. 704.16-2(b)].
- 482 ▪ *Incarceration.* The Family Court may order an obligor to be incarcerated. Before a jail sentence is
483 imposed, the Family Court may provide other conditions that require a certain amount of money
484 be paid or action be taken for an obligor to avoid incarceration [7 O.C. 704.16-2(c)].
- 485 ○ *Current Practice.* The current law allows for the Family Court to order an obligor to be
486 incarcerated. However, in practice, the Family Court has never sentenced an obligor to jail
487 because the Oneida Nation has no jail and does not have agreements in place with other
488 jails to house individuals sentenced under this law. For more information see Section 9
489 “Other Considerations.”
- 490 ▪ *Criminal Non-Support.* A criminal non-support action may be initiated, in the appropriate county,
491 against an obligor who has the ability to pay child support and willfully or intentionally failed to

- 492 pay. The Agency reports that criminal non-support is rarely used in Brown and Outagamie counties
493 [7 O.C. 704.16-2(d)].
- 494 ■ *Bonds and Other Guarantees.* The Family Court may order an obligor to provide a bond or
495 guarantee if income withholding is not applicable or practical [7 O.C. 704.16-2(e)].
 - 496 ■ *Claims Against Estates.* The Family Court may approve a claim for past and future support against
497 an obligor’s estate or issue a restraining order against an estate that an obligor is set to inherit [7
498 O.C. 704.16-2(f)].
- 499 **W. Minor Drafting Changes.** Minor drafting and formatting changes have been made throughout the law
500 for clarity.
501

502 SECTION 6. RELATED LEGISLATION

- 503 **A. References to Other Laws.** The following laws of the Nation are referenced in the Child Support law.
504 These amendments do not conflict with any of the referenced laws.
- 505 ■ *Per Capita law.* The Child Support Agency may initiate the attachment or/seizure of per capita
506 payments of members of the Nation in accordance with the Per Capita law [7 O.C. 704.15-4].
 - 507 ■ *Oneida Judiciary Rules of Civil Procedure.* The Family Court may utilize discovery procedures
508 and contempt powers as authorized by any law, policy, or rule of the Nation to obtain information
509 relevant to the establishment or enforcement of child support [7 O.C. 704.6-2].
 - 510 ■ *Rules of Appellate Procedure.* A party may appeal a Family Court decision, other than the decision
511 of the Family Court in regard to administrative enforcement action, to the Nation’s Court of
512 Appeals within thirty (30) calendar days after the date the Family Court made the decision. The
513 review of the Court of Appeals shall be based on the record and original decision of the Family
514 Court [7 O.C. 704.18].
- 515 **B. Other Laws that Reference Child Support.** The following laws of the Nation reference child support.
516 These amendments do not conflict with any of the referenced laws, except for one potential discrepancy
517 in the Family Court law.
- 518 ■ *Family Court law.* The Family Court law states that proceedings of the Court shall be closed to the
519 public, except that divorce, child support and post-divorce matters may be attended by members of
520 the general public. However, in any case where the presiding Judge determines that there are safety
521 or confidentiality concerns, the Judge may exclude from the proceedings all individuals not
522 necessarily present as parties of witnesses [8 O.C. 806.4-3].
 - 523 ○ *Comparison to Child Support law.* The Family Court law states that child support matters
524 may be attended by members of the general public, unless the presiding judge determines
525 that there are safety or confidentiality concerns. However, the current Child Support law
526 (and the proposed amendments) state that Child Support proceedings shall be closed to any
527 person other than those necessary to the action or proceeding [7 O.C. 704.6-5 in current
528 Child Support law]. The Family Court law was adopted by the OBC on May 8th, 2013,
529 while the current Child Support law was adopted more recently, on August 13, 2014.
 - 530 ○ *Current Practice.* The Family Court reports that child support hearings are currently closed
531 in accordance with the Child Support law.
 - 532 ○ *Conclusion:* In reviewing amendments to this law, the LOC has expressed that they wish
533 to protect the privacy of matters involving children. Given the inconsistent language
534 between the two laws, the LOC may wish to amend the Family Court law to match the
535 hearing provisions in the Child Support law and the Family Court’s current practice. Since
536 the Family Court law is not currently on the LOC’s Active Files List, the LOC could direct
537 the Legislative Reference Office to make note of this discrepancy the next time the Family
538 Court law comes up for amendments.
 - 539 ■ *Family Court Rules.*

- 540 ○ *Family Court Rule #5 – Paternity Procedure.* If genetic testing results establish an alleged
541 father as the biological father, the Family Court may address the issue of Child Support at
542 a final paternity hearing [8 O.C. 807].
- 543 ○ *Family Court Rule #12 – Foreign Child Support orders.* Requests, motions or petitions
544 seeking recognition and enforcement of a foreign child support order is governed by this
545 rule when filed under the Nation’s Child Support Law or Garnishment law. The rule
546 outlines the process for sending notice of the filing, filing objections, requesting a hearing,
547 and authenticating the foreign order [8 O.C. 807].
- 548 ■ *Workers Compensation Law.* Workers compensation awards are subject to child support income
549 withholding and other remedies available for the support of a child support order. The maximum
550 amount that may be withheld is one-half of the compensation award. [2 O.C. 203.7-4].
- 551 ■ *Garnishment Law.*
- 552 ○ *Garnishment Amount.* In calculating the amount of the garnishment per pay period, the
553 judge may not include amounts garnished pursuant to child support orders when calculating
554 twenty (20%) of the debtor’s disposable earnings [2 O.C. 205.5-6(c)(1) and 205.6-4(a)(2)].
- 555 ○ *Recognition and Enforcement of Child Support Orders.* The Judiciary shall recognize and
556 enforce child support orders against any employee, provided that the order has been issued
557 from a court of competent jurisdiction. [2 O.C. 204.7].
- 558 ■ *Paternity Law.* The Paternity law outlines the process to establish paternity of Oneida children and
559 other children in order to protect the best interest of these children. The duties and responsibilities
560 of the Child Support Agency in the establishment of paternity through order of the Oneida Family
561 Court are outlined in the Paternity law. The Child Support Agency, when required by federal law,
562 may file a petition requesting the court to establish paternity or other related orders. The Child
563 Support Agency may also assist a party who is filing a petition to establish the paternity of a child
564 [see 7 O.C. 703.6].
- 565 ○ *Commencing a Custody Proceeding.* A child custody proceeding is commenced by a parent
566 by filing a petition to: (a) seek custody of a child, (b) establish the paternity of a child; (c)
567 establish a child support order...” [see 7 O.C. 705.6-1]
- 568 ○ *Peacemaking and Mediation.* Child support shall not be considered during mediation
569 unless child support is directly related to the legal custody or physical placement of the
570 child and the parties agree, in writing, to consider child support. [see 7 O.C. 705.7-3(b)].
- 571 ■ *Per Capita Law.* Per capita payments may be attached for child support arrears ordered by a court
572 of competent jurisdiction, such as the Oneida Family Court. The Per Capita law includes a process
573 for how child support attachments are handled by the Agency and Trust Enrollment Department.
574 [1 O.C. 123.4-9(a)(1) and 1 O.C. 123.4-9(c)].
- 575 ■ *Children’s Code.* At the time this analysis was drafted, the Nation’s Children’s Code was not
576 scheduled to become effective until October 1, 2019.
- 577 ○ *Indian Child Welfare Department Duties.* One of the duties of the Indian Child Welfare
578 Department is to enter into memorandums of understanding and/or agreements with
579 appropriate departments, including the Oneida Child Support Agency, in order to carry out
580 the provisions of the Children’s Code. [7 O.C. 708.7-2(e)].
- 581 ○ *Referrals to Oneida Child Support.* The Family Court or Indian Child Welfare Department
582 may refer matters to the Oneida Child Support Agency at any time. [7 O.C. 708.13-3 &
583 13-4].
- 584 ○ *Indian Child Welfare Disposition Report.* If the ICW Department recommends out-of-
585 home placement, the ICW Department must include in its disposition report a
586 recommendation as to whether the Family Court should establish child support obligation
587 for the parents. [7 O.C. 708.21-2(b)].
- 588 ○ *Termination of Parental Rights.* The Family Court may dismiss a petition if it finds the
589 evidence does not warrant the termination of parental rights or if the Court finds that a

- 590 parent is attempting to voluntarily terminate their parental rights for the sole purpose of
 591 avoiding a child support obligation. [7 O.C. 708.40-2(a)].
- 592 ■ *Divorce, Annulment and Legal Separation.*
 - 593 ○ *Petitions.* Petitions for divorce, annulment or legal separation must state whether the parties
 594 have entered into any written agreement as to child support, and if so, the written agreement
 595 must be attached [7 O.C. 702.5-1(g)].
 - 596 ○ *Legal Separation and Divorce.* After an action for an annulment, legal separation or
 597 divorce is initiated, the Family Court shall make any necessary temporary order concerning
 598 child support. Final orders concerning child support shall be made at the time the
 599 annulment, legal separation or divorce is granted. [7 O.C. 702.8-4].
 - 600 ■ *Child Custody, Placement and Visitation.*
 - 601 ○ *Commencement of Proceeding.* A child custody proceeding may be commenced under the
 602 Child Custody, Placement and Visitation play by a parent filing a petition to seek custody
 603 of a child, establish the paternity of a child, or establish a child support order. [7 O.C.
 604 705.6-1].
 - 605 ○ *Mediation.* If parties agree to mediation under the Child Custody, Placement and Visitation
 606 law, child support shall not be considered during mediation unless child support is directly
 607 related to legal custody or physical placement of the child and the parties agree, in writing,
 608 to consider child support. [7 O.C. 705.7-3(b)].
 - 609

610 **SECTION 7. EFFECTS ON EXISTING RIGHTS, PRIVILEGES, OR OBLIGATIONS**

- 611 A. *New Rights and Privileges for Incarcerated Parents.* Parents sentenced to incarceration for greater
 612 than one hundred and eighty (180) days will now have the right to have their child support orders
 613 modified or suspended under certain circumstances. Parties have the right to object to modification or
 614 suspension of an order and request a hearing on the matter [7 O.C. 704.11].

615

616 **SECTION 8. ENFORCEMENT AND ACCOUNTABILITY**

- 617 A. *Enforcement Tools.* Under the current Child Support law, the Oneida Child Support Agency and
 618 Oneida Family Court have a number of administrative and judicial enforcement tools to enforce child
 619 support orders. These include:
- 620 ■ *Administrative (Agency) Enforcement Tools:* Liens, Seizure of Property including account seizure
 621 and personal property, attachment of per capita payments, license suspension, pension, judgment
 622 and settlement intercepts, tax and lottery intercepts and passport denial [7 O.C. 704.15].
 - 623 ■ *Judicial Enforcement Tools:* Bonds and other guarantees, claims against estates, contempt,
 624 community service, incarceration and criminal non-support [7 O.C. 704.16].
 - 625

626 **SECTION 9. OTHER CONSIDERATIONS**

- 627 A. *Child Support Collection Rates by Agency.* The following provides examples of collection rates for
 628 country and tribal child support agencies as of July 2018:

629
 630 *Chart 6. Child Support Collection Rates by Agency:*

County or Tribal Agency	Court Cases with Current Support Ordered	Court Cases with Current Support Payments	Collection Rate
Oneida Nation	937	471	50.27%
Lac du Flambeau	256	78	30.47%
Menominee Nation	493	229	46.45%

Ashland County	622	375	60.29%
Brown County	6169	4545	73.67%
Calumet County	1019	828	81.26%
Ho Chunk Nation	145	130	89.66%

Source: Oneida Child Support Agency, August 2018.

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- B. *Repeal of Child Support Rules No. 1 and 2.*** Child Support Law Rule No. 1 – Deviation from Child Support and Child Support Law Rule No. 2 – Enforcement Tools have now been incorporated into the body of the law itself. Therefore, the two rules will be repealed upon adoption of these amendments as they will become redundant.
- *Conclusion:* The repeal of the Child Support Law Rules No. 1 and No. 2 is included in the adopting resolution for these amendments.
- C. *Paternity Law.*** During the development of these amendments, the Oneida Child Support Agency noted that updates to the Nation’s Paternity law may be needed. The establishment of paternity is an important step in setting child support orders. The Nation’s Paternity law was last amended by the Oneida Business Committee in 2014.
- *Recommendation:* If the Oneida Child Support Agency wishes to request amendments to the Paternity law, it is recommended that the agency submit an Active Files Request to the LOC.
- D. *Potential Enforcement Tools Considered and Not Added.*** During the development of these amendments, the LOC and Child Support Agency researched potential new enforcement tools to increase collection of child support orders. After reviewing the research and feedback from departments, the LOC decided not to move forward with adding these new tools to the law. The potential enforcement tools considered included:
- *Immobilization of Vehicles.* Authorizing the Family Court or Child Support Agency to direct Oneida Police Department to place a “boot” or “wheel lock” on an obligor’s vehicle to immobilize it. The obligor would then have to contact the Agency to make a payment or negotiate a plan to have the “boot” removed.
 - *“Pocket Pulls.”* Ordering an obligor to empty his or her pockets while in Oneida Nation’s court.
 - *“Till Taps.”* Seizing money from an obligor’s business if it is located on the Reservation.
- E. *Incarceration.*** The current Child Support law already allows the Family Court to sentence parents who are delinquent in their child support payments to jail time. However, this authority has never been used by the Family Court. This is because, unlike Wisconsin counties or other tribal nations, the Oneida Nation does not have any jail facilities. The Agency reports that delinquent obligors with cases in the Oneida Child Support system are aware that, unlike other courts, Oneida Nation’s Family Court cannot send them to jail for failing to pay their child support.
- *Incarceration as a Tool to Encourage Compliance.* While the goal of the Child Support Agency is not to send anyone to jail, the threat of jail time may motivate obligors to make payments in the most egregious of cases. For example, cases where a parent is known to be earning money on a cash basis and all previous attempts to compel payments or negotiate an agreement have failed. In these cases, delinquent obligors could be ordered to make a partial payment or meet with the Child Support Agency to develop an alternative payment plan or else be sentenced to jail [7 O.C. 704.16-2(c)].
 - *Agreement for Housing Inmates:* The Family Court reports that it will not sentence individuals to jail without an agreement in place with another jail to house our inmates. Therefore, in order for the Family Court to use incarceration as an enforcement tool, agreements must be developed between the Nation and Brown and/or Outagamie counties to utilize their jail facilities. The Agency is aware of examples of other Wisconsin tribes establishing similar agreements with other counties. The Oneida Business Committee previously established a workgroup including Intergovernmental Affairs and the Law Office to explore potential agreements with Brown and Outagamie counties.

676 ▪ *Conclusion:* The current Child Support law already authorizes the Family Court to use incarceration
677 as an enforcement tool in Child Support cases. However, this feature of the law cannot be used
678 unless an agreement is developed between the Nation and Brown and/or Outagamie County to
679 utilize their jail facilities. Whether to pursue such an agreement is policy decision for the the Oneida
680 Business Committee.

681

Title 7. Children, Elders and Family - Chapter 704

CHILD SUPPORT

shakoti'nukú·lale? latiksashúha?

They watch over the children

CHILD SUPPORT

704.1. Purpose and Policy	704.10. Modification of a Child Support Order
704.2. Adoption, Amendment, Repeal, Other Laws and Agency Rules	704.11. Modification of a Child Support Order for an Incarcerated Parent Full Faith and Credit for Foreign Child Support Orders
704.3. Definitions	704.12. Compliance Plan Right of Appeal
704.4. Jurisdiction	704.13. Enforcement of an Order
704.5. Initiating an Action for Child Support Orders	704.14. Alternative Payment Plans
704.6. Child Support Hearing Procedures	704.15. Administrative Enforcement Action
704.7. Determining the Child Support Obligation Determination	704.16. Family Court Contempt Enforcement Action
704.8. Determining the Child Support Obligation in Special Circumstances Content and Effect of Order	704.17. Full Faith and Credit for Foreign Child Support Orders
704.9. Enforcement of Child Support Order	704.18. Right of Appeal

1 2 **704.1. Purpose and Policy**

3 704.1-1. *Purpose.* The purposes of this law **are** ~~is~~ to:

- 4 (a) Establish the legal responsibility of parents to provide financially for their children's
5 general well-being;
6 (b) Make support payments more equitable by ensuring consistent treatment of persons in
7 similar circumstances;
8 (c) Make support payments based on the real earning capability of parents; and
9 (d) Improve the efficiency of child support establishment and enforcement.

10 704.1-2. *Policy.* It is the policy of this law to:

- 11 (a) establish an adequate standard of support for children whose paternity has been
12 established or acknowledged;
13 (b) encourage the use of ~~voluntary agreements~~ **stipulations** to resolve disputes over child
14 support obligations; ~~and~~
15 (c) limit the use and disclosure of personal information received or maintained by the
16 **Nation's** Family Court ~~and~~/or the Oneida ~~Tribe~~ **Nation** Child Support Agency in order to
17 protect the privacy rights of all parties and children who are involved in proceedings or
18 actions under this law.

19 20 **704.2. Adoption, Amendment, Repeal, ~~Other Laws and Agency Rules~~**

21 704.2-1. This law was adopted by the Oneida Business Committee by resolution BC-06-24-09-B
22 and amended by resolutions BC-02-24-10-G, BC-02-23-11-E, BC-06-22-11-K, BC-10-10-12-C,
23 ~~and BC-08-13-14-E, and BC- - - - .~~

24 704.2-2. This law may be amended ~~pursuant to the procedures set out in the Oneida Administrative~~
25 ~~Procedures Act or repealed~~ by the Oneida Business Committee or the Oneida General Tribal
26 Council **pursuant to the procedures set out in the Legislative Procedures Act.**

27 704.2-3. Should a provision of this law or the application thereof to any person or circumstances
28 be held as invalid, such invalidity shall not affect other provisions of this law which are considered
29 to have legal force without the invalid portions.

30 704.2-4. In the event of a conflict between a provision of this law and a provision of another law,
31 ~~ordinance, policy, regulation, rule, resolution, or motion~~, the provisions of this law shall control.

32 ~~Provided that, nothing in this law is intended to repeal or modify any existing law, ordinance,~~
33 ~~policy, regulation, rule, resolution or motion.~~

34 704.2-5. This law is adopted under authority of the Constitution of the Oneida ~~Nation Tribe of~~
35 ~~Indians of Wisconsin.~~

36 ~~704.2-6. Any Agency requirements which would affect individuals outside the Agency and do not~~
37 ~~relate to the internal management of the Agency shall require Oneida Business Committee~~
38 ~~approval in the form of a law or rule.~~

39

40 **704.3. Definitions**

41 704.3-1. This section shall govern the definitions of words and phrases used within this law. All
42 words not defined herein shall be used in their ordinary and everyday sense.

43 (a) ~~“Administrative enforcement action” means enforcement actions taken by the Oneida~~
44 ~~Nation Child Support Agency authorized by federal regulations which are taken~~ to enforce
45 ~~a child support order without obtaining an order from the Family Court.~~

46 (b) “Agency” ~~shall mean means~~ the Oneida ~~Nation Tribe~~ Child Support Agency
47 established to administer and supervise the ~~Nation’s Tribe’s~~ child support enforcement
48 program.

49 (c) ~~“Alternative payment plan” or “plan” means a negotiated agreement between the~~
50 ~~Agency and an obligor, or an order set by the Family Court, to establish terms and~~
51 ~~conditions for the payment of arrears.~~

52 (d) ~~“Basic support costs” means food, shelter, clothing, transportation, personal care, and~~
53 ~~incidental recreational costs.~~

54 (e) ~~“Business day” means Monday through Friday from 8:00 a.m. to 4:30 p.m., excluding~~
55 ~~holidays recognized by the Nation.~~

56 (f) “Child” ~~shall mean means~~ a ~~biological natural~~ or adopted child of the obligor under the
57 age of eighteen (18), or any person who is less than nineteen (19) years old if he or she is
58 pursuing a high school diploma or its equivalent from an accredited course of instruction.

59 (g) “Child support” means the total financial obligation a parent has towards his or her
60 child as established through judicial and/or administrative processes.

61 (h) ~~“Child Support Obligation of Low-Income Payers Schedule” means the Wisconsin~~
62 ~~Department of Children and Families Child Support Obligation of Low-Income Payers at~~
63 ~~the Federal Poverty Guidelines, found in DCF 150 Appendix C.~~

64 (i) “Child support order” ~~shall mean means~~ a judgment of the Family Court or a court of
65 competent jurisdiction ordering payment of child support which provides monetary
66 support, health care, arrearages, or reimbursement, and which may include related costs
67 and fees, interest and penalties, income withholding, attorney’s fees and other relief.

68 ~~(e) “Clerk” shall mean the designated clerk in the Family Court who is identified to carry~~
69 ~~out certain provisions in this law.~~

70 (j) ~~“Contempt” means a willful disregard of the authority of a court or disobedience to its~~
71 ~~lawful orders.~~

72 (k) ~~“Current six (6) month treasury bill rate” means the yield of a U.S. government security~~
73 ~~with a term of six (6) months.~~

74 (l) “Custodial parent” ~~shall mean means~~ the parent who exercises physical custody of the
75 child pursuant to a custody order, on the basis of agreement between the parents or in the
76 absence of one parent. A legal guardian with primary physical custody of the child or
77 children and standing in the position of the parent shall have the same rights to child support
78 as a custodial parent.

79 (m) “Employer” ~~shall mean means~~ any individual, business, government, institution, or
80 other entity paying wages to one or more employees.

81 (n) “Equity” means the fair market value of property minus the liens on that property with
82 priority over the child support lien.

83 (o) “Equivalent care” means a period of time during which the parent cares for the child
84 that is not overnight, but is determined by the court to require the parent to assume the
85 basic support costs that are substantially equivalent to what the parent would spend to care
86 for the child overnight. Blocks of time with the child of at least six (6) hours may be
87 considered the equivalent of a half-day if a meal is provided during that time period. Two
88 (2) half-day blocks may be considered the equivalent of an overnight.

89 (p) “Family Court” ~~shall mean means~~ the ~~judicial arm branch~~ of the ~~Tribe Nation’s~~
90 Judiciary that is designated to handle all matters ~~under this Law~~ related to the family and/or
91 children.

92 (q) “Gross income” ~~shall mean means~~ any form of payment due to an individual regardless
93 of source, including, but not limited to:

- 94 (1) Salary and wages, including overtime pay;
- 95 (2) Interest and investment income;
- 96 (3) Social Security disability and old age insurance benefits under 42 U.S.C. §401
97 to 433;
- 98 (4) Net proceeds resulting from worker’s compensation or other personal injury
99 awards intended to replace income;
- 100 (5) Unemployment insurance;
- 101 (6) Income continuation benefits;
- 102 (7) Voluntary deferred compensation and ~~voluntary~~ employee contributions to the
103 following: employee benefit plan, profit-sharing, pension or retirement account;
- 104 (8) Military allowances and veterans disability compensation benefits;
- 105 (9) Undistributed income of a corporation or any partnership in which the parent
106 has an ownership interest sufficient to individually exercise control or to access the
107 earnings of the business, unless the income included is an asset;
- 108 (10) Per capita distribution payments;
- 109 (11) Lease or rental income;
- 110 (12) Prizes over one thousand dollars (\$1,000); and
- 111 (13) All other income, whether taxable or not, except that gross income does not
112 include any of the following:
 - 113 (A) Child support;
 - 114 (B) Foster care payments;
 - 115 (C) Kinship care payments;
 - 116 (D) Public assistance benefits, except that child care subsidy payments shall
117 be considered income to a child care provider;
 - 118 (E) Food stamps;
 - 119 (F) Public assistance or financial hardship payments paid by a county or a
120 ~~tribe Nation~~;
 - 121 (G) Supplemental Security Income under 42 U.S.C. §1381 to 1383(f) and
122 state supplemental payments; or
 - 123 (H) Payments made for social services.

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

- 127
- 128 (s) “Immediate family member” means an individual’s husband, wife, mother, father, step-
- 129 mother, step-father, son, daughter, step-son, step-daughter, brother, sister, step-brother,
- 130 step-sister, grandparent, grandchild, mother-in-law, father-in-law, daughter-in-law, son-in-
- 131 law, brother-in-law or sister-in-law and any of the these relations attained through legal
- 132 adoption.
- 133 (t) “Income withholding” means the process whereby a court order, Family Court order,
- 134 or voluntary wage assignment directs an employer, bank, or agent holding monies or
- 135 property of an obligor, to make payments or deliver property to satisfy a child support
- 136 obligation.
- 137 (u) “Intact family” means a family in which the child or children and the obligor reside in
- 138 the same household and the obligor shares his or her income directly with the child or
- 139 children and has a legal obligation to support the child or children.
- 140 (v) “Legally incompetent adult” shall mean means a person at least eighteen (18) years old
- 141 who has been declared incompetent by a court of competent jurisdiction because he or she
- 142 is temporarily or permanently impaired to the extent that the person lacks sufficient
- 143 understanding to make or communicate responsible personal decisions.
- 144 (w) “Lien amount” means the difference between the monthly amount of support due and
- 145 the arrears in a case.
- 146 (x) “Lien docket” means the registry kept by the State of Wisconsin containing the names
- 147 of people who owe past-due child support.
- 148 (y) “Low-income obligor” means an obligor for whom the Family Court uses the monthly
- 149 support amount provided in the schedule in ~~Appendix A~~ the Child Support Obligation of
- 150 Low-Income Payers Schedule based on the Family Court’s determination that the obligor’s
- 151 total economic circumstances limit his or her ability to pay support at the level provided
- 152 under 704.7-2(a) standard percentages and the obligor’s income is at a level set forth in the
- 153 schedule in ~~Appendix A~~ the Child Support Obligation of Low-Income Payers Schedule.
- 154 (z) “Marital child” means a child born during the marriage of his or her parents. In
- 155 addition, if the father and mother of a non-marital child enter into a lawful marriage or a
- 156 marriage which appears and they believe is lawful, except where the parental rights of the
- 157 mother were terminated before either of these circumstances, the child becomes a marital
- 158 child and shall enjoy all of the rights and privileges of a marital child as if he or she had
- 159 been born during the marriage of the parents. The children of all marriages declared void
- 160 under the law are nevertheless marital children.
- 161 (aa) “Monthly income” shall mean means the obligor’s annual gross income or, if
- 162 applicable, the obligor’s annual income modified for business expenses; plus the obligor’s
- 163 annual income imputed based on earning capacity; plus the obligor’s annual income
- 164 imputed from assets; divided by twelve (12).
- 165 (bb) “Nation” means the Oneida Nation.
- 166 (cc) “Non-custodial parent” shall mean means the parent of a child who does not hold
- 167 primary care, custody and/or control of a child.
- 168 (dd) “Non-legally responsible relative” means a relative person connected with a child by
- 169 blood, marriage, or adoption who assumes responsibility for the care of a child without
- 170 legal custody, but is not in violation of a court order. ~~A “Non-legally responsible relative”~~
- 171 does not include a relative who has physical custody of a child during a court-ordered
- 172 visitation period.
- 173 (ee) “Obligee” shall mean means the person or entity to whom child support is owed.

- 174 ~~(ff)~~ “Obligor” ~~shall mean means~~ the person who is obliged to pay child support to the
175 obligee.
- 176 ~~(gg)~~ “Ownership interest” means any personal financial interest.
- 177 ~~(hh)~~ “Parent” means the ~~biological natural~~ or adoptive parent of the child.
- 178 ~~(ii)~~ “Payor” ~~shall mean means~~ a person or entity with a legal obligation, as an employer,
179 buyer of goods, debtor, or otherwise, to pay an obligor.
- 180 ~~(+)~~ “Relative” means any person connected with a child by blood, marriage or adoption.
- 181 ~~(jj)~~ “Reservation” ~~shall mean means~~ all lands within the exterior boundaries of the
182 Reservation of the Oneida ~~Nation Tribe of Indians of Wisconsin~~, as created pursuant to the
183 1838 Treaty with the Oneida, 7 Stat. 566, and any lands added thereto pursuant to federal
184 law.
- 185 ~~(kk)~~ “Serial family obligor” means an obligor with an existing legal obligation for child
186 support who incurs an additional legal obligation for child support in a subsequent family
187 as a result of a child support order.
- 188 ~~(ll)~~ “Shared-placement obligor” means a parent who has an ordered period of placement
189 of at least twenty-five percent (25%), is ordered by the Family Court to assume the child’s
190 basic support costs in proportion to the time that the parent has placement of the child and
191 is determined to owe a greater support amount than the other parent.
- 192 ~~(mm)~~ “Split-placement obligor” means an obligor who has two (2) or more children and
193 who has physical placement of one (1) or more children but not all of the children.
- 194 ~~(nn)~~ “Stipulation” means a voluntary agreement between parties concerning some relebatn
195 point.
- 196 ~~(mmoo)~~ “Substantial change of income” means the obligor has a significant change in his
197 or her finances that would lead to a change in child support of more than fifteen percent
198 (15%) and fifty dollars (\$50.00) per month.
- 199 ~~(napp)~~ “Variable costs” means the reasonable costs above basic support costs incurred by
200 or on behalf of a child, including but not limited to, the cost of child care, tuition, a child’s
201 special needs, and other activities that involve substantial cost.
- 202 ~~(oqq)~~ “Threshold” means an amount, expressed as either a percentage of the monthly
203 amount due, a fixed dollar amount, or both, that the lien amount must equal or exceed
204 before an administrative enforcement action may be used to enforce a child support order.
- 205 ~~(t)~~ “Tribe” or “Tribal” shall mean the Oneida Tribe of Indians of Wisconsin.
- 206 ~~(u)~~ “Wage Withholding” shall mean the process whereby a court order, Family Court
207 order or voluntary wage assignment directs an employer, bank or agent holding monies or
208 property of an obligor, to make payments or deliver property to satisfy a child support
209 obligation.

704.4. Jurisdiction

704.4-1. The Family Court has jurisdiction over any action brought under this law.

704.4-2. *Personal Jurisdiction.* Personal jurisdiction over an individual under this law may be established where one party or a child of the parties is any of the following:

- 215 (a) a member of the ~~Tribe; or~~ Nation;
- 216 (b) a resident of the Reservation who is also a member of an Indian tribe, band or
217 community which is recognized by a State or the federal government;
- 218 (c) a resident of the Reservation who is also the biological parent of a the child that is
219 enrolled or is eligible for enrollment with the ~~Tribe~~ Nation; ~~or~~

220 (d) an individual who consents to the jurisdiction of the Family Court by one (1) of the
221 following means:

222 (1) Filing an action with the Family Court;

223 (2) Knowingly and voluntarily giving written consent to the jurisdiction of the
224 Family Court;

225 (3) Entering a notice of appearance before the Family Court in an action without
226 concurrently preserving the defense of lack of personal jurisdiction or filing a
227 motion to dismiss for lack of personal jurisdiction within thirty (30) days of entering
228 the notice of appearance; or

229 (4) Appearing in an action before the Family Court without asserting the defense
230 of lack of personal jurisdiction.

231 704.4-~~23~~. Personal jurisdiction over the other party may be established using any method provided
232 by law, including long-arm jurisdiction procedures as provided for in Section 201 of the Uniform
233 Interstate Family Support Act as referred to in 42 ~~USC Section~~ U.S.C. §666.

234 704.4-~~34~~. *Transfer of Cases from Other Courts*. If personal jurisdiction over the parties has been
235 established under ~~704.4-1 or 704.4-2~~ this law, the Family Court has jurisdiction over any action
236 transferred to the Family Court from any court of competent jurisdiction.

237 **704.5. Initiating an Action for Child Support Orders**

238 704.5-1. Every parent has a duty to support each and every child of that parent. A child support
239 order may be obtained from the Family Court by either submitting a voluntary agreement to the
240 Family Court for approval or by filing a petition for child support with the Family Court.

241 (a) If a party to the action is a minor or is a legally incompetent adult, the Family Court
242 may appoint a guardian ad litem to represent such party in the action, ~~in accordance with~~
243 ~~section 705.8 of the Child Custody, Placement and Visitation law.~~

244 ~~704.5-2. A party may request the services of the Agency or may be referred to the Agency from~~
245 ~~an entitlement program.~~

246 ~~704.5-2. Initiation of Action by the Agency. For assistance in initiating a child support order a~~
247 ~~party may request the services of the Agency or may be referred to the Agency from an entitlement~~
248 ~~program.~~

249 (a) Within ~~thirty five (530) business~~ days of receiving a completed application for services
250 or a referral, the Agency shall ~~send the non-~~ meet with the custodial parent ~~a Letter of~~
251 ~~Request for Support and Financial Disclosure form.~~

252 (b) Within seven (7) business days of the meeting with the custodial parent, the Agency
253 shall send a Letter of Request for Support and Financial Disclosure form to the non-
254 custodial parent.

255 (c) If the non-custodial parent fails to respond to or take action on the Letter ~~within ten~~
256 ~~(10) business days, a second Letter~~ of Request for Support and Financial Disclosure form
257 shall be sent.

258 (e) ~~If the non-custodial parent fails to respond to or take action on the second Letter within~~
259 ~~five (5) within ten (10) business days, the custodial parent, or the Agency when required by~~
260 ~~federal law,~~ may initiate a hearing in accordance with this law.

261 (d) If the non-custodial parent responds within the required time period after receiving a
262 Letter of Request for Support and Financial Disclosure form, the parties shall attempt to
263 enter into a stipulation ~~voluntary agreement~~.

264 ~~704.5-3. Initiation of Action by a Party Not the Agency. Any of the following individuals may~~
265 ~~initiate an action for the establishment of child support at any time by filing a petition with the~~
266 ~~Family Court:~~

- 268 ~~(1a)~~ a custodial parent;
- 269 ~~(2b)~~ a child's mother;
- 270 ~~(3c)~~ a child's father;
- 271 ~~(4d)~~ a child's guardian ad litem;
- 272 ~~(5e)~~ a child's non-legally responsible relative; or
- 273 ~~(6f)~~ a legally incompetent adult's guardian ad litem; ~~or~~

274 704.5-34. ~~Voluntary Agreement~~ Stipulation. ~~(a)~~ The parties may enter into a stipulation ~~voluntary~~
275 ~~agreement~~ at any time as to the level of the child support obligation.

276 ~~(a)~~ The Agency shall assist parties in reaching a stipulation ~~voluntary agreement~~ upon
277 request or when the parties are referred to the Agency by an entitlement program. Parties
278 may also submit a stipulation ~~voluntary agreement~~ to the Family Court for approval without
279 the Agency's assistance.

280 ~~(b)~~ In order for a stipulation ~~voluntary agreement~~ to be valid the following conditions shall
281 be met:

- 282 (1) The stipulation ~~agreement~~ shall be in writing, signed, and notarized;
- 283 (2) If the parties deviate from the percentage standards, the stipulation ~~agreement~~
284 shall state the amount of support that would have been ordered by the percentage
285 standards and the reasons for deviating from the percentage standards;
- 286 (3) All parties shall sign the stipulation ~~agreement~~ free of duress and coercion; and
- 287 (4) The Family Court shall make written findings that the stipulation ~~agreement~~ is
288 appropriate, using the criteria for deviating from standard percentages ~~under 704.7-~~
289 ~~3~~ as a guideline, if applicable.

290 ~~(c)~~ After the stipulation ~~agreement~~ is approved and filed by the Family Court, it shall have
291 the same force and effect as an order issued by the Family Court. The obligation of the
292 obligor to pay child support shall commence on the date specified in the stipulation
293 agreement, but no later than the date the agreement is approved and filed by the Family
294 Court.

295 704.5-45. ~~Initiating a Hearing~~ Petition to Establish Child Support. If the parties do not enter into
296 a stipulation ~~voluntary agreement~~, then ~~any of the following may initiate an action for the~~
297 ~~establishment of a petition to establish~~ child support ~~by filing a petition~~ may be filed with the
298 Family Court.

- 299 ~~(a)~~ a custodial parent;
- 300 ~~(b)~~ a child's ~~natural~~ mother;
- 301 ~~(c)~~ a child's father;
- 302 ~~(d)~~ a child's guardian ad litem;
- 303 ~~(e)~~ a child's non-legally responsible relative;
- 304 ~~(f)~~ a legally incompetent adult's guardian ad litem; or
- 305 ~~(g)~~ the Agency when required by federal law.

306 704.5-5. Petition. The petition to establish child support may be filed as a separate proceeding or
307 in connection with a petition for child custody. ~~The petition to establish child support shall include~~
308 ~~the following~~:

309 ~~(a)~~ Requirements of the Petition. ~~The petition to establish child support shall include the~~
310 following:

- 311 ~~(1)~~ The name, date of birth, ~~and address,~~ and tribal affiliation of the petitioner, ~~and~~
312 respondent, and child for whom support is requested;
- 313 ~~(+A)~~ If the address of the respondent is unknown, other ~~Tribal~~ departments
314 of the Nation shall cooperate with the Family Court, at the Family Court's
315 request, to provide the Family Court with the respondent's address. Any

316 such Family Court requests shall be made in such a way which protects the
317 privacy rights of all parties and children who are involved in proceedings or
318 actions under this law.

319 (2) With whom the child currently resides;

320 (3) When and how paternity was established;

321 (4) Name and date of birth of other children of the parties, and the child support
322 obligation for those children, if applicable;

323 (5) Whether either party is receiving state or tribal benefits, and if so, what benefits;

324 (6) Whether any other action to determine child support has been commenced or
325 is pending in a court of another jurisdiction and whether a child support order has
326 been entered by another court;

327 (7) Financial information such as the parties' income;

328 (8) The relief the petitioner is requesting, which shall include, but is not limited to,
329 establishment of support, request for support back to date of filing, and/or any other
330 relief the court may deem just and equitable;

331 (b2) Confidential Petition Addendum. The confidential petition addendum is a
332 separate form which has the parties and the child's name, date of birth and social
333 security number. This form shall be kept separate from the petition and shall be
334 maintained in a confidential file. The form shall be available only to the parties,
335 their the parties' attorneys or advocates, the Agency, or any person authorized by
336 the Family Court to have access to the form.

337 (b) Nondisclosure of Information in Protected Cases. Upon a finding, which may be made
338 ex parte, that the health, safety or welfare of a party or child would be unreasonably put at
339 risk by the disclosure of identifying information, or if an existing order so provides, the
340 Family Court shall order that the address of the child or party, or other identifying
341 information, not be disclosed in a pleading or other document filed in a proceeding under
342 this law.

343 704.5-6-(c) Hearing Date. Upon receipt of a petition, the Family Court shall schedule a
344 hearing to determine child support to be held at a time after the filing of the petition and
345 consistent with the manner of service.

346 704.5-7-(d) Notice Summons. All parties shall be notified of the petition and of all
347 hearings, and shall be given an opportunity to be heard.

348 (1) Service of the Summons. The summons, which N-notices the initiation of an
349 action shall be served by certified mail (return receipt requested) or in person within
350 fifteen (15) calendar days after the petition is filed with the Family Court. All
351 mailing of notice The summons shall include the Family Court clerk's return
352 address, with a notice request to file an answer to that address. Subsequent Any
353 notice after the summons shall be served by first-class mail to the recently verified
354 last-known address of the party.

355 (aA) Certified mail. Certified mail sent to a party's most recently verified
356 last-known address but returned because it was unclaimed or refused shall
357 constitute constructive service. Certified mail returned for other reasons
358 shall require service by other methods pursuant to the Oneida Judiciary
359 Rules of Civil Procedure.

360 (bB) Publication. When a responding party cannot be found for personal
361 service after diligent attempts and attempts to serve the responding party by
362 certified mail have failed, the petitioner shall may ask the Family Court to
363 direct the Agency to provide use service by publication. If the request is

364 ~~granted, the Agency~~ The publication shall ~~be publish the petition~~ in the
365 ~~Kalihwisaks Nation's newspaper~~ or a newspaper of general circulation in
366 the county of residence of the respondent, if known. ~~The P~~publication shall
367 be designated as a Legal Notice and any confidential information shall be
368 redacted.

369 (1i) If service by publication is ~~used~~permitted and there is
370 insufficient time for notice and answer pursuant to this ~~L~~law, the
371 Family Court shall re-schedule the hearing appropriately and may
372 permit extended time deadlines for default orders and for hearings
373 in order to provide for fair notice and opportunity for the party to
374 respond.

375 ~~704.5-8~~ (2) Requirements of the Summons and Petition. The summons to be served
376 on the respondent(s), along with the petition, shall include the following notice, in
377 addition to providing a time, place, and date for appearance:

378 (a1) That if he or she chooses not to appear at the hearing or enter a defense
379 to the petition challenging the authority of the Family Court to hear the
380 matter by the date of the hearing, the hearing shall proceed on the basis of
381 the petitioner's evidence;

382 (b2) That a child support order may require the ~~respondent~~person found to
383 be the obligor to pay child support until the child reaches eighteen (18) years
384 of age or until the child graduates from high school, or its equivalent, up to
385 age nineteen (19);

386 (e3) That the ~~respondent's~~ person found to be the obligor may have his or
387 her license(s) ~~may be~~ suspended or denied for failure to pay child support,
388 in addition to other enforcement actions;

389 (d4) That the ~~respondent's~~ person found to be the obligor's employer or
390 others with evidence of ~~the respondent's~~ his or her income may be
391 subpoenaed to provide the Family Court with records of his or her earnings;

392 (e5) That if the ~~respondent~~ person found to be the obligor is unemployed,
393 ~~he or she will~~ it shall still be ~~imputed to be~~ determind that he or she is able
394 to provide some degree of child support and an order of support ~~will~~shall
395 be calculated according to this law unless the Family Court makes written
396 findings ordering otherwise; and

397 (f6) That any answer to the petition shall be filed with the Family Court
398 within twenty (20) calendar days of the date of service of the petition, and
399 a copy served on the other party.

400 ~~704.5-9~~ (e) Answers. Answers shall be filed with the Family Court and served on the
401 petitioner within twenty (20) calendar days of the date of service of the petition in
402 accordance with the Nation's laws and policies governing civil procedure.

403 ~~704.5-10~~ (f) Subpoenas. Upon request of either party, the Family Court shall issue
404 subpoenas to any person in possession of relevant information to appear or produce
405 documents to the Family Court. Failure to comply with such a subpoena may be punishable
406 as contempt.

407 ~~704.5-11. Temporary Orders.—At any time after a child's parentage has been established, the~~
408 ~~Family Court may make a temporary order for the payment of child support and the child's health~~
409 ~~care expenses. Before making a temporary order, the Family Court shall consider those factors~~
410 ~~that the Family Court is required to consider when granting a final child support order. If the~~
411 ~~Family Court makes a temporary child support order that deviates from the amount of support that~~

412 ~~would be required by using the percentage standard, the requirements of section 704.7-38 shall be~~
413 ~~complied with.~~

414

415 **704.6. Child Support Hearing Procedures**

416 704.6-1. The factual determinations made at a hearing shall ~~include, but is not~~ be limited to, the
417 income and expense information necessary to determine the appropriate level of support according
418 to this law.

419 704.6-2. The Family Court may utilize discovery procedures and contempt powers, as authorized
420 by ~~any Tribal~~ law, policy, or rule of the Nation to obtain information relevant to the establishment
421 or enforcement of child support. These procedures may include the following:

422 (a) Issue subpoenas requiring necessary and relevant parties to appear in person and
423 provide testimony;

424 (b) Issue subpoenas requiring the production of evidence;

425 (c) Obtain information about property or assets to assess its value or funding source for
426 lien or seizure actions;

427 (d) Obtain information about the income of any party to the action; ~~and/or~~

428 (e) Issue contempt findings for failure to comply with the lawful order of the Family Court.

429 704.6-3. Both parties have the right to representation by an attorney and/or advocate at his or her
430 ~~their~~ own expense. The ~~Tribe~~ Nation shall not be required to pay for any fees and/or expenses
431 incurred by any party in connection with proceedings under this law.

432 ~~704.6-4. Temporary Orders. At any time after a child's parentage has been established, the Family~~
433 ~~Court may make a temporary order for the payment of child support and the child's health care~~
434 ~~expenses. Before making a temporary order, the Family Court shall consider these all factors that~~
435 ~~the Family Court is required to consider when granting a final child support order. If the Family~~
436 ~~Court makes a temporary child support order that deviates from the amount of support that would~~
437 ~~be required by using the percentage standard, the requirements of section 704.7-38 shall be~~
438 ~~complied with.~~

439 ~~704.6-45. Default.~~ If the respondent fails to appear at the hearing upon a showing of valid service
440 and the petitioner presents evidence of the obligation by the absent party, a child support order
441 shall be entered pursuant to the evidence.

442 ~~704.6-56. Hearings and Records Closed.~~ Child ~~S~~ support proceedings shall be closed to any
443 person other than those necessary to the action or proceeding. Records of child support cases shall
444 remain confidential and shall only be viewed by the parties, the legal guardian of a party who is a
445 minor, the parties' attorney or advocate, guardian ad litem, Judges and staff assigned to the case,
446 and those other persons who first obtain a written release from a party to view material contained
447 in the record.

448

449 **704.7. Determining the Child Support Determination Obligation**

450 704.7-1. ~~Except as provided elsewhere in this law, T~~he Family Court shall determine child
451 support payments by using the percentage standards established in section 704.7-2 of this law,
452 except as provided elsewhere in this law. The obligor's monthly income shall be considered in
453 determining his or her child support obligation.

454 704.7-2. *Percentage Standards to Determine the Amount of Child Support.*

455 (a) The following percentages shall be applied to the portion of an obligor's monthly
456 income available for child support that is less than seven thousand dollars (\$7,000):

457 (1) seventeen percent (17%) for one (1) child;

458 (2) twenty-five percent (25%) for two (2) children;

- 459 (3) twenty-nine percent (29%) for three (3) children;
 460 (4) thirty-one percent (31%) for four (4) children; and
 461 (5) thirty-four percent (34%) for five (5) or more children.
- 462 (b) The following percentages shall be applied to the portion of an obligor's monthly
 463 income available for child support that is greater than or equal to seven thousand dollars
 464 (\$7,000) and less than or equal to twelve thousand five hundred dollars (\$12,500):
 465 (1) fourteen percent (14%) for one (1) child;
 466 (2) twenty percent (20%) for two (2) children;
 467 (3) twenty-three percent (23%) for three (3) children;
 468 (4) twenty-five percent (25%) for four (4) children; and
 469 (5) twenty-seven percent (27%) for five (5) or more children.
- 470 (c) The following percentages shall be applied to the portion of an obligor's monthly
 471 income available for child support that is greater than twelve thousand five hundred dollars
 472 (\$12,500):
 473 (1) ten percent (10%) for one (1) child;
 474 (2) fifteen percent (15%) for two (2) children;
 475 (3) seventeen percent (17%) for three (3) children;
 476 (4) nineteen percent (19%) for four (4) children; and
 477 (5) twenty percent (20%) for five (5) or more children.

478 704.7-3. 1.3-1. Determining Income Modified for Business Expenses. In determining a parent's
 479 monthly income, the Family Court may adjust a parent's-gross income as follows:

- 480 (a) Adding wages paid to dependent household members.
 481 (b) Adding undistributed income that the Family Court determines is not reasonably
 482 necessary for the growth of the business. The parent shall have the burden of proof to show
 483 that any undistributed income is reasonably necessary for the growth of the business.
 484 (c) Reducing gross income by the business expenses that the Family Court determines are
 485 reasonably necessary for the production of that income or operation of the business and
 486 that may differ from the determination of allowable business expenses for tax purposes.

487 704.7-4. Determining Income Imputed Based on Earning Capacity. When a parent's income is
 488 less than the parent's earning capacity or is unknown, the Family Court may impute income to the
 489 parent at an amount that represents the parent's ability to earn.

- 490 (a) The parent's ability to earn may be based on the parent's:
 491 (1) education, training, and recent work experience;
 492 (2) earnings during previous periods;
 493 (3) current physical and mental health;
 494 (4) history of child care responsibilities as the parent with primary physical
 495 placement; and
 496 (5) the availability of work in or near the obligor's community.
- 497 (b) If evidence is presented that due diligence has been exercised to ascertain information
 498 on the parent's actual income or ability to earn and that information is unavailable, the
 499 Family Court may impute to the parent the income that a person would earn by working
 500 thirty-five (35) hours per week for the federal minimum hourly wage under 29 USC 206
 501 (a)(1). In addition to imputed income, the Family Court may order the parent to search for
 502 a job or participate in a work experience and job training program.
- 503 (c) If a parent has gross income or income modified for business expenses below his or
 504 her earning capacity, the income imputed based on earning capacity shall be the difference
 505 between the parent's earning capacity and the parent's gross income or income modified
 506 for business expenses.

507 704.7-5. Determining Income Imputed from Assets.

508 (a) The Family Court may impute a reasonable earning potential to a parent's assets if the
509 Family Court finds both of the following:

510 (1) The parent has ownership and control over any real or personal property,
511 including but not limited to, life insurance, cash and deposit accounts, stocks and
512 bonds, business interests, net proceeds resulting from worker's compensation or
513 other personal injury awards not intended to replace income, and cash and corporate
514 income in a corporation in which the obligor has an ownership interest sufficient to
515 individually exercise control and the cash or corporate income is not included as
516 gross income.

517 (2) The parent's assets are underproductive and at least one (1) of the following
518 applies:

519 (A) The parent has diverted income into assets to avoid paying child
520 support.

521 (B) Income from the parent's assets is necessary to maintain the child or
522 children at the standard of living they would have had if they were living
523 with both parents.

524 (b) The Family Court shall impute income to assets by multiplying the total net value of
525 the assets by the current six (6) month treasury bill rate or any other rate that the Family
526 Court determines is reasonable and subtracting the actual income from the assets that were
527 included as gross income.

528 704.7-6. Adjustment for Child's Social Security Benefits. ~~The Family Court may include consider~~
529 ~~benefits received by a child under 42 U.S.C. §402(d) based on a parent's entitlement to federal~~
530 ~~disability or old-age insurance benefits under 42 U.S.C. §401 to 433 in the parent's gross income~~
531 ~~and adjust an obligor's child support obligation by subtracting the amount of the child's benefit.~~
532 ~~In no case may this adjustment require the obligee to reimburse the obligor for any portion of the~~
533 ~~child's benefit. If the obligor is receiving the child's benefit, the support amount is either the~~
534 ~~percentage standard applied to the obligor's income or the amount of the child's benefit, whichever~~
535 ~~is greater.~~

536 (a) Determining the Child Support Obligations of Shared-Placement Parent when the
537 Child Receives Social Security Benefits. ~~If the shared-placement guidelines under section~~
538 ~~704.8-2 apply, the child's benefit is split between the parents in proportion to the amount~~
539 ~~of time the child spends with each parent. Add the proportion of the child's benefit that~~
540 ~~represents the proportion of time the child spends with the parent not receiving the benefit~~
541 ~~to the support obligation of the parent who is receiving the child's benefit. Child support~~
542 ~~shall be determined as follows:~~

543 (1) Determine each parent's monthly income available for child support under
544 section 704.7-2. If a parent has one (1) or more previous child support obligations,
545 determine the parent's monthly income available for child support adjusted for the
546 previous obligations as provided in section 704.8-1. Include the parent's federal
547 disability or old age insurance benefits under 42 U.S.C. §401 to 433 in that parent's
548 income, but do not include the child's benefit under 42 U.S.C. §402 (d) in either
549 parent's income.

550 (2) Multiply each parent's monthly income available for child support by the
551 appropriate percentage standard under section 704.7-2.

552 (3) Multiply each amount determined under section 704.7-6(a)(2) by one hundred
553 and fifty percent (150%).

554 (4) Multiply the amount determined for each parent in section 704.7-6(a)(3) by the
555 proportion of time that the child spends with the other parent.

556 (5) Multiply the amount of the child's benefit by the proportion of the time the
557 child spends with the parent who is not receiving the child's benefit.

558 (6) Add the amount in section 704.7-6(a)(5) to the child support obligation
559 calculated in section 704.7-6(a)(4) for the parent who is receiving the child's
560 benefit.

561 (7) Offset the resulting amounts against each other. The parent with the greater
562 child support obligation is the shared-placement obligor. The shared-placement
563 obligor shall pay either the greater of the amount determined in this subsection or
564 the amount determined using the appropriate percentage standard under section
565 704.7-2.

566 704.7-7. Claiming Children for Tax Purposes. The Family Court may address who may claim
567 the child for tax purposes or accept a stipulation entered into by the parties regarding children and
568 taxes.

569 704.7-38. Deviation from ~~Standard Factors~~ the Percentage Standards. Upon request by a party,
570 the Family Court may modify the amount of child support payments determined by the percentage
571 standards if, after considering the following factors, the Family Court finds by the greater weight
572 of the credible evidence that use of the percentage standards is unfair to the child or to any of the
573 parties:

- 574 (a) The financial resources of the child;
- 575 (b) The financial resources of both parents;
- 576 (c) Maintenance received by either party;
- 577 (d) The needs of each party in order to support himself or herself at a level equal to or
- 578 greater than ~~that~~ the federal poverty line as established under 42 U.S.C. §9902 (2);
- 579 (e) The needs of any person, other than the child, whom either party is legally obligated to
- 580 support;
- 581 (f) The standard of living the child would have enjoyed if his or her parents were living
- 582 together;
- 583 (g) The desirability that the custodial parent remain in the home as a full-time parent;
- 584 (h) The cost of day care if the ~~eustodian~~ custodial parent works outside the home, or the
- 585 value of custodial services performed by the ~~eustodian~~ custodial parent if the ~~eustodian~~ custodial
- 586 parent remains in the home;
- 587 (i) The award of substantial periods of physical placement to both parents;
- 588 (j) Extraordinary travel expenses incurred in exercising the right to periods of physical
- 589 placement;
- 590 (k) The physical, mental, and emotional health needs of the child, including any costs for
- 591 health insurance;
- 592 (l) The child's educational needs;
- 593 (m) The tax consequences to each party;
- 594 (n) The best interests of the child;
- 595 (o) The earning capacity of each parent, based on each parent's education, training and
- 596 work experience and the availability of work in or near the parent's community; and
- 597 (p) Any other factors which the Family Court in each case determines are relevant.

598 Cross-reference: See also Rule CS-1 CHILD SUPPORT PERCENTAGE OF INCOME STANDARD.

599 704.7-59. Past-due and Arrears obligations.

- 600 (a) A party may request payment of arrears or past-due child support as follows:

(1) In an action ~~pursuant to Chapter 703, Paternity,~~ regarding paternity, back to the date of birth of the child or date of application, whichever is later;

(2) In a child support establishment or modification pursuant to this law, back to the date of application, review, or referral; or

(3) In an establishment or modification of placement pursuant to ~~Chapter 702 or Chapter 705,~~ an action regarding divorce, annulment and legal separation or child custody, placement, and visitation, back to the date of filing, or as otherwise ordered by the Family Court.

(b) ~~An~~ A payment for arrears or a past-due payment shall be set based on the amount due and the income available to pay current support.

(c) Once current child support is ended in any manner prescribed by law, child support shall continue to be paid at the same rate, until all arrears or past due child support is paid in full.

704.8. Determining the Child Support Obligation in Special Circumstances ~~Content and Effect of Order~~

~~704.8-1.1.4-1.~~ Determining the Child Support Obligation of a Serial-Family Obligor.

(a) Applicability. This subsection applies only if the additional support obligation incurred by the obligor is the result of a child support order and the support obligation being calculated is for children from a subsequent family or subsequent paternity judgment or acknowledgment. An obligor may not use the provisions of this section as a basis for seeking modification of an existing order based on a subsequently incurred legal obligation for child support.

(b) Determination. For a serial-family obligor, the child support obligation incurred for a marital or non-marital child in a subsequent family as a result of a child support order may be determined as follows:

(1) Determine the obligor's monthly income.

(2) Determine the order of the obligor's legal obligations for child support by listing them according to the date each obligation is incurred.

(A) For a marital child, the legal obligation for child support is incurred on the child's date of birth.

(B) For a non-marital child, the legal obligation for child support is incurred on the date ~~of the child support order~~ that paternity is legally established.

(C) For a non-marital ~~paternal~~ child in an intact family, it is incurred on the date of adoption or the date ~~of the filing of an acknowledgement of paternity~~ that paternity is legally established.

(D) For a non-marital maternal child in an intact family, it is incurred on the child's date of birth.

(3) Determine the first child support obligation as follows:

(aA) If the obligor is subject to an existing support order for that legal obligation, except a shared-placement order, the support for that obligation is the monthly amount of that order; or

(bB) If the obligor is in an intact family, ~~has primary placement of another child,~~ or is subject to a shared-placement order, the support is determined by multiplying the appropriate percentage for that number of children by the obligor's monthly income.

647 (4) Adjust the monthly income by subtracting the support for the first legal
648 obligation ~~under (3)~~ from the obligor's monthly income ~~under (1)~~.

649 (5) Determine the second child support obligation as follows:

650 (aA) If the obligor is subject to an existing support order for that legal
651 obligation, except a shared-placement order, the support for that obligation
652 is the monthly amount of that order; or

653 (bB) If the obligor is in an intact family or is subject to a shared-placement
654 order, the support is determined by multiplying the appropriate percentage
655 for that number of children by the obligor's monthly income.

656 (6) Adjust the monthly income a second time by subtracting the support for the
657 second legal obligation ~~determined under (5)~~ from the first adjusted monthly
658 income ~~under (4)~~.

659 (7) Repeat the procedure ~~under (5) and (6)~~ for determining the child support
660 obligation and adjusting the monthly income for each additional legal obligation
661 for child support the serial family obligor has incurred.

662 (8) Multiply the appropriate percentage for the number of children subject to the
663 new order by the final adjusted monthly income ~~determined in either (6) or (7)~~ to
664 determine the new child support obligation.

665 704.8-2. 1.4-2. Determining the Child Support Obligations of Shared-Placement Parents.

666 (a) **Applicability.** The shared-placement formula may be applied when both of the
667 following conditions are met:

668 (1) Both parents have periods of placement of at least twenty-five percent (25%)
669 or ninety-two (92) days a year. ~~When calculating periods of placement based on~~
670 ~~equivalent care, the total number of overnights may exceed three hundred and sixty-~~
671 ~~five (365). The period of placement for each parent shall be determined by~~
672 ~~calculating the number of overnights or equivalent care ordered to be provided by~~
673 ~~the parent and dividing that number by 365, the total number of overnights in a~~
674 ~~year. The combined periods of placement for both parents shall equal one hundred~~
675 ~~percent (100%).~~

676 (2) Each parent is ordered by the Family Court to assume the child's basic support
677 costs in proportion to the time that the parent has placement of the child.

678 (b) **Determination.** The child support obligations for parents who meet the requirements
679 ~~of (a) for the shared-placement formula~~ may be determined as follows:

680 (1) Determine each parent's monthly income.

681 (A) In determining whether to impute income based on earning capacity
682 for an unemployed parent or a parent employed less than full time ~~under~~
683 ~~1.3-2, the Family Court shall consider benefits to the child of having a~~
684 ~~parent remain in the home during periods of placement and the additional~~
685 ~~variable day care costs that would be incurred if the parent worked more.~~

686 (2) Multiply each parent's monthly income by the appropriate percentage standard
687 ~~under 704.7.~~

688 (3) Multiply each amount determined under ~~(2)~~ section 704.8-2(b)(2) by **one**
689 **hundred and fifty percent (150%).**

690 (4) Multiply the amount determined for each parent under ~~(3)~~ section 704.8-2(b)(3)
691 by the proportion of the time that the child spends with the other parent to determine
692 each parent's child support obligation.

693 (5) Offset resulting amounts under ~~(4)~~ section 704.8-2(b)(4) against each other.
694 The parent with a greater child support obligation is the shared-placement obligor.

695 The shared-placement obligor shall pay the lesser of the amount determined under
696 this section or the amount determined using the appropriate percentage standard
697 under 704.7. If the shared-placement obligor is also a low-income obligor, the child
698 support obligation may be the lesser of the amount determined under this section
699 or under 1.4.4 the shared placement determination or the low-income
700 determination.

701 (6) In addition to the child support obligation determined under (5) section 704.8-
702 2(b)(5), the Family Court shall assign responsibility for payment of the child's
703 variable costs in proportion to each parent's share of physical placement, with due
704 consideration to a disparity in the parents' incomes.

705 (A) The Family Court shall direct the manner of payment of a variable cost
706 order to be either between the parents or from a parent to a third-party
707 service provider.

708 (B) The Family Court shall not direct payment of variable costs to be made
709 to the Agency or the Agency's designee, except as incorporated in the fixed
710 sum or percentage expressed child support order.

711 (7) A change in the child's variable costs shall not in and of itself be considered a
712 substantial change in circumstances sufficient to justify a modification of a
713 judgment or order under section 704.10.

714 704.8-3.1.4-3. *Determining the Child Support Obligations of Split-Placement Parents.*

715 (a) *Applicability.* The split-placement formula may be applied when ~~For~~ ~~parents who~~ ~~have~~
716 two (2) or more children and each parent has placement of one (1) or more but not all of
717 the children, ~~the child support obligations may be determined as follows:~~

718 (b) *Determination.* The child support obligation for a split-placement parent may be
719 determined as follows:

720 (a1) Determine each parent's monthly income.

721 (b2) ~~Multiply each parent's monthly income by the appropriate percentage for the~~
722 ~~number of children placed with the other parent to determine each parent's child~~
723 ~~support obligation. Determine the appropriate percentage standard for the number~~
724 ~~of total children.~~

725 (3) Divide the appropriate percentage standard for the number of total children by
726 the total number of children.

727 (4) Multiply the number calculated in section 704.8-3(b)(3) by the number of
728 children placed with each parent.

729 (5) Multiply each parent's monthly income by the number calculated in 704.8-
730 3(b)(4) based on the number of children placed with the other parent to determine
731 each parent's child support obligation; and

732 (e6) Offset resulting amounts under (b) ~~section~~ 704.8-3(b)(5) against each other.

733 The parent with a greater child support obligation is the split-placement obligor.

734 704.8-4.1.4-4. *Determining the Child Support Obligation of a Low-Income Obligor.*

735 (a) *Applicability.* If an ~~the~~ obligor's total economic circumstances limit his or her ability
736 to pay support at the level determined ~~under 704.7~~ by the standard percentage standards,
737 then the low-income obligor standards found in the Child Support Obligation of Low-
738 Income Payers Schedule may be used.

739 (b) *Determination.* The Family Court may use the monthly support amount provided in
740 the ~~schedule in Appendix A~~ Child Support Obligation of Low-Income Payers Schedule as
741 the support amount for an obligor with a monthly income at a level set forth in the schedule

742 ~~if the obligor's total economic circumstances limit his or her ability to pay support at the~~
743 ~~level determined under 704.7.~~

744 ~~(1) If an obligor's monthly income is below the lowest income level in Appendix~~
745 ~~A the Child Support Obligation of Low-Income Payers Schedule, the Family Court~~
746 ~~may set an order at an amount appropriate for the obligor's total economic~~
747 ~~circumstances. This amount may be lower than the lowest support amount in~~
748 ~~Appendix A the Child Support Obligation of Low-Income Payers Schedule. (b) The~~
749 ~~Agency shall revise the schedule in Appendix A at least once every four (4) years.~~
750 ~~The revision shall be based on changes in the federal poverty guidelines since the~~
751 ~~schedule was last revised.~~

752 ~~704.8 1. The child support order shall provide for immediate wage withholding. An order to~~
753 ~~withhold income shall be binding against future payors upon actual notice of the order through~~
754 ~~service by personal delivery or certified mail upon the payor. Wages shall not be subject to~~
755 ~~withholding only where:~~

756 ~~(a) One of the parties demonstrates and the Family Court finds that there is good cause not~~
757 ~~to require wage withholding due to one of the following:~~

758 ~~(1) There is an error in the amount of current or overdue support; or~~

759 ~~(2) The identity of the obligor is mistaken.~~

760 ~~(b) The parties reach a written agreement which provides for an alternative arrangement~~
761 ~~and is approved by the Family Court.~~

762 ~~704.8 2. The Family Court may require a party, or both parties, to utilize the services available to~~
763 ~~him or her to obtain and maintain regular employment and/or job training.~~

764 ~~704.8 3. Support Order Notice Requirements. Each order for child support shall include an order~~
765 ~~that the obligor and obligee notify the Agency of any change of address or name change within~~
766 ~~ten (10) business days of such change. Each order for child support shall also include an order that~~
767 ~~the obligor notify the Agency and the obligee of any change of employer or substantial change of~~
768 ~~income within ten (10) business days of the change. A "substantial change of income" means the~~
769 ~~obligor has a significant change in his or her finances that would lead to a change in child support~~
770 ~~of either more than fifteen percent (15%) or fifty dollars (\$50.00) per month. An order under this~~
771 ~~section is enforceable as contempt.~~

772 ~~704.8 4. Collection and Distribution of Child Support. The Agency shall collect and distribute~~
773 ~~child support monies pursuant to regulations set forth in the Social Security Act 45 CFR 309.115.~~

775 **704.9. Child Support Order Enforcement of Order**

776 ~~704.9-1. 1.3-5. Expression of Ordered Support. The child support amount shall be expressed as~~
777 ~~a fixed sum unless the parties have stipulated to expressing the amount as a percentage of the~~
778 ~~obligor's income and the stipulation requirements of Chapter 704 are satisfied.~~

779 ~~704.9-42. Interest on Arrears. The Tribe Nation shall not charge a party an obligor ordered to~~
780 ~~pay child support interest on any arrears.~~

781 ~~704.9-23. Income Wage Withholding. The child support order shall provide for immediate wage~~
782 ~~income withholding.~~

783 ~~(a) A copy of the Family Court's wage-income withholding order shall be sent by the~~
784 ~~Agency to a payor within three (3) business days of the entry of the order of the Family~~
785 ~~Court by any business method acceptable to the payor mail, fax, or electronic means.~~

786 ~~(b) An order to withhold income shall be binding against future payors upon actual notice~~
787 ~~of the income withholding order through service notice by mail, fax, or electronic means.~~
788 ~~personal delivery or certified mail upon the payor.~~

- 789 (c) Income wages shall not be subject to withholding only where:
790 (a1) One of the parties demonstrates, and the Family Court finds, that there is good
791 cause not to require income wage withholding due to one of the following:
792 (1A) There is an error in the amount of current or overdue support; or
793 (2B) The identity of the obligor is mistaken.
794 (b2) The parties reach a written agreement which provides for an alternative
795 arrangement that is approved by the Family Court.
796 ~~(b)~~ No payor shall refuse to honor ~~a wage~~ an income withholding order executed pursuant
797 to this law. A payor shall begin withholding income immediately after ~~notice~~ service of a
798 ~~wage-an income~~ withholding order made pursuant to this law. Within five (5) business
799 days after the payor pays the obligor, the payor shall send the amount withheld to the
800 Agency-Wisconsin Support Collections Trust Fund.
801 ~~(e)~~ A payor shall be liable for one hundred percent (100%) of the child support order, or
802 the amount of money that should have been withheld from the obligor's earnings,
803 whichever is the lesser amount, if the payor:
804 (1) Fails or refuses, after being ~~noticed of~~ served with an income withholding order,
805 to deduct or promptly remit the amounts of money required in the order; ~~or~~
806 (2) Fails or refuses to submit an answer to the notice of ~~wage-income~~ withholding
807 after being ~~noticed~~ served; or
808 (3) Is unwilling to comply with the other requirements of this law.
809 ~~(d)~~ A payor shall not discharge from employment, refuse to employ, or otherwise take
810 disciplinary action against any obligor solely because he or she is subject to ~~wage-income~~
811 withholding.
812 (1) When the Family Court finds that a payor has taken any of these actions, the
813 payor shall be liable for a civil penalty. Any payor who violates any provision of
814 this paragraph shall be liable in a civil action for reasonable damages suffered by
815 an obligor as a result of the violation, and an obligor discharged or demoted in
816 violation of this paragraph shall be entitled to be reinstated to his or her former
817 position.
818 (2) The statute of limitations for actions under this section shall be one (1) year.
819 ~~(e)~~ A payor who repeatedly fails to comply with ~~a wage~~ an income withholding order as
820 required by this law may be subject to a fine, not to exceed five hundred dollars (\$500), or
821 have its Oneida vendor license revoked or suspended, if applicable, until compliance with
822 this law is assured.
823 (1) The vendor license issuing agency shall comply with the Family Court order to
824 revoke or suspend a vendor license.
825 ~~(f)~~ If ~~wage income~~ withholding is inapplicable, ineffective or insufficient to ensure
826 payment of child support, the Family Court may require the obligor to establish an account
827 for the purpose of transferring child support payments.
828 ~~(g)~~ The total amount withheld under an income withholding order shall not exceed the
829 maximum amount permitted under section 303(b) of the Consumer Credit Protection Act
830 (15 U.S.C. §1673(b)).
831 ~~(h)~~ Non-Indian off-reservation payors shall be subject to income withholding under 28
832 U.S.C. §1738B.
833 704.9-4. 704.8-2. Conditions of the Order. The Family Court may require a party, or both parties,
834 to use the services available to him or her to obtain and maintain regular employment and/or job
835 training.
836 704.9-5. Support Order Notice Requirements. Each order for child support shall include:

837 (a) ~~a~~An order that the obligor and obligee notify the Agency of any change of address or
838 name change within ten (10) business days of such change; and
839 (b) ~~Each order for child support shall also include a~~ An order that the obligor notify the
840 Agency and the obligee of any change of employer or substantial change of income within
841 ten (10) business days of the change. A “substantial change of income” means the obligor
842 has a significant change in his or her finances that would lead to a change in child support
843 of either more than fifteen percent (15%) or fifty dollars (\$50.00) per month. An order
844 under this section is enforceable as contempt.

845 704.9-6. *Enforcement of Order.* A child support order under this section is enforceable as
846 contempt.

847 704.9-7. *Collection and Distribution of Child Support.* The Agency shall collect and distribute
848 child support monies pursuant to regulations set forth in the Social Security Act 45 CFR 309.115.

849 704.9-8. ~~4-3-6~~ *Trust.* The Family Court may protect and promote the best interests of the minor
850 children by setting aside a portion of the child support that either party is ordered to pay in a
851 separate fund or trust for the support, education, and welfare of such children.

852 704.7-49-9. *Non-Cash Payments.*

853 (a) Non-cash payments may be used to satisfy part or all of a child support order if the
854 parties and the Family Court agree to allow non-cash payments. Non-cash payments shall
855 not be used to fulfill arrears. If non-cash payments are allowed, the order shall:

- 856 (1) state the specific dollar amount of the support obligation;
- 857 (2) state the maximum amount (in dollars) of non-cash payment that the obligee
858 will accept;
- 859 (3) describe the type(s) of non-cash payment that is permitted;
- 860 (4) provide that non-cash payment cannot be used to satisfy assigned child support
861 obligations.

862 (b) When both parents are in agreement that non-cash payments may be used to satisfy a
863 child support obligation, the non-cash payment may include, but is not limited, to the
864 following:

- 865 (1) Clothing;
- 866 (2) Groceries;
- 867 (3) Child Care;
- 868 (4) Deer/Venison;
- 869 (5) Wood;
- 870 (6) Transportation;
- 871 (7) Skilled trades or services, such as car repairs, lawn care and snow removal;
872 and/or
- 873 (8) Gift cards.

874 (c) When a non-cash payment is used to satisfy part or all of a child support order, the
875 obligor and obligee shall submit any forms required by the Agency within the month that
876 the non-cash payment is made. If there are less than five (5) business days left in the month
877 when a non-cash payment is made, the obligor and obligee have five (5) business days to
878 submit any required forms to the Agency. The Agency shall be responsible for applying
879 the non-cash payment towards the child support order during the appropriate month.

880 704.9-3. In the event that an obligor is at least one (1) month delinquent in paying his or her child
881 support obligation, he or she may be subject to the following enforcement actions:

- 882 (a) increase in amount of wages withheld
- 883 (b) placement on lien docket;
- 884 (c) credit bureau reporting;

- 885 ~~(d) intercept of income and/or other payments;~~
- 886 ~~(e) seizure of personal property;~~
- 887 ~~(f) suspension of licenses;~~
- 888 ~~(g) denial of passport;~~
- 889 ~~(h) commitment to jail;~~
- 890 ~~(i) charge of contempt;~~
- 891 ~~(j) referral for criminal charges;~~
- 892 ~~(k) any other enforcement action included in this law or in a rule that is established under~~
- 893 ~~this law.~~

894 ~~Cross reference: See also Rule CS 2 ENFORCEMENT TOOLS.~~

895

896 **704.10. Modification of a Child Support Order**

897 704.10-1. Review of the Child Support Order. Every two (2) years, the Agency shall conduct a

898 review of the child support order. The Agency shall notify the non-custodial parent, custodial

899 parent, and any interested party that a review of their child support order ~~will~~ shall be conducted.

900 704.10-2. Modification of Child Support Sought by the Agency. After the two (2) year review is

901 conducted by the Agency, the Agency shall seek an order to modify the child support obligation if

902 there is a substantial change in circumstances, unless otherwise stipulated by the parties ~~an order~~

903 ~~to update the child support obligation will be sought by the Agency if there is a substantial change~~

904 ~~in circumstances.~~ A substantial change in circumstance ~~means~~ includes, but is not limited to:

- 905 (a) the child's placement is changed;
- 906 (b) either parent or the child has a significant change in his or her finances that would lead
- 907 to a change in child support of ~~either~~ more than fifteen percent (15%) ~~or~~ and fifty dollars
- 908 (\$50.00) per month;
- 909 (c) the obligee is receiving public assistance benefits and is required to have a current
- 910 support order in place;
- 911 (d) it has been twenty-four (24) months since the date of the last child support order or
- 912 revision to the child support order, unless the child support amount is expressed as a
- 913 percentage; or
- 914 (e) a change has occurred and if the current circumstances had been in place at the time
- 915 the order was issued, a significantly different order would have been issued.

916 704.10-~~23~~. Modification of Child Support Sought by the Parties. Either party, not including the

917 Agency, may file a motion for a modification of a child support order at any time based upon a

918 substantial change of circumstances supported by affidavit.

- 919 (a) Such motion shall state why the previous decision should be prospectively modified.
- 920 (b) The motion and affidavit shall be served by the moving party on the responding party
- 921 by first-class mail to the recently verified last-known address, or by any method provided
- 922 by law.

- 923 (c) A hearing date shall be scheduled no sooner than ten (10) calendar days after the date
- 924 of service.

925 704.10-~~34~~. An obligor shall not raise a substantial change in circumstances as a reason not to pay

926 a past due reward current child support order or arrears. If a child support ~~award~~ order becomes

927 unjust due to a substantial change in circumstances of the obligor, the obligor has the duty to file

928 a petition or motion with the Family Court for a ~~changed award~~ modification to the child support

929 order at that time. ~~He or she may not raise that change in circumstances as a reason not to pay a~~

930 ~~past due award.~~

931 ~~704.10-4. A change in the percentages shall constitute a substantial change in circumstances and~~
932 ~~shall justify prospective modification of a child support order.~~

933
934 **704.11. Modification of a Child Support Order for an Incarcerated Parent** ~~Full Faith and~~
935 ~~Credit for Foreign Child Support Orders~~

936 704.11-1. In the event an obligor is incarcerated for one hundred and eighty (180) days or more,
937 the obligor shall have the right to have the Agency review his or her child support order to
938 determine if modification or suspension of the child support order is appropriate. The obligor shall
939 notice the Agency of his or her incarceration.

940 (a) An ordered child support obligation shall be suspended for an incarcerated obligor who
941 has been sentenced to one hundred and eighty (180) days or more and has an income of
942 less than two hundred dollars (\$200) per month.

943 (b) If while incarcerated the obligor's income is two hundred dollars (\$200) or more per
944 month the Agency shall review the order and seek temporary modification of the child
945 support order based on the incarcerated obligor's income, if necessary.

946 (c) Child support obligations shall not be suspended or modified for an obligor who is
947 incarcerated for a criminal offense which includes:

- 948 (1) felony failure to pay support;
949 (2) a crime against a child; and/or
950 (3) a crime against the obligee.

951 (d) Past due child support related debt and/or arrears shall not be suspended or reduced as
952 a result of the obligor's incarceration without stipulation by the parties.

953 704.11-2. Notification of Review. Within fifteen (15) business days of the receipt by the Agency
954 of verification of the obligor's incarceration, the Agency shall send out a letter to the parties of the
955 case informing them of the obligor's right to have his or her child support obligation reviewed,
956 and of the Agency's intent to review the current child support order.

957 704.11-3. Agency Review of Order. The Agency shall review the obligor's child support order
958 and make one of the following determinations:

959 (a) that the obligor's income while incarcerated is two hundred dollars (\$200) or more per
960 month, and the Agency shall seek temporary modification of the obligor's child support
961 order based on the incarcerated obligor's income, if necessary; or

962 (b) that the obligor's income while incarcerated is less than two hundred dollars (\$200)
963 per month, and the Agency shall seek temporary suspension of the obligor's child support
964 order while incarcerated.

965 704.11-4. Suspension of Order by the Agency. If the Agency determines the obligor's income is
966 less than two hundred dollars (\$200) per month while incarcerated, the Agency shall file with the
967 Family Court a Motion and Order to Suspend without a request for a hearing with notice to all
968 parties that the child support order shall be suspended.

969 (a) Either party shall have the right to object to the suspension of the order within ten (10)
970 business days of the date of the notice by filing such objection with the Family Court and
971 providing a copy of the objection to the Agency.

972 (b) If no objection to the suspension is received, the Family Court shall enter the order as
973 proposed.

974 (c) Upon receipt of an objection from either party, the Family Court shall schedule a
975 hearing on the issue.

976 704.11-5. Modification of Order by the Agency. If the Agency determines the obligor's income
977 is two hundred dollars (\$200) per month or more while incarcerated, the Agency shall file with the
978 Family Court a Motion to Modify.

979 (a) The Family Court shall schedule a hearing on the motion. The Agency shall provide
980 notice to all parties with the proposed modification to the child support order by first class
981 mail at least ten (10) business days prior to the hearing.

982 704.11-6. Modification of the Order by the Incarcerated Parent. The incarcerated parent may
983 seek modification of his or her own child support order by filing a motion to modify with the
984 Family Court in accordance with section 704.10-3.

985 704.11-7. If during the term of incarceration, the Agency receives notification of a change in the
986 obligor's employment and/or income, the Agency shall review the obligor's order and determine
987 if the obligor's income is two hundred dollars (\$200) or more per month, and whether it is
988 necessary to temporarily modify or suspend the obligor's child support order.

989 (a) If the Agency determines that suspension of the obligor's order is necessary, then the
990 procedure for filing a Motion and Order to Suspend without a request for a hearing
991 described in section 704.11-4 shall be followed.

992 (b) If the Agency determines that modification of the obligor's order is necessary, then the
993 procedure for filing a Motion to Modify described in section 704.11-5 shall be followed.

994 704.11-8. Reinstatement of Prior Order. Sixty (60) days after the obligor's release from
995 incarceration, the child support order shall be administratively reinstated by the Agency to the
996 previous child support order in effect before the suspension or modification of the order based on
997 the obligor's incarceration.

998 (a) The Agency shall send notice to both parties of the obligor's release from incarceration
999 and the intent of the Agency to reinstate the original order.

1000 ~~704.11-1. Properly issued child support orders, and judgments or decrees of other Indian tribes,~~
1001 ~~tribal organizations and states, that relate to child support shall be recognized and modified in~~
1002 ~~accordance with the requirements under the Full Faith and Credit for Child Support Orders Act,~~
1003 ~~28 U.S.C. 1738B.~~

1004 ~~704.11-2. A foreign order is authenticated by reasonable proof that the document tendered to the~~
1005 ~~Family Court is a true copy of the foreign order as it is recorded in the agency or court of the~~
1006 ~~issuing jurisdiction. An authentication stamp issued by a court clerk or custodian of records, or a~~
1007 ~~court seal, is sufficient evidence of authenticity.~~

1008 ~~704.11-3. Unless defects in jurisdiction are apparent on the face of the foreign order, the person~~
1009 ~~contesting enforcement of the order has the burden of showing the order is not valid. Upon a~~
1010 ~~failure to respond to notice of the order and to timely contest it, the Family Court shall enforce it~~
1011 ~~as a Family Court order.~~

1012 ~~704.11-4. If a foreign order is brought before the Family Court solely for an interpretation of the~~
1013 ~~terms of the order, and the order has been recognized and given full faith and credit by the~~
1014 ~~Family Court, the Family Court shall interpret the order by applying the law of the forum that~~
1015 ~~issued the foreign order.~~

1016

1017 **704.12. Compliance Plan-Right of Appeal**

1018 ~~704.12-1. 2.3-1. The Agency shall attempt to meet with a party who is found to be subject to~~
1019 ~~enforcement action as soon as possible by sending a Letter of Non-Compliance within five (5)~~
1020 ~~business days of being informed of a party's failure to either pay support as ordered or to meet a~~
1021 ~~required obligation or action. If at any time an obligor is, or may become, non-compliant with his~~

1022 or her child support order by failing to pay support as ordered or meeting a required obligation or
1023 action, the Agency shall meet with the obligor to develop a compliance plan.

1024 704.12-2. An Appointment Letter may be sent by the Agency at any time deemed appropriate, but
1025 the Agency shall send out the Appointment Letter at least thirty (30) days prior to the initiation of
1026 any enforcement action.

1027 (a) The Letter of Non-Compliance shall set out the conditions the party has failed to
1028 comply with, outline the enforcement actions that may be taken, and request the party meet
1029 with the Agency to discuss barriers to payment and how to avoid future enforcement action.

1030 (b) If the party does not respond to the Letter within five (5) business days after receipt of
1031 the letter, the Agency shall send a second Letter.

1032 (c) If the party fails to respond to the second Letter within five (5) business days after
1033 receipt of the letter, the Agency may proceed with appropriate enforcement action.

1034 (c) If the party obligor responds to the Letter, the Agency shall interview the party to
1035 determine the reasons and barriers for the non-compliance and create a compliance plan.

1036 The compliance plan may include an increase in payment and/or any activity that is
1037 necessary to ensure assist in payment, including programs that focus on:

1038 (1) Employment and training;

1039 (2) Social service and mental health;

1040 (3) Physical and learning disabilities;

1041 (4) Tribal traditions and customs;

1042 (5) Family counseling and parenting; and

1043 (6) Any other program deemed necessary.

1044 (d) If the party successfully completes the terms of the compliance plan, no further
1045 enforcement action is necessary. However, if the party fails to complete the compliance
1046 plan, the Agency shall proceed with appropriate enforcement action.

1047 704.12-1. Any enforcement action implemented by the Agency may, within thirty (30) calendar
1048 days after the date that the action is enforced, be appealed to the Family Court. The decision of
1049 the Family Court shall be final.

1050 704.12-2. If the Family Court conducts a hearing under this law, a party may, within thirty (30)
1051 calendar days after the date that the Family Court makes a decision, appeal that decision to the
1052 Court of Appeals of the Judiciary. The appellate body review shall be based on the record and
1053 the original decision of the Family Court.

1054

1055 **704.13. Enforcement of an Order**

1056 704.13-1. An obligor may be subject to enforcement actions when the obligor is at least one (1)
1057 month delinquent in paying his or her child support obligation. Enforcement actions may include
1058 administrative enforcement action by the Agency and enforcement action by the Family Court.

1059 (a) An obligor shall be provided with notice of an enforcement action of at least thirty (30)
1060 days before an enforcement action is used, unless another timeline is specified.

1061 (b) An enforcement action shall be stayed and/or suspended after notice is given to the
1062 obligor if the obligor pays the debt in full or enters into, and maintains, an alternative
1063 payment plan and/or a compliance plan with the Agency.

1064 704.13-2. 704.9-1. Agency Responsibilities in the Enforcement of an Order. The Agency shall
1065 have the following responsibilities in the enforcement of an order:

1066 (a) Track and document the progress of an obligor who is under an enforcement action;

1067 (b) Take additional enforcement action when an obligor fails to comply with a previous
1068 enforcement action;

- 1069 (c) Document the reasons why an enforcement action is not taken, when such action would
1070 have been appropriate under the circumstances; and
- 1071 (d) Assist in Rrefunding amounts that were improperly withheld, terminate income
1072 withholding when appropriate, and allocate amounts across multiple cases.
- 1073 704.13-3. ~~2.4.2~~ Notice to the Obligor of Delinquency. In the event that an obligor owes a debt
1074 equal to or exceeding the monthly amount due, the Agency shall send a notice of delinquency to
1075 the obligor. ~~(a)~~ The notice of delinquency shall inform the obligor of the following:
- 1076 ~~(1) The dates that the delinquency accrued;~~
- 1077 ~~(2a) The total amount of the delinquency; and~~
- 1078 ~~(3) Any prior agreement or showing of good cause to not wage withhold may be~~
1079 ~~terminated and the obligor may be subject to wage withholding;~~
- 1080 ~~(4b) The enforcement action that may be taken as a result of the delinquency.~~
- 1081 ~~(5) The obligor may request, in writing to the Agency, to negotiate an alternative~~
1082 ~~payment plan with the Agency within ten (10) business days after the service of~~
1083 ~~notice in order to stay any enforcement action;~~
- 1084 ~~(6) The obligor has ten (10) business days after the service of the notice of~~
1085 ~~delinquency to file an objection with the Agency presenting good cause why an~~
1086 ~~arrears payment or other enforcement action should not be implemented. The~~
1087 ~~only allowable objections are:~~
- 1088 ~~(A) There is an error in the amount of current or overdue support; or~~
- 1089 ~~(B) The identity of the obligor is mistaken.~~
- 1090 704.13-4. Notice to the Obligor of Enforcement Action. After the obligor has been noticed of his
1091 or her delinquency, and at least twenty (20) days prior to an enforcement being used against an
1092 obligor, the Agency shall send a notice of enforcement action to the obligor.
- 1093 (a) The notice of enforcement action shall inform the obligor of the following:
- 1094 (1) The total amount of the delinquency;
- 1095 (2) The enforcement action that may be taken as a result of the delinquency;
- 1096 (3) The obligor may request, in writing to the Agency, to negotiate an alternative
1097 payment plan with the Agency within ten (10) business days after the notice in order
1098 to stay any enforcement action;
- 1099 (4) The obligor has ten (10) business days after the notice of enforcement action to
1100 file an objection with the Agency presenting good cause why an arrears payment
1101 or other enforcement action should not be implemented. The only allowable
1102 objections are:
- 1103 (A) There is an error in the amount of current or overdue support; or
- 1104 (B) The identity of the obligor is mistaken.
- 1105 (b) If the obligor does not file an objection or request to negotiate an alternative payment
1106 plan:
- 1107 (1) the enforcement action shall be taken; and/or
- 1108 (2) an income wage withholding order, or revised order if one is already in place,
1109 shall be imposed on the payor. No more than an additional twenty percent (20%)
1110 of the current support payment order can be withheld to satisfy the delinquency
1111 provided that the total amount withheld does not exceed forty percent (40%) of the
1112 obligor's monthly income.
- 1113 (c) If a permissible objection is filed, the obligor shall be entitled to a hearing before any
1114 enforcement action is taken.

1115 704.13-5. 2.4-3 Use of Mail for Notices. The Agency shall send notices related to the delinquency
1116 of an obligor and enforcement of a child support order by mail to the last-known mailing address
1117 provided by the obligor.

1118 (a) If the notice is returned, the Agency shall send notice to the obligor using the current
1119 employer mailing address provided by the obligor.

1120 (b) If the notice to the obligor mailed to the obligor's employer is returned, the Agency
1121 shall use all appropriate tribal, federal, state and local resources to ascertain an obligor's
1122 current mailing address.

1123 (c) If those resources are used for a period of ~~sixty~~ thirty (630) days and a verified mailing
1124 address has not been identified, the Agency may proceed with the administrative
1125 enforcement action.

1126 704.13-6. 2.4-4. Notice to the Obligee of Enforcement Proceedings. The Agency shall provide
1127 written notice to the obligee when an enforcement action has been initiated against the obligor or
1128 when the obligor requests a hearing and the hearing has been scheduled. The notice to the obligee
1129 shall be sent at the same time notice is sent to the obligor.

1130 704.13-7. 2.4-5. Notice to Individuals Other Than the Obligor with a Recorded Ownership Interest
1131 in Property. The Agency shall provide notice related to the seizure of property to any individual,
1132 other than the obligor, with a recorded ownership interest in property subject to seizure. The
1133 individual may request a hearing for a determination of the proportion of the value of the property
1134 that is attributable to his or her net contribution to the property. The hearing shall be requested
1135 within thirty (30) days after the notice was received by the individual.

1136
1137 **704.14. Alternative Payment Plans**

1138 704.14-1. 2.9-1 Applicability of Alternative Payment Plans. When an obligor is subject to
1139 administrative enforcement action, he or she may negotiate an alternative payment plan with the
1140 Agency.

1141 704.14-2. 2.9-2 Negotiation of an Alternative Payment Plan After Receiving Notice of an
1142 Enforcement Action.

1143 (a) In order to negotiate an alternative payment plan, an obligor shall submit a written
1144 request to the Agency.

1145 (1) A written request to negotiate an alternative payment plan received by the
1146 Agency within ten (10) business days after the date of notice shall stay any
1147 administrative enforcement action.

1148 (2) If a written request to negotiate an alternative payment plan is received by the
1149 Agency more than ten (10) business days after the date of notice, administrative
1150 enforcement action may be taken, as long as the requirements of 2.9-3 and 2.9-4
1151 are met.

1152 (3) If the Agency agrees to negotiate an alternative payment plan after the ten (10)
1153 business days after the date of notice, the Agency and obligor may agree to stay or
1154 suspend the administrative enforcement action.

1155 (b) An obligor may negotiate a plan with the Agency to have a license suspension lifted
1156 issued or renewed after it has been restricted, limited, suspended or refused.

1157 (c) Hearings for Negotiations of an Alternative Payment Plan. The obligor may submit a
1158 written request for a hearing on the reasonableness of the plan within ten (10) business
1159 days after the terms of the plan are agreed upon with the Family Court regarding
1160 negotiations of an alternative payment plan in the following circumstances:

1161 (1) The obligor and the Agency have agreed to terms of a plan, but the obligor
1162 wants the Family Court to consider the reasonableness of the plan due to a
1163 substantial change of circumstances since the plan was agreed to by the Agency
1164 and the obligor.

1165 (A) The ~~the~~ obligor may submit this a written request for a hearing on the
1166 reasonableness of the plan within ten (10) business days after the terms of
1167 the plan are agreed upon.

1168 (2) ~~If the Agency and the obligor~~ The obligor and the Agency are unable to reach
1169 agreement on the terms of a plan a hearing may be conducted.

1170 (A) The Family Court may order a plan by setting conditions and/or
1171 payments in the amounts and at the times it considers reasonable.

1172 (d) ~~2.9-5. Proceeding with Administrative Enforcement Actions.~~ The Agency may
1173 continue with the administrative enforcement action if:

1174 (1a) the obligor and the Agency are unable to negotiate a plan;

1175 (2b) the Family Court determines that the plan is not reasonable; and/or

1176 (3e) the Family Court does not order a plan.

1177 704.14-3. ~~2.9-6~~ Disclosure of Income and Assets. The request to negotiate a plan shall include an
1178 agreement by the obligor to provide the Agency with a full disclosure of income and assets
1179 available. The obligor shall provide complete income and assets information to the Agency within
1180 five (5) business days of the request to negotiate a plan.

1181 704.14-4. ~~2.9-7~~ Terms of an Alternative Payment Plan.

1182 (a) An alternative payment plan may include a lump-sum payment, or periodic payments
1183 on the arrears, or both, subject to the following standards:

1184 (1) The sum of any periodic payment established under the plan and any other
1185 payment of support ordered by the Family Court, when subtracted from the
1186 obligor's gross income, may not leave the obligor below one hundred percent
1187 (100%) of the poverty line established under 42 U.S.C. §9902 (2) unless the obligor
1188 agrees otherwise.

1189 (2) When establishing an alternative payment plan, the Agency shall consider the
1190 factors used by the Family Court in determining whether the use of the percentage
1191 standard is unfair to the child or any of the parties.

1192 (b) Periodic payments under the plan may be made through income withholding in
1193 amounts in addition to the amount ordered in the child support order that is in effect.

1194 704.14-5. ~~2.9-3.~~ Staying Administrative Enforcement Actions. Administrative enforcement actions
1195 shall be stayed by the Agency while the obligor and the Agency are negotiating a plan, or, if a
1196 hearing is requested because an agreement cannot be reached or the reasonableness of the plan is
1197 questioned, until the Family Court determination has been made. To stay an administrative
1198 enforcement action means the following:

1199 (a) The obligor shall not be certified for denial, nonrenewal, restriction, or suspension of
1200 professional, occupational, fishing, recreational, motor vehicle and/or Oneida-issued
1201 licenses any State or Oneida-issued licenses;

1202 (b) Any frozen financial accounts shall remain frozen and shall not be seized; and

1203 (c) Personal property that has been seized shall not be sold.

1204 704.14-6. ~~2.9-4.~~ Suspension of Administrative Enforcement Actions.

1205 (a) When a plan has been negotiated between the obligor and the Agency, or the Family
1206 Court has determined that a plan is reasonable or has ordered a plan, the Agency shall
1207 suspend administrative enforcement actions as long as the obligor complies with the plan

1208 or requests a hearing because of a substantial change in circumstances which makes the
1209 plan unreasonable.

1210 (b) If an obligor makes an ~~full~~ arrears payment agreeable to the Agency, the administrative
1211 enforcement action shall be suspended.

1212 704.14-7. ~~2.9-8.~~ *Default on an Alternative Payment Plan.* In the event that the obligor defaults on
1213 the plan, the Agency shall notify the obligor in writing that an administrative enforcement action
1214 shall be implemented unless the ~~child support~~ lien is paid in full.

1215 704.14-8. ~~2.9-9.~~ *Renegotiation of an Alternative Payment Plan.* After the entry of an alternative
1216 payment plan, the plan may be renegotiated upon the written request of the obligor or Agency if
1217 the requesting party can show a substantial change in circumstances. A substantial change in
1218 circumstances includes any of the following:

1219 (a) A change in the obligor's income or assets, including the sale or purchase of real or
1220 personal property.;

1221 (b) A change in the obligor's earning capacity.; and/or

1222 (c) Any other factor that the Agency determines is relevant.

1223 ~~2.9-10. *Obligors with Cases in Multiple Jurisdictions.*~~

1224 ~~(a) When multiple child support agencies initiate administrative enforcement actions~~
1225 ~~against the same obligor, and the obligor negotiates an alternative payment plan with one~~
1226 ~~of the agencies, the plan does not preclude any other child support agency from~~
1227 ~~proceeding with its administrative enforcement action.~~

1228 ~~(b) If a child support agency which has a lien against property of an obligor negotiates an~~
1229 ~~alternative payment plan with the obligor, the agency may receive proceeds from the sale~~
1230 ~~of the obligor's personal property under the lien including, but not limited to, proceeds~~
1231 ~~from administrative enforcement actions taken by other child support agencies.~~

1232

1233 **704.15. Administrative Enforcement Action**

1234 704.15-1. The Agency shall have the authority to use administrative enforcement actions to
1235 enforce a child support order without obtaining an order from the Family Court in the event that
1236 an obligor is at least one (1) month delinquent in paying his or her child support obligations.

1237 704.15-2. ~~2.5-1~~ *Liens.* The Agency shall have an obligor placed on the lien docket if the obligor
1238 owes a debt in one or more of the obligor's cases equal to or exceeding the monthly amount due
1239 or ~~five hundred dollars~~ (\$500.00), whichever is greater.

1240 (a) ~~2.5-2~~ *Lien Amount.* The lien amount on the lien docket shall equal the sum of lien
1241 amounts from the cases in which the lien amount meets or exceeds the lien threshold.

1242 (b) ~~2.5-3~~ *Filing Date.* The filing date on the lien docket is the date that a lien is first
1243 docketed and delivered to the register of deeds. The filing date is the effective date of the
1244 lien. The effective date does not change if the lien amount is adjusted up or down within
1245 five (5) years after the date that the lien is first docketed.

1246 (c) ~~2.5-4~~ *Lien Priority.* The child support lien shall have priority over all other liens on
1247 property except:

1248 (1) tax and special assessment liens.;

1249 (2) purchase money mortgages.;

1250 (3) construction liens.;

1251 (4) environmental liens.;

1252 (5) liens that are filed or recorded before the child support lien becomes effective.;

1253 and

1254 (6) any other lien given priority under the law.

- 1255 (d) ~~(a)~~ Property subject to a lien includes personal property in which the obligor has a
1256 recorded ownership interest.
- 1257 (e) ~~Effect on a Good Faith Purchaser.~~ ~~(b)~~ A child support lien is not effective against a
1258 good faith purchaser of titled personal property unless the lien is recorded on the title.
- 1259 (f) ~~2.5-5 Credit Bureau Reporting.~~ The Agency may report the total amount of an obligor's
1260 liens to the credit bureau, so long as the lien is fully enforceable and the case is not barred
1261 from credit bureau reporting.
- 1262 ~~2.5-6. Denial of State-issued Grants and Loans. Wisconsin state agencies may deny grants~~
1263 ~~and loans to an obligor who is placed on the lien docket. These grants and loans include~~
1264 ~~student loans and higher education grants, as well as mortgage loans from the Wisconsin~~
1265 ~~Housing and Economic Development Authority (WHEDA).~~
- 1266 (g) ~~Agency Lien Responsibilities.~~ ~~2.5-7~~ The Agency shall, ~~either on its own or in~~
1267 ~~conjunction with the State,~~ be responsible for:
- 1268 (a1) updating the lien docket periodically;
- 1269 (b2) providing a copy of the lien docket to the appropriate register of deeds;
- 1270 (e3) responding to inquiries concerning information recorded on the lien docket;
- 1271 (d4) ensuring the satisfaction of a lien is recorded on the lien docket;
- 1272 (e5) renewing a lien if the lien amount equals or exceeds the lien threshold at the
1273 end of the five (5) year effective period;
- 1274 (1A) When a lien is renewed, the date on which the lien is renewed shall
1275 become the effective date of the lien, and a new five (5) year period shall
1276 commence.
- 1277 (f6) sending the obligor a notice when a lien has been renewed; and
- 1278 (g7) developing procedures for releasing a lien and releasing specific property from
1279 a lien.
- 1280 (h) ~~2.5-8 Financial Record Review.~~
- 1281 (a1) An obligor may request a financial record review, ~~in writing to the Agency~~
1282 within ten (10) business days of the date of notice of a lien, to determine the
1283 correctness of the financial records in a case. ~~The request shall be made in writing~~
1284 ~~to the Agency.~~
- 1285 (b2) Upon receiving a request for a financial record review, the Agency shall, at
1286 no charge to the obligor, provide the obligor with:
- 1287 (1A) all relevant financial records;
- 1288 (2B) information explaining how to interpret the records; and
- 1289 (3C) a form the obligor may use to identify any alleged errors in the records.
- 1290 (e3) Within twenty (20) days after receiving the relevant financial records, the
1291 obligor may:
- 1292 (1A) request a meeting with the Agency to review the financial records and
1293 to discuss any alleged errors; and/or
- 1294 (2B) provide a statement of alleged error on the documents.
- 1295 (Ai) The Agency shall review the records to determine whether the
1296 alleged error is correct and provide a written determination within
1297 sixty (60) days after the obligor's request for a financial record
1298 review is received as to whether the lien against the obligor is in the
1299 correct amount.
- 1300 (d4) The Agency may proceed with the lien if:

1301 (1A) the obligor does not request a meeting with the Agency or provide a
1302 statement of alleged error within twenty (20) days after receiving the
1303 financial records; ~~or~~
1304 (2B) no errors are found in the financial records of the case; or
1305 (3C) the arrears exceed the required threshold amount after any errors in
1306 the financial records are corrected.

1307 704.15-3. Seizure of Property. 2.6-1. When seizing property. The Agency shall have the authority
1308 to seize property, whether an account or personal property, of an obligor. The Agency shall
1309 presume that an obligor's equity or ownership in the property is an equal pro-rata share of the
1310 equity or ownership based on the number of individuals with a recorded ownership interest in the
1311 property.

1312 (a) 2.6-2 Account Seizure. Once a lien is placed against an obligor, the Agency may initiate
1313 an account seizure if there is a lien against an obligor and the lien amount in the obligor's
1314 case equals or exceeds three hundred percent (300%) of the monthly amount due in the
1315 order, or one thousand dollars (\$1,000), whichever is greater.

1316 (a1) The Agency may not issue a notice of seizure unless the sum of the funds in
1317 all of the obligor's financial accounts, minus expected seizure fees and any early
1318 withdrawal penalty, exceeds five hundred dollars (\$500). The first five hundred
1319 dollars (\$500) of each account shall not be frozen and/or seized.

1320 (b2) The notice issued by the Agency shall instruct the financial institution of the
1321 following:

1322 (1A) The maximum amount frozen in an account may not exceed the
1323 amount specified by the Agency in the notice.

1324 (2B) The maximum amount frozen in an account may not exceed the
1325 obligor's ownership interest.

1326 (3C) A financial institution is not liable for encumbering or surrendering
1327 any assets held by the financial institution in response to instructions from
1328 the Agency for the purpose of enforcing a child support order.

1329 (b) 2.6-3 Seizure of Personal Property-Other than Financial Accounts. In addition to the
1330 requirements under (a) and (b) below, Once a lien is placed against an obligor, the Agency
1331 may initiate the seizure of personal property if there is a lien against an obligor and the lien
1332 amount equals or exceeds six hundred percent (600%) of the monthly amount due in the
1333 order. Upon issuance of a written order of execution, non-exempt personal property may
1334 be seized and sold in a reasonable manner after notice to the owner in payment of a child
1335 support obligation that has been adjudicated delinquent by the Family Court. Ceremonial
1336 or religious property and real property are exempt from such writs of execution

1337 (a1) Personal Property. The Agency may seize personal property if the obligor's
1338 equity in the property, minus expected seizure fees, exceeds five hundred dollars
1339 (\$500) per item total.

1340 (b) The Tribe's "Disposition of Excess Tribal Property Policy" shall not apply to
1341 any property seized under this law.

1342 (2) Ceremonial or religious property and/or real property are exempt and shall not
1343 be seized by the Agency.

1344 (3) Process for Seizing Property. The Agency shall follow the following process
1345 for seizing personal property:

1346 (A) The Agency shall notify the obligor of the intent to request the Family
1347 Court to issue an order of execution for the seizure of property.

1348 (B) The Agency shall request the Family Court to grant a written order of
1349 execution for the seizure of property. The Agency shall provide the Family
1350 Court an affidavit that notice of this request has been provided to the
1351 obligor.

1352 (C) Upon issuance of a written order of execution by the Family Court,
1353 non-exempt personal property may be seized and sold in a reasonable
1354 manner.

1355 704.15-4. Attachment of Per Capita Payments. The Agency may initiate the attachment and/or
1356 seizure of per capita payments of tribal members of the Nation in accordance with applicable laws
1357 of the Nation.

1358 704.15-5. 2.7-2 License Suspension. (a) The Agency may initiate the suspension or denial of
1359 occupational, fishing, recreational, motor vehicle and/or Oneida issued licenses both State and
1360 Oneida issued licenses if there is a lien against an obligor that equals or exceeds three hundred
1361 percent (300%) of the monthly amount due in the child support order, or one thousand dollars
1362 (\$1000), whichever is greater.

1363 (a) The types of State or Oneida issued licenses that the Agency may initiate the suspension
1364 or denial of include, but are not limited to, vendor, professional, occupational, hunting,
1365 fishing, recreational, and/or motor vehicle licenses.

1366 (b) Suspension of an occupational and/or motor vehicle license shall be pursued only as a
1367 last resort and the Agency shall not initiate the suspension of an occupational and/or motor
1368 vehicle license(s) if:

1369 (1) there is an order in place that prohibits the suspension of the license(s);

1370 (2) the obligor has filed for bankruptcy; or

1371 (3) action has already been taken to suspend the license.

1372 (bc) When an Oneida-issued license is suspended, that suspension shall be binding on and
1373 given effect by the license issuing agencies. Orders affecting licenses issued by other
1374 governmental agencies shall be sent to such agencies for enforcement.

1375 704.15-6. Intercept of Lump-Sum Pension Payments, Judgments, and Settlements Intercepts.
1376 Once an obligor has been placed on the lien docket the Agency may initiate the intercept of lump-
1377 sum pension payments, judgments and/or settlements when an obligor has been placed on the lien
1378 docket.

1379 (a) When initiating the intercept of lump-sum pension payments, judgments and/or
1380 settlements, the Agency shall specify in the notice that the amount withheld from the lump-
1381 sum pension payment, judgment or settlement may not exceed the obligor's ownership
1382 interest in the payment.

1383 704.15-7. Tax and Lottery Intercepts. The Agency may coordinate with a federal or state agency
1384 in order to enforce a child support order through a tax and/or lottery intercept. Once an obligor
1385 has been notified that his or her tax refund and/or lottery winnings may be intercepted, that notice
1386 is valid until all arrears are paid in full.

1387 (a) Federal Tax Intercept. The Agency may certify a federal tax intercept when the
1388 requirements pertaining to federal tax intercept contained in an agreement between the
1389 State and the Nation have been met.

1390 (b) Wisconsin State Tax and/or Lottery Intercept. The Agency may certify a Wisconsin
1391 state tax intercept and/or a Wisconsin state lottery intercept, when the lottery winnings are
1392 one thousand dollars (\$1,000) or more, when the following requirements are met:

1393 (1) The arrears shall be at least one hundred and fifty dollars (\$150);

1394 (2) The arrears shall be at least thirty (30) days old; and

1395 (3) The arrears shall be for a minor child or a child who has reached the age of
1396 eighteen (18) within the last twenty (20) year.

1397 (e) Wisconsin Lottery Intercept. When a case is certified for Wisconsin state tax
1398 intercept, it shall also be automatically certified for Wisconsin lottery intercept for lottery
1399 winnings of one thousand dollars (\$1,000) or more.

1400 704.15-8. 2.7-5 Passport Denial. If a federal tax intercept is in place and the obligor owes five
1401 two thousand five hundred dollars (\$25,500) or more in arrears, an obligor may be denied a
1402 passport. The arrears must meet the criteria for federal tax intercept in order for passport denial to
1403 be used as an enforcement tool. An obligor shall be removed from the passport denial list if:

1404 (a) The federal tax intercept certification amount is zero (0);

1405 (b) The obligor makes a lump-sum payment and/or negotiates a payment plan with the
1406 Agency;

1407 (c) The obligor has to travel abroad because of a life-or-death situation involving an
1408 immediate family member, such as the obligor's parent, guardian, step parent, child,
1409 stepchild, grandparent, sibling, step sibling, aunt, uncle or spouse; or

1410 (d) The obligor was denied a passport in error.

1411

1412 **704.16. Family Court Contempt Enforcement Action**

1413 704.16-1. 2.8-1 If the Agency does not have the authority to conduct the appropriate enforcement
1414 action, or the obligor is unresponsive to the enforcement actions being imposed by the Agency,
1415 the case shall be referred to the Agency shall file a motion for contempt with the Family Court for
1416 enforcement. 2.8-2 During a contempt proceeding tThe Family Court may order any of the
1417 enforcement actions the Agency is authorized to implement, in addition to the contempt actions
1418 described in this section. In addition, the Family Court may order the following to enforce a child
1419 support order:

1420 704.16-2. 2.8-2(d) Contempt. The Family Court may hold aAn obligor who disobeys a fails to
1421 comply with a lawful child support order in contempt. An obligor found to be in contempt shall be
1422 subject to any of the folloing punishments: for contempt of court.

1423 (a)-2.8-2(e) Community Service. The Family Court may order an obligor to perform
1424 community service. The number of hours of work required may not exceed what would
1425 be reasonable considering the amount of arrears the obligor owes. The obligor shall be
1426 provided a written statement of the terms of the community service order and that the
1427 community service order is monitored. The order shall specify:

1428 (1) how many hours of community service the obligor is required to complete;

1429 (2) the time frame in which the hours must be completed;

1430 (3) how the obligor will report his or her hours; and

1431 (4) any other information the Family Court determines is relevant.

1432 (b) Fines. An obligor found in contempt of court may be fined in an amount not to exceed
1433 one thousand dollars (\$1,000.00) per act of contempt and may not exceed five thousand
1434 dollars (\$5,000.00) in total. In instances of continuing contempt, each day shall constitute
1435 a separate act of contempt.

1436 (c) 2.8-2(e) Incarceration. The Family Court may order an obligor be incarcerated,
1437 contingent on the agreements necessary to enable the Tribe to incarcerate individuals.
1438 Before a jail sentence is imposed, the Family Court may provide other conditions that
1439 require a certain amount of money be paid or action be taken for an obligor to avoid
1440 incarceration.

- 1441 (d) 2.8-3 Criminal Non-Support. A criminal non-support action may be initiated, in the
1442 appropriate county, against an obligor who has the ability to pay child support and willfully
1443 or intentionally failed to pay and the obligor knew or reasonably should have known he or
1444 she was legally obligated to provide.
- 1445 (e) 2.8-2(a) Bonds and Other Guarantees. The Family Court may require an obligor to
1446 provide a surety, bond or guarantee to secure the payment of arrears, if ~~wage-income~~
1447 ~~withholding is not applicable, practical, or feasible to secure payment of arrears.~~
- 1448 (f) 2.8-2(b) Claims Against Estates. ~~(1) The Family Court may approve a claim for past~~
1449 ~~and future support against an obligor's estate. (2) The Family Court may issue a restraining~~
1450 ~~order against an estate from which an obligor will inherit.~~

1451

1452 **704.17. Full Faith and Credit for Foreign Child Support Orders**

1453 704.~~17~~-1. ~~Properly issued child~~ Child support orders, ~~and~~ judgments, or decrees of other Indian
1454 federally recognized tribes, ~~tribal organizations~~, and states, that relate to child support shall be
1455 recognized and modified in accordance with the requirements under the Full Faith and Credit for
1456 Child Support Orders Act, 28 U.S.C. 1738B.

1457 704.~~17~~-2. A foreign order is authenticated by reasonable proof that the document tendered to
1458 the Family Court is a true certified copy of the foreign order as it is recorded in the agency or court
1459 of the issuing jurisdiction. An authentication stamp issued by a court clerk or custodian of records,
1460 or a court seal, is sufficient evidence of authenticity.

1461 704.~~17~~-3. Unless defects in jurisdiction are apparent on the face of the foreign order, the person
1462 contesting enforcement of the order has the burden of showing the order is not valid. Upon a
1463 failure to respond to notice of the order and to timely contest it, the Family Court shall enforce it
1464 as an order of the Family Court ~~order~~.

1465 704.~~17~~-4. If a foreign order is brought before the Family Court solely for an interpretation of
1466 the terms of the order, and the order has been recognized and given full faith and credit by the
1467 Family Court, the Family Court shall interpret the order by applying the law of the forum that
1468 issued the foreign order.

1469

1470 **704.18. Right of Appeal**

1471 704.~~18~~-1. Appeals of Administrative Enforcement Action. Any enforcement action implemented
1472 by the Agency may be appealed to the Family Court within thirty (30) calendar days after the date
1473 that the action is enforced, ~~be appealed to the Family Court~~. The decision of the Family Court as
1474 to the Agency's administrative enforcement action shall be final and non-appealable.

1475 704.~~18~~-2. Appeals of Family Court Decisions. ~~If the Family Court conducts a hearing under this~~
1476 ~~law a~~ A party may appeal a Family Court decision, other than the decision of the Family Court in
1477 regard to administrative enforcement action as referenced in section 704.18-1, to the Nation's
1478 Court of Appeals within thirty (30) calendar days after the date ~~that~~ the Family Court ~~makes a~~
1479 ~~made the~~ decision, ~~appeal that decision to the Court of Appeals of the Judiciary~~. The appellate
1480 body review of the Court of Appeals shall be based on the record and the original decision of the
1481 Family Court.

1482

1483 *End.*

1484 Emergency Adopted - BC-06-30-08-C (Expired)
1485 Emergency Extended - BC-12-10-08-H (Expired)
1486 Permanently Adopted- BC-06-24-09-B
1487 Emergency Amended - BC-10-28-09-E
1488 Amended - BC-02-24-10-G
1489 Amended - BC-06-22-11-K

1490 Amended - BC-10-10-12-C
 1491 Amended - BC-08-13-14-E
 1492 Amended - BC-__-__-__-__

Rule CS-1

~~DEVIATION FROM CHILD SUPPORT PERCENTAGE STANDARDS~~

1.1. Introduction	1.3. Support Orders
1.2. Definitions	1.4. Determining the Child Support Obligation in Special Circumstances

~~1.1. Introduction~~

~~1.1-1. Purpose. This rule is promulgated for the purpose of determining child support when circumstances require a deviation from the percentage standards in Chapter 704.~~

~~1.1-2. Applicability. This rule applies to any child support order or child support order modification implemented under Chapter 704.~~

~~1.1-3. Effect of Rule Change. A modification of any provision in this rule shall not in and of itself be considered a substantial change in circumstances sufficient to justify a revision of a judgment or order under Chapter 704. A modification of any provision in this rule shall apply to orders established after the effective date of the modification.~~

~~1.1-4. This rule shall be effective June 24, 2009.~~

~~1.2. Definitions~~

~~1.2-1. In this rule:~~

~~(a) "Adjusted monthly income" means the monthly income at which child support is determined for serial family obligors, which is the obligor's monthly income less the amount of any existing legal obligation for child support.~~

~~(b) "Agency" means the Oneida Tribe Child Support Agency.~~

~~(c) "Basic support costs" means food, shelter, clothing, transportation, personal care, and incidental recreational costs.~~

~~(d) "Child" means a person under the age of eighteen (18), or any person who is less than nineteen (19) years old if he or she is pursuing a high school diploma or its equivalent from an accredited course of instruction.~~

~~(e) "Child support" means the total financial obligation a parent has towards his or her child as established through judicial and/or administrative processes.~~

~~(f) "Child Support Order" means a judgment of the Family Court or a court of competent jurisdiction ordering payment of child support which provides monetary support, health care, arrearages, or reimbursement, and which may include related costs and fees, income withholding, attorneys' fees and other relief.~~

~~(g) "Current 6 month treasury bill rate" means the yield of a U.S. government security with a term of 6 months.~~

~~(h) "Dependent household member" means a person for whom a taxpayer is entitled to an exemption for the taxable year under 26 USC 151.~~

~~(i) "Family Court" shall mean the judicial arm of the Tribe that is designated to handle all matters under this Law.~~

~~(j) "Federal dependency exemption" means the deduction allowed in computing taxable income pursuant to 26 USC 151 for a child of the taxpayer who has not attained the age of nineteen (19) or who is a student.~~

- 1538 ~~(k) “Gross income” means any form of payment due to an individual regardless of source,~~
1539 ~~including, but not limited to:~~
- 1540 ~~(1) Salary and wages, including overtime pay.~~
 - 1541 ~~(2) Interest and investment income.~~
 - 1542 ~~(3) Social Security disability and old age insurance benefits under 42 USC 401 to~~
1543 ~~433.~~
 - 1544 ~~(4) Net proceeds resulting from worker’s compensation or other personal injury~~
1545 ~~awards intended to replace income.~~
 - 1546 ~~(5) Unemployment insurance.~~
 - 1547 ~~(6) Income continuation benefits.~~
 - 1548 ~~(7) Voluntary deferred compensation and voluntary employee contributions to the~~
1549 ~~following: employee benefit plan, profit sharing, pension or retirement account.~~
 - 1550 ~~(8) Military allowances and veterans benefits.~~
 - 1551 ~~(9) Undistributed income of a corporation or any partnership in which the parent~~
1552 ~~has an ownership interest sufficient to individually exercise control or to access the~~
1553 ~~earnings of the business, unless the income included is an asset.~~
 - 1554 ~~(10) Per capita distribution payments.~~
 - 1555 ~~(11) Lease or rental income.~~
 - 1556 ~~(12) Prizes over \$1,000.00.~~
 - 1557 ~~(13) All other income, whether taxable or not, except that gross income does not~~
1558 ~~include any of the following:~~
- 1559 ~~(A) Child support.~~
 - 1560 ~~(B) Foster care payments.~~
 - 1561 ~~(C) Kinship care payments.~~
 - 1562 ~~(D) Public assistance benefits, except that child care subsidy payments shall~~
1563 ~~be considered income to a child care provider.~~
 - 1564 ~~(E) Food stamps.~~
 - 1565 ~~(F) Public assistance or financial hardship payments paid by a county or a~~
1566 ~~tribe.~~
 - 1567 ~~(G) Supplemental Security Income under 42 USC 1381 to 1383(f) and state~~
1568 ~~supplemental payments.~~
 - 1569 ~~(H) Payments made for social services.~~
- 1570 ~~(l) “Income imputed based on earning capacity” means the amount of income that exceeds~~
1571 ~~the parent’s actual income and represents the parent’s ability to earn, based on the parent’s~~
1572 ~~education, training and recent work experience, earnings during previous periods, current~~
1573 ~~physical and mental health, history of child care responsibilities as the parent with primary~~
1574 ~~physical placement, and the availability of work in or near the parent’s community.~~
- 1575 ~~(m) “Income imputed from assets” means the amount of income ascribed to assets that are~~
1576 ~~unproductive and to which income has been diverted to avoid paying child support or from~~
1577 ~~which income is necessary to maintain the child or children at the standard of living they~~
1578 ~~would have if they were living with both parents, and that exceeds the actual income from~~
1579 ~~the assets.~~
- 1580 ~~(n) “Income modified for business expenses” means the amount of income after adding~~
1581 ~~wages paid to dependent household members, adding undistributed income that the Family~~
1582 ~~Court determines is not reasonably necessary for the growth of the business, and~~
1583 ~~subtracting business expenses that the Family Court determines are reasonably necessary~~
1584 ~~for the production of that income or operation of the business and that may differ from the~~
1585 ~~determination of allowable business expenses for tax purposes.~~

- 1586 ~~(o) “Intact family” means a family in which the child or children and the obligor reside in~~
1587 ~~the same household and the obligor shares his or her income directly with the child or~~
1588 ~~children and has a legal obligation to support the child or children.~~
1589 ~~(p) “Low income obligor” means an obligor for whom the Family Court uses the monthly~~
1590 ~~support amount provided in the schedule in Appendix A based on the Family Court’s~~
1591 ~~determination that the obligor’s total economic circumstances limit his or her ability to pay~~
1592 ~~support at the level provided under 704.7-2(a) and the obligor’s income is at a level set~~
1593 ~~forth in the schedule in Appendix A.~~
1594 ~~(q) “Marital child” means a child born during the marriage of his or her parents. In~~
1595 ~~addition, if the father and mother of a non-marital child enter into a lawful marriage or a~~
1596 ~~marriage which appears and they believe is lawful, except where the parental rights of the~~
1597 ~~mother were terminated before either of these circumstances, the child becomes a marital~~
1598 ~~child and shall enjoy all of the rights and privileges of a marital child as if he or she had~~
1599 ~~been born during the marriage of the parents. The children of all marriages declared void~~
1600 ~~under the law are nevertheless marital children.~~
1601 ~~(r) “Monthly income” means the obligor’s income available for child support and is the~~
1602 ~~obligor’s annual gross income or, if applicable, the obligor’s annual income modified for~~
1603 ~~business expenses; plus the obligor’s annual income imputed based on earning capacity;~~
1604 ~~plus the obligor’s annual income imputed from assets; divided by twelve (12).~~
1605 ~~(s) “Parent” means the natural or adoptive parent of the child.~~
1606 ~~(t) “Obligee” means the person or entity to whom child support is owed.~~
1607 ~~(u) “Obligor” means the person who is obliged to pay child support to the obligee.~~
1608 ~~(v) “Serial family obligor” means an obligor with an existing legal obligation for child~~
1609 ~~support who incurs an additional legal obligation for child support in a subsequent family~~
1610 ~~as a result of a child support order.~~
1611 ~~(w) “Shared-placement obligor” means a parent who has an ordered period of placement~~
1612 ~~of at least twenty five percent (25%), is ordered by the Family Court to assume the child’s~~
1613 ~~basic support costs in proportion to the time that the parent has placement of the child and~~
1614 ~~is determined to owe a greater support amount than the other parent.~~
1615 ~~(x) “Split-placement obligor” means a obligor who has two (2) or more children and who~~
1616 ~~has physical placement of one (1) or more but not all of the children.~~
1617 ~~(y) “Variable costs” means the reasonable costs above basic support costs incurred by or~~
1618 ~~on behalf of a child, including but not limited to, the cost of child care, tuition, a child’s~~
1619 ~~special needs, and other activities that involve substantial cost.~~

1.3. Support Orders

1622 ~~1.3-1. Determining Income Modified for Business Expenses. In determining a parent’s monthly~~
1623 ~~income, the Family Court may adjust a parent’s gross income as follows:~~

- 1624 ~~(a) Adding wages paid to dependent household members.~~
1625 ~~(b) Adding undistributed income that the Family Court determines is not reasonably~~
1626 ~~necessary for the growth of the business. The parent shall have the burden of proof to show~~
1627 ~~that any undistributed income is reasonably necessary for the growth of the business.~~
1628 ~~(c) Reducing gross income by the business expenses that the Family Court determines are~~
1629 ~~reasonably necessary for the production of that income or operation of the business and~~
1630 ~~that may differ from the determination of allowable business expenses for tax purposes.~~

1631 ~~1.3-2. Determining Income Imputed Based on Earning Capacity. When a parent’s income is less~~
1632 ~~than the parent’s earning capacity or is unknown, the Family Court may impute income to the~~
1633 ~~parent at an amount that represents the parent’s ability to earn, based on the parent’s education,~~

1634 ~~training and recent work experience, earnings during previous periods, current physical and mental~~
1635 ~~health, history of child care responsibilities as the parent with primary physical placement and the~~
1636 ~~availability of work in or near the parent's community. If evidence is presented that due diligence~~
1637 ~~has been exercised to ascertain information on the parent's actual income or ability to earn and~~
1638 ~~that information is unavailable, the Family Court may impute to the parent the income that a person~~
1639 ~~would earn by working thirty-five (35) hours per week for the federal minimum hourly wage under~~
1640 ~~29 USC 206 (a)(1). If a parent has gross income or income modified for business expenses below~~
1641 ~~his or her earning capacity, the income imputed based on earning capacity shall be the difference~~
1642 ~~between the parent's earning capacity and the parent's gross income or income modified for~~
1643 ~~business expenses.~~

1644 ~~1.3.3. *Determining Income Imputed From Assets.*~~

1645 ~~(a) The Family Court may impute a reasonable earning potential to a parent's assets if the~~
1646 ~~Family Court finds both of the following:~~

1647 ~~(1) The parent has ownership and control over any real or personal property,~~
1648 ~~including but not limited to, life insurance, cash and deposit accounts, stocks and~~
1649 ~~bonds, business interests, net proceeds resulting from worker's compensation or~~
1650 ~~other personal injury awards not intended to replace income, and cash and corporate~~
1651 ~~income in a corporation in which the parent has an ownership interest sufficient to~~
1652 ~~individually exercise control and the cash or corporate income is not included as~~
1653 ~~gross income.~~

1654 ~~(2) The parent's assets are underproductive and at least one (1) of the following~~
1655 ~~applies:~~

1656 ~~(a) The parent has diverted income into assets to avoid paying child~~
1657 ~~support.~~

1658 ~~(b) Income from the parent's assets is necessary to maintain the child or~~
1659 ~~children at the standard of living they would have had if they were living~~
1660 ~~with both parents.~~

1661 ~~(b) The Family Court shall impute income to assets by multiplying the total net value of~~
1662 ~~the assets by the current 6-month treasury bill rate or any other rate that the Family Court~~
1663 ~~determines is reasonable and subtracting the actual income from the assets that were~~
1664 ~~included as gross income.~~

1665 ~~1.3.4. *Adjustment for Child's Social Security.* The Family Court may include benefits received~~
1666 ~~by a child under 42 USC 402(d) based on a parent's entitlement to federal disability or old-age~~
1667 ~~insurance benefits under 42 USC 401 to 433 in the parent's gross income and adjust a parent's~~
1668 ~~child support obligation by subtracting the amount of the child's social security benefit. In no case~~
1669 ~~may this adjustment require the obligee to reimburse the obligor for any portion of the child's~~
1670 ~~benefit.~~

1671 ~~1.3.5. *Expression of Ordered Support.* The support amount shall be expressed as a fixed sum~~
1672 ~~unless the parties have stipulated to expressing the amount as a percentage of the obligor's income~~
1673 ~~and the stipulation requirements of Chapter 704 are satisfied.~~

1674 ~~1.3.6. *Trust.* The Family Court may protect and promote the best interests of the minor children~~
1675 ~~by setting aside a portion of the child support that either party is ordered to pay in a separate fund~~
1676 ~~or trust for the support, education, and welfare of such children.~~

1677 ~~1.3.7. *Dependency Exemption.* The Family Court may order the obligee to waive the federal~~
1678 ~~dependency exemption provided that the obligee's execution of the exemption waiver is made~~
1679 ~~contingent on the receipt of child support payments.~~

1680

1681 ~~1.4. *Determining the Child Support Obligation in Special Circumstances*~~

- 1682 1.4.1. Determining the Child Support Obligation of a Serial Family Obligor.
1683 (a) Applicability. This subsection applies only if the additional child support obligation
1684 incurred by an obligor is the result of a child support order and the support obligation being
1685 calculated is for children from a subsequent family or subsequent paternity judgment or
1686 acknowledgment. An obligor may not use the provisions of this section as a basis for
1687 seeking modification of an existing order based on a subsequently incurred legal obligation
1688 for child support.
1689 (b) Determination. For a serial family obligor, the child support obligation incurred for a
1690 marital or nonmarital child in a subsequent family as a result of a child support order may
1691 be determined as follows:
1692 (1) Determine the obligor's monthly income;
1693 (2) Determine the order of the obligor's legal obligations for child support by
1694 listing them according to the date each obligation is incurred. For a marital child,
1695 the legal obligation for child support is incurred on the child's date of birth. For a
1696 nonmarital child, the legal obligation for child support is incurred on the date of the
1697 child support order. For a nonmarital child in an intact family, it is incurred on the
1698 date of adoption or the date of the filing of an acknowledgement of paternity. For
1699 a nonmarital maternal child in an intact family, it is incurred on the child's date of
1700 birth;
1701 (3) Determine the first child support obligation as follows:
1702 (a) If the obligor is subject to an existing support order for that legal
1703 obligation, except a shared placement order, the support for that obligation
1704 is the monthly amount of that order; or
1705 (b) If the obligor is in an intact family or is subject to a shared placement
1706 order, the support is determined by multiplying the appropriate percentage
1707 for that number of children by the obligor's monthly income;
1708 (4) Adjust the monthly income by subtracting the support for the first legal
1709 obligation under (3) from the obligor's monthly income under (1);
1710 (5) Determine the second child support obligation as follows:
1711 (a) If the obligor is subject to an existing support order for that legal
1712 obligation, except a shared placement order, the support for that obligation
1713 is the monthly amount of that order; or
1714 (b) If the obligor is in an intact family or is subject to a shared placement
1715 order, the support is determined by multiplying the appropriate percentage
1716 for that number of children by the obligor's monthly income;
1717 (6) Adjust the monthly income a second time by subtracting the support for the
1718 second legal obligation determined under (5) from the first adjusted monthly
1719 income determined under (4);
1720 (7) Repeat the procedure under (5) and (6) for each additional legal obligation for
1721 child support the serial family obligor has incurred;
1722 (8) Multiply the appropriate percentage for the number of children subject to the
1723 new order by the final adjusted monthly income determined in either (6) or (7) to
1724 determine the new child support obligation.

1725 Note: The following example shows how the child support obligation is determined for a serial-
1726 family obligor whose additional child support obligation has been incurred for a subsequent
1727 family.

1728 Assumptions:

- 1729 ● ~~Parent A's current monthly income is \$3000.~~
- 1730 ● ~~Parent A and Parent B were married, had a child in 1990 and divorced in 1991. Parent~~
- 1731 ~~A is subject to an existing support order of \$450 per month.~~
- 1732 ● ~~Parent A remarries and has two children, one born in 1996 and the other in 1997, and~~
- 1733 ~~remains an intact family.~~
- 1734 ● ~~Parent A was adjudicated the father in 1998 for a child born in 1995. Child support~~
- 1735 ~~needs to be established for this child.~~

1736
1737 Order of parent A's legal obligation for child support:

- 1738 ● ~~First legal obligation: one child (1990) (divorcee)~~
- 1739 ● ~~Second legal obligation: 2 children (1996 and 1997) (intact family)~~
- 1740 ● ~~Third legal obligation: one child (1998) (paternity)~~

1741
1742 Calculation:

- 1743 ● ~~Parent A's current monthly income \$3000.~~
- 1744 ● ~~The first legal obligation is subject to an existing monthly support order (divorcee) \$450.~~
- 1745 ● ~~Adjust the monthly income \$3000 - 450~~
- 1746 ● ~~First adjusted monthly income \$2550~~
- 1747 ● ~~Determine support for the second legal obligation (intact family) \$2550 x .25 \$637.50~~
- 1748 ● ~~Adjust the first adjusted monthly income \$2550 - 637.50~~
- 1749 ● ~~Second adjusted monthly income \$1912.50~~
- 1750 ● ~~Determine support for the third legal obligation (paternity) \$1912.50 x .17 \$ 325.12~~

1751
1752 1.4.2. Determining the Child Support Obligations of Shared Placement Parents:

1753 (a) The shared placement formula may be applied when both of the following conditions

1754 are met:

1755 (1) Both parents have periods of placement of at least twenty five percent (25%)

1756 or ninety two (92) days a year. The period of placement for each parent shall be

1757 determined by calculating the number of overnights or equivalent care ordered to

1758 be provided by the parent and dividing that number by 365. The combined periods

1759 of placement for both parents shall equal 100%.

1760 (2) Each parent is ordered by the Family Court to assume the child's basic support

1761 costs in proportion to the time that the parent has placement of the child.

1762 (b) The child support obligations for parents who meet the requirements of (a) may be

1763 determined as follows:

1764 (1) Determine each parent's monthly income. In determining whether to impute

1765 income based on earning capacity for an unemployed parent or a parent employed

1766 less than full time under 1.3.2, the Family Court shall consider benefits to the child

1767 of having a parent remain in the home during periods of placement and the

1768 additional variable day care costs that would be incurred if the parent worked more.

1769 (2) Multiply each parent's monthly income by the appropriate percentage standard

1770 under 704.7.

1771 (3) Multiply each amount determined under (2) by 150%.

1772 (4) Multiply the amount determined for each parent under (3) by the proportion of

1773 the time that the child spends with the other parent to determine each parent's child

1774 support obligation.

1775 ~~(5) Offset resulting amounts under (4) against each other. The parent with a greater~~
 1776 ~~child support obligation is the shared placement obligor. The shared placement~~
 1777 ~~obligor shall pay the lesser of the amount determined under this section or the~~
 1778 ~~amount determined using the appropriate percentage standard under 704.7. If the~~
 1779 ~~shared placement obligor is also a low income obligor, the child support obligation~~
 1780 ~~may be the lesser of the amount determined under this section or under 1.4.4.~~
 1781 ~~(6) In addition to the child support obligation determined under (5), the Family~~
 1782 ~~Court shall assign responsibility for payment of the child's variable costs in~~
 1783 ~~proportion to each parent's share of physical placement, with due consideration to~~
 1784 ~~a disparity in the parents' incomes. The Family Court shall direct the manner of~~
 1785 ~~payment of a variable cost order to be either between the parents or from a parent~~
 1786 ~~to a third party service provider. The Family Court shall not direct payment of~~
 1787 ~~variable costs to be made to the Agency or the Agency's designee, except as~~
 1788 ~~incorporated in the fixed sum or percentage expressed child support order.~~

1789 **Note:** The following example shows how to calculate the child support obligations of shared-
 1790 placement parents.

- 1791 ● Number of children: Two
- 1792 ● Parent A: \$2,000 monthly income
- 1793 ● Ordered placement of the child for 219 days a year or 60%
- 1794 ● Parent B: \$3,000 monthly income

1795 Ordered placement of the child for 146 days a year or 40%

1796

	Parent A	Parent B
1. Monthly income	\$2,000	\$3,000
2. Monthly income X percentage standard for two children	$\$2,000 \times 25\% = \500	$\$3,000 \times 25\% = \750
3. Amount in 2. X 150%.	$\$500 \times 150\% = \750	$\$750 \times 150\% = \1125
4. Amount in 3. X the proportion of time that the child spends with the other parent	$\$750 \times 40\% = \300	$\$1125 \times 60\% = \675
5. Offset	$\$675 - \$300 = \$375$	
6. Family Court also assigns responsibility for payment of the child's variable costs.	Manner of payment is between the parents or from a parent to a third party service provider, except as incorporated in the fixed sum or percentage expressed child support order.	

1797
 1798 ~~1.4.3. Determining the Child Support Obligations of Split Placement Parents. For parents who~~
 1799 ~~have two (2) or more children and each parent has placement of one (1) or more but not all of the~~
 1800 ~~children, the child support obligations may be determined as follows:~~

- 1801 ~~(a) Determine each parent's monthly income.~~
 1802 ~~(b) Multiply each parent's monthly income by the appropriate percentage for the number of~~
 1803 ~~children placed with the other parent to determine each parent's child support obligation.~~
 1804 ~~(c) Offset resulting amounts under (b) against each other. The parent with a greater child support~~
 1805 ~~obligation is the split placement obligor.~~

1806 **Note:** The following example shows how to calculate the amount of child support for split-
 1807 placement parents:

1808 Assumptions:

- 1809 ● ~~Parent A and B have 3 children.~~
- 1810 ● ~~Parent A has placement of one child and Parent B has placement of 2 children.~~
- 1811 ● ~~Parent A's monthly income is \$3,000.~~
- 1812 ● ~~Parent B's monthly income is \$1,500.~~

1813 Calculation:

- 1814 ● ~~Parent A's child support obligation is $\$3,000 \times 25\% = 750$~~
- 1815 ● ~~Parent B's child support obligation is $\$1,500 \times 17\% = 255$~~
- 1816 ● ~~Parent A owes Parent B $750 - 255 = \$495$~~

1817 1.4.4. Determining the Child Support Obligation of a Low Income Obligor.

1818 ~~(a) The Family Court may use the monthly support amount provided in the schedule in Appendix~~
1819 ~~A as the support amount for an obligor with a monthly income at a level set forth in the schedule~~
1820 ~~if the obligor's total economic circumstances limit his or her ability to pay support at the level~~
1821 ~~determined under 704.7. If an obligor's monthly income is below the lowest income level in~~
1822 ~~Appendix A, the Family Court may set an order at an amount appropriate for the obligor's total~~
1823 ~~economic circumstances. This amount may be lower than the lowest support amount in Appendix~~
1824 ~~A.~~

1825 ~~(b) The Agency shall revise the schedule in Appendix A at least once every four (4) years. The~~
1826 ~~revision shall be based on changes in the federal poverty guidelines since the schedule was last~~
1827 ~~revised.~~

1828 ~~**Note:** The schedule in Appendix A provides reduced percentage rates that may be used to~~
1829 ~~determine the child support obligation for obligors with an income below approximately 125% of~~
1830 ~~the federal poverty guidelines. If an obligor's monthly income is below approximately 75% of the~~
1831 ~~federal poverty guidelines, the Family Court may order an amount appropriate for the obligor's~~
1832 ~~total economic circumstances. For monthly income amount for child support between~~
1833 ~~approximately 75% and 125% of the federal poverty guidelines, the percentage rates in the~~
1834 ~~schedule gradually increase as income increases. The percentage rates used in 704.7 apply to~~
1835 ~~obligors with income greater than or equal to approximately 125% of the federal poverty~~
1836 ~~guidelines.~~

1837 ~~End.~~

1839

Rule CS-2
ENFORCEMENT TOOLS

2.1. Purpose and Effective Date	2.6. Seizure of Property
2.2 Definition	2.7. Other Enforcement Tools
2.3. Compliance Plan	2.8. Family Court Enforcement Action
2.4. Notice of Enforcement Actions	2.9. Alternative Payment Plans
2.5. Liens	

2.1. Purpose and Effective Date

~~2.1-1. This rule is promulgated for the purpose of establishing the enforcement tools that may be used when an obligor is no longer paying the amount required by a child support order.~~
~~2.1-2. This rule shall be effective June 24, 2009.~~

2.2. Definitions

~~2.2-1. In this rule:~~

- ~~(a) “Administrative enforcement actions” means actions authorized by federal regulations which are taken to enforce a child support order without obtaining an order from the Family Court.~~
- ~~(b) “Agency” means the Oneida Tribe Child Support Agency.~~
- ~~(c) “Alternative payment plan” or “plan” means a negotiated agreement between the Agency and an obligor, or an order set by the Family Court, to establish terms for the payment of arrears.~~
- ~~(d) “Equity” means the fair market value of property minus the liens on that property with priority over the child support lien.~~
- ~~(e) “Lien amount” means the difference between the monthly amount of support due and the arrears in a case.~~
- ~~(f) “Lien docket” means the registry kept by the State of Wisconsin containing the names of people who owe past due child support.~~
- ~~(g) “Monthly amount due” means the sum of court ordered provisions for periodic payments due in one (1) month, including any arrears payment.~~
- ~~(h) “Obligee” means the person or entity to whom child support is owed.~~
- ~~(i) “Obligor” means the person who is obliged to pay child support to the obligee.~~
- ~~(j) “Ownership interest” means any personal financial interest.~~
- ~~(k) “Qualified child” means an individual who is no longer a minor but who, while still a minor, was determined to be disabled under Title II or Title XVI of the Social Security Act.~~
- ~~(l) “Threshold” means an amount, expressed as either a percentage of the monthly amount due, a fixed dollar amount, or both, that the lien amount must equal or exceed before an administrative enforcement action may be used to enforce a child support order.~~

2.3. Compliance Plan

~~2.3-1. The Agency shall attempt to meet with a party who is found to be subject to enforcement action as soon as possible by sending a Letter of Non-Compliance within five (5) business days of being informed of a party’s failure to either pay support as ordered or to meet a required obligation or action.~~

- ~~(a) The Letter shall set out the conditions the party has failed to comply with, outline the enforcement actions that may be taken and request the party meet with the Agency.~~
- ~~(b) If the party does not respond to the Letter within five (5) business days after receipt of the letter, the Agency shall send a second Letter.~~

- 1889 ~~(c) If the party fails to respond to the second Letter within five (5) business days after~~
1890 ~~receipt of the letter, the Agency shall proceed with appropriate enforcement action.~~
1891 ~~(d) If the party responds to the Letter, the Agency shall interview the party to determine~~
1892 ~~the reasons and barriers for the non-compliance and create a Compliance Plan. The~~
1893 ~~Compliance Plan may include an increase in payment and/or any activity that is necessary~~
1894 ~~to ensure payment, including programs that focus on:~~
1895 ~~(1) Employment and training;~~
1896 ~~(2) Social service and mental health;~~
1897 ~~(3) Physical and learning disabilities;~~
1898 ~~(4) Tribal traditions and customs;~~
1899 ~~(5) Family counseling.~~
1900 ~~(e) If the party successfully completes the Compliance Plan, no further enforcement action~~
1901 ~~is necessary. However, if the party fails to complete the Compliance Plan, the Agency~~
1902 ~~shall proceed with appropriate enforcement action.~~

1904 **2.4. Notice of Enforcement Actions**

1905 ~~2.4.1. The enforcement actions in this rule may be applied when an obligor is no longer in~~
1906 ~~compliance with a child support order and is not making efforts to comply with the order. An~~
1907 ~~obligor shall be provided with at least thirty (30) days notice before an enforcement action is~~
1908 ~~utilized, unless another time line is specified within this rule. An enforcement action shall be stayed~~
1909 ~~and/or suspended after notice is given to the obligor if the obligor pays the debt in full or enters~~
1910 ~~into, and maintains, an alternative payment plan.~~

1911 ~~2.4.2. Notice of Delinquency. In the event that an obligor owes a debt equal to or exceeding the~~
1912 ~~monthly amount due, the Agency shall send a notice of delinquency to the obligor.~~

- 1913 ~~(a) The notice shall inform the obligor of the following:~~
1914 ~~(1) The dates that the delinquency accrued;~~
1915 ~~(2) The total amount of the delinquency;~~
1916 ~~(3) Any prior agreement or showing of good cause to not wage withhold may be~~
1917 ~~terminated and the obligor may be subject to wage withholding;~~
1918 ~~(4) The enforcement action that may be taken as a result of the delinquency;~~
1919 ~~(5) The obligor may request, in writing to the Agency, to negotiate an alternative~~
1920 ~~payment plan with the Agency within ten (10) business days after the service of~~
1921 ~~notice in order to stay any enforcement action;~~
1922 ~~(6) The obligor has ten (10) business days after the service of the notice of~~
1923 ~~delinquency to file an objection with the Agency presenting good cause why an~~
1924 ~~arrears payment or other enforcement action should not be implemented. The only~~
1925 ~~allowable objections are:~~

1926 ~~(A) There is an error in the amount of current or overdue support; or~~

1927 ~~(B) The identity of the obligor is mistaken.~~

1928 ~~(b) If the obligor does not file an objection or request to negotiate an alternative payment~~
1929 ~~plan:~~

- 1930 ~~(1) the enforcement action shall be taken; and/or~~
1931 ~~(2) a wage withholding order, or revised order if one is already in place, shall be~~
1932 ~~imposed on the payor. No more than an additional twenty percent (20%) of the~~
1933 ~~current support payment order can be withheld to satisfy the delinquency provided~~
1934 ~~that the total amount withheld does not exceed forty percent (40%) of the obligor's~~
1935 ~~monthly income.~~

1936 ~~(c) If a permissible objection is filed, the obligor shall be entitled to a hearing before any~~
1937 ~~enforcement action is taken.~~

1938 ~~2.4 3. Use of Mail. The Agency shall send notices related to the enforcement of a child support~~
1939 ~~order by mail to the last known mailing address provided by the obligor. If the notice is returned,~~
1940 ~~the Agency shall send notice to the obligor using the current employer mailing address provided~~
1941 ~~by the obligor. If the notice to the obligor mailed to the obligor's employer is returned, the Agency~~
1942 ~~shall use all appropriate tribal, federal, state and local resources to ascertain an obligor's current~~
1943 ~~mailing address. If those resources are used for a period of sixty (60) days and a verified mailing~~
1944 ~~address has not been identified, the Agency may proceed with the administrative enforcement~~
1945 ~~action.~~

1946 ~~2.4 4. Notice to the Obligee of Enforcement Proceedings. The Agency shall provide written notice~~
1947 ~~to the obligee when an enforcement action has been initiated against the obligor or when the~~
1948 ~~obligor requests a hearing and the hearing has been scheduled. The notice to the obligee shall be~~
1949 ~~sent at the same time notice is sent to the obligor.~~

1950 ~~2.4 5. Notice to Individuals Other Than the Obligor with a Recorded Ownership Interest in~~
1951 ~~Property. The Agency shall provide notice related to the seizure of property to any individual,~~
1952 ~~other than the obligor, with a recorded ownership interest in property subject to seizure. The~~
1953 ~~individual may request a hearing for a determination of the proportion of the value of the property~~
1954 ~~that is attributable to his or her net contribution to the property. The hearing shall be requested~~
1955 ~~within thirty (30) days after the notice was received by the individual.~~

1956
1957 **2.5. Liens**

1958 ~~2.5 1. The Agency shall have an obligor placed on the lien docket if the obligor owes a debt in~~
1959 ~~one or more of the obligor's cases equal to or exceeding the monthly amount due or \$500.00,~~
1960 ~~whichever is greater.~~

1961 ~~2.5 2. Lien Amount. The lien amount on the lien docket shall equal the sum of lien amounts from~~
1962 ~~the cases in which the lien amount meets or exceeds the lien threshold.~~

1963 ~~2.5 3. Filing Date. The filing date on the lien docket is the date that a lien is first docketed and~~
1964 ~~delivered to the register of deeds. The filing date is the effective date of the lien. The effective~~
1965 ~~date does not change if the lien amount is adjusted up or down within five (5) years after the date~~
1966 ~~that the lien is first docketed.~~

1967 ~~2.5 4. Lien Priority. The child support lien shall have priority over all other liens on property~~
1968 ~~except tax and special assessment liens, purchase money mortgages, construction liens,~~
1969 ~~environmental liens, liens that are filed or recorded before the child support lien becomes effective~~
1970 ~~and any other lien given priority under the law.~~

1971 ~~(a) Property subject to a lien includes personal property in which the obligor has a recorded~~
1972 ~~ownership interest.~~

1973 ~~(b) A child support lien is not effective against a good faith purchaser of titled personal~~
1974 ~~property unless the lien is recorded on the title.~~

1975 ~~2.5 5. Credit Bureau Reporting. The Agency may report the total amount of an obligor's liens to~~
1976 ~~the credit bureau, so long as the lien is fully enforceable and the case is not barred from credit~~
1977 ~~bureau reporting.~~

1978 ~~2.5 6. Denial of State issued Grants and Loans. Wisconsin state agencies may deny grants and~~
1979 ~~loans to an obligor who is placed on the lien docket. These grants and loans include student loans~~
1980 ~~and higher education grants, as well as mortgage loans from the Wisconsin Housing and Economic~~
1981 ~~Development Authority (WHEDA).~~

1982 ~~2.5 7. The Agency shall, either on its own or in conjunction with the State, be responsible for:~~

1983 ~~(a) updating the lien docket periodically.~~

- 1984 ~~(b) providing a copy of the lien docket to the appropriate register of deeds.~~
1985 ~~(c) responding to inquiries concerning information recorded on the lien docket.~~
1986 ~~(d) ensuring the satisfaction of a lien is recorded on the lien docket.~~
1987 ~~(e) renewing a lien if the lien amount equals or exceeds the lien threshold at the end of the~~
1988 ~~five (5) year effective period.~~
1989 ~~(1) When a lien is renewed, the date on which the lien is renewed shall become the~~
1990 ~~effective date of the lien, and a new five (5) year period shall commence.~~
1991 ~~(f) sending the obligor a notice when a lien has been renewed.~~
1992 ~~(g) developing procedures for releasing a lien and releasing specific property from a lien.~~

1993 ~~2.5 8. Financial Record Review.~~

- 1994 ~~(a) An obligor may request a financial record review, within ten (10) business days of~~
1995 ~~receiving a notice of a lien, to determine the correctness of the financial records in a case.~~
1996 ~~The request shall be made in writing to the Agency.~~
1997 ~~(b) Upon receiving a request for a financial record review, the Agency shall, at no charge~~
1998 ~~to the obligor, provide the obligor with:~~
1999 ~~(1) all relevant financial records.~~
2000 ~~(2) information explaining how to interpret the records.~~
2001 ~~(3) a form the obligor may use to identify any alleged errors in the records.~~
2002 ~~(c) Within twenty (20) days after receiving the relevant financial records, the obligor may:~~
2003 ~~(1) request a meeting with the Agency to review the financial records and to discuss~~
2004 ~~any alleged errors.~~
2005 ~~(2) provide a statement of alleged error on the documents.~~
2006 ~~(A) The Agency shall review the records to determine whether the alleged~~
2007 ~~error is correct and provide a written determination within sixty (60) days~~
2008 ~~after the obligor's request for a financial record review is received as to~~
2009 ~~whether the lien against the obligor is in the correct amount.~~
2010 ~~(d) The Agency may proceed with the lien if:~~
2011 ~~(1) the obligor does not request a meeting with the Agency or provide a statement~~
2012 ~~of alleged error within twenty (20) days after receiving the financial records; or~~
2013 ~~(2) no errors are found in the financial records of the case; or~~
2014 ~~(3) the arrears exceed the required threshold amount after any errors in the financial~~
2015 ~~records are corrected.~~

2016
2017 ~~2.6. Seizure of Property~~

- 2018 ~~2.6 1. When seizing property, the Agency shall presume that an obligor's equity or ownership in~~
2019 ~~the property, whether an account or personal property, is an equal pro-rata share of the equity or~~
2020 ~~ownership based on the number of individuals with a recorded ownership interest in the property.~~
2021 ~~2.6 2. Account Seizure. The Agency may initiate an account seizure if there is a lien against an~~
2022 ~~obligor and the lien amount in the obligor's case equals or exceeds 300% of the monthly amount~~
2023 ~~due in the order or \$1,000, whichever is greater.~~

- 2024 ~~(a) The Agency may not issue a notice of seizure unless the sum of the funds in all of the~~
2025 ~~obligor's financial accounts, minus expected seizure fees and any early withdrawal penalty,~~
2026 ~~exceeds \$500. The first \$500 of each account shall not be frozen and/or seized.~~
2027 ~~(b) The notice shall instruct the financial institution of the following:~~
2028 ~~(1) The maximum amount frozen in an account may not exceed the amount~~
2029 ~~specified by the Agency in the notice.~~
2030 ~~(2) The maximum amount frozen in an account may not exceed the obligor's~~
2031 ~~ownership interest.~~

2032 ~~(3) A financial institution is not liable for encumbering or surrendering any assets~~
2033 ~~held by the financial institution in response to instructions from the Agency for the~~
2034 ~~purpose of enforcing a child support order.~~

2035 ~~2.6 3. Seizure of Personal Property Other than Financial Accounts. In addition to the~~
2036 ~~requirements under (a) and (b) below, the Agency may initiate the seizure of personal property if~~
2037 ~~there is a lien against an obligor and the lien amount equals or exceeds 600% of the monthly~~
2038 ~~amount due in the order. Upon issuance of a written order of execution, non-exempt personal~~
2039 ~~property may be seized and sold in a reasonable manner after notice to the owner in payment of a~~
2040 ~~child support obligation that has been adjudicated delinquent by the Family Court. Ceremonial or~~
2041 ~~religious property and real property are exempt from such writs of execution.~~

2042 ~~(a) Personal Property. The Agency may seize personal property if the obligor's equity in~~
2043 ~~the property, minus expected seizure fees, exceeds \$500 per item total.~~

2044 ~~(b) The Tribe's "Disposition of Excess Tribal Property Policy" shall not apply to any~~
2045 ~~property seized under this law.~~

2046
2047 **2.7. Other Enforcement Tools.**

2048 ~~2.7 1. Attachment of Per Capita Payments. The Agency may initiate the attachment and/or seizure~~
2049 ~~of per capita payments of tribal members in accordance with applicable law.~~

2050 ~~2.7 2. License Suspension.~~

2051 ~~(a) The Agency may initiate the suspension or denial of occupational, fishing, recreational,~~
2052 ~~motor vehicle and/or Oneida issued licenses if there is a lien against an obligor that equals~~
2053 ~~or exceeds 300% of the monthly amount due in the child support order, or \$1000,~~
2054 ~~whichever is greater. Suspension of an occupational and/or motor vehicle license shall be~~
2055 ~~pursued only as a last resort and the Agency shall not initiate the suspension of a license(s)~~
2056 ~~if:~~

2057 ~~(1) there is an order in place that prohibits the suspension of the license(s);~~

2058 ~~(2) the obligor has filed for bankruptcy; or~~

2059 ~~(3) action has already been taken to suspend the license.~~

2060 ~~(b) When an Oneida issued license is suspended, that suspension shall be binding on and~~
2061 ~~given effect by the license issuing agencies. Orders affecting licenses issued by other~~
2062 ~~governmental agencies shall be sent to such agencies for enforcement.~~

2063 ~~2.7 3. Intercept of Lump Sum Pension Payments, Judgments and Settlements. The Agency may~~
2064 ~~initiate the intercept of lump sum pension payments, judgments and/or settlements when an~~
2065 ~~obligor has been placed on the lien docket.~~

2066 ~~(a) When initiating the intercept of lump sum pension payments, judgments and/or~~
2067 ~~settlements, the Agency shall specify in the notice that the amount withheld from the lump~~
2068 ~~sum pension payment, judgment or settlement may not exceed the obligor's ownership~~
2069 ~~interest in the payment.~~

2070 ~~2.7 4. Tax and Lottery Intercepts. The Agency may coordinate with a federal or state agency in~~
2071 ~~order to enforce a child support order through a tax and/or lottery intercept. Once an obligor has~~
2072 ~~been notified that his or her tax refund and/or lottery winnings may be intercepted, that notice is~~
2073 ~~valid until all arrears are paid in full.~~

2074 ~~(a) Federal Tax Intercept. The Agency may certify a federal tax intercept when the~~
2075 ~~requirements pertaining to federal tax intercept contained in an agreement between the~~
2076 ~~State and the Tribe have been met.~~

2077 ~~(b) Wisconsin State Tax Intercept. The Agency may certify a Wisconsin state tax intercept~~
2078 ~~when the following requirements are met:~~

2079 ~~(1) The arrears shall be at least one hundred fifty dollars (\$150).~~

- 2080 ~~(2) The arrears shall be at least thirty (30) days old.~~
- 2081 ~~(3) The arrears shall be for a minor child or a child who has reached the age of~~
- 2082 ~~eighteen (18) within the last twenty (20) years.~~
- 2083 ~~(c) Wisconsin Lottery Intercept. When a case is certified for Wisconsin state tax intercept,~~
- 2084 ~~it shall also be automatically certified for Wisconsin lottery intercept for lottery winnings~~
- 2085 ~~of one thousand dollars (\$1,000) or more.~~
- 2086 ~~2.7.5. Passport Denial. If a federal tax intercept is in place and the obligor owes five thousand~~
- 2087 ~~dollars (\$5,000) or more in arrears, an obligor may be denied a passport. The arrears must meet~~
- 2088 ~~the criteria for federal tax intercept in order for passport denial to be used as an enforcement tool.~~
- 2089 ~~An obligor shall be removed from the passport denial list if:~~
- 2090 ~~(a) The federal tax intercept certification amount is zero (0);~~
- 2091 ~~(b) The obligor makes a lump sum payment and/or negotiates a payment plan with the~~
- 2092 ~~Agency;~~
- 2093 ~~(c) The obligor has to travel abroad because of a life or death situation involving an~~
- 2094 ~~immediate family member, such as the obligor's parent, guardian, step parent, child, step~~
- 2095 ~~child, grandparent, sibling, step-sibling, aunt, uncle or spouse; or~~
- 2096 ~~(d) The obligor was denied a passport in error.~~
- 2097

2.8. Family Court Enforcement Action

- 2099 ~~2.8.1. If the Agency does not have the authority to conduct the appropriate enforcement action,~~
- 2100 ~~or the obligor is unresponsive to the enforcement actions being imposed by the Agency, the case~~
- 2101 ~~shall be referred to the Family Court for enforcement.~~
- 2102 ~~2.8.2. The Family Court may order any of the enforcement actions the Agency is authorized to~~
- 2103 ~~implement. In addition, the Family Court may order the following to enforce a child support order:~~
- 2104 ~~(a) Bonds and Other Guarantees. The Family Court may require an obligor to provide a~~
- 2105 ~~surety, bond or guarantee to secure the payment of arrears, if wage withholding is not~~
- 2106 ~~applicable, practical or feasible to secure payment of arrears.~~
- 2107 ~~(b) Claims Against Estates.~~
- 2108 ~~(1) The Family Court may approve a claim for past and future support against an~~
- 2109 ~~obligor's estate.~~
- 2110 ~~(2) The Family Court may issue a restraining order against an estate from which~~
- 2111 ~~an obligor will inherit.~~
- 2112 ~~(c) Community Service. The Family Court may order an obligor to perform community~~
- 2113 ~~service. The number of hours of work required may not exceed what would be reasonable~~
- 2114 ~~considering the amount of arrears the obligor owes. The obligor shall be provided a written~~
- 2115 ~~statement of the terms of the community service order and that the community service order~~
- 2116 ~~is monitored. The order shall specify:~~
- 2117 ~~(1) how many hours of community service the obligor is required to complete;~~
- 2118 ~~(2) the time frame in which the hours must be completed;~~
- 2119 ~~(3) how the obligor will report his or her hours; and~~
- 2120 ~~(4) any other information the Family Court determines is relevant.~~
- 2121 ~~(d) Contempt. An obligor who disobeys a lawful child support order shall be subject to~~
- 2122 ~~punishment for contempt of court. An obligor found in contempt of court may be fined in~~
- 2123 ~~an amount not to exceed one thousand dollars (\$1,000.00) per act of contempt and may not~~
- 2124 ~~exceed five thousand dollars (\$5,000.00) in total. In instances of continuing contempt,~~
- 2125 ~~each day shall constitute a separate act of contempt.~~
- 2126 ~~(e) Incarceration. The Family Court may order an obligor be incarcerated, contingent on~~
- 2127 ~~the agreements necessary to enable the Tribe to incarcerate individuals. Before a jail~~

2128 ~~sentence is imposed, the Family Court may provide other conditions that require a certain~~
2129 ~~amount of money be paid or action be taken for an obligor to avoid incarceration.~~

2130 ~~2.8-3. Criminal Non-Support. A criminal non-support action may be initiated, in the appropriate~~
2131 ~~county, against an obligor who has the ability to pay child support and willfully or intentionally~~
2132 ~~failed to pay and the obligor knew or reasonably should have known he or she was legally obligated~~
2133 ~~to provide.~~

2134 ~~2.9. Alternative Payment Plans~~

2135 ~~2.9-1. Applicability of Alternative Payment Plans. When an obligor is subject to administrative~~
2136 ~~enforcement action, he or she may negotiate an alternative payment plan with the Agency.~~

2137 ~~2.9-2. Negotiation of an Alternative Payment Plan After Receiving Notice of an Enforcement~~
2138 ~~Action.~~

2139 ~~(a) In order to negotiate an alternative payment plan, an obligor shall submit a written~~
2140 ~~request to the Agency. A written request to negotiate an alternative payment plan received~~
2141 ~~by the Agency within ten (10) business days after the date of notice shall stay any~~
2142 ~~administrative enforcement action. If a written request to negotiate an alternative payment~~
2143 ~~plan is received by the Agency more than ten (10) business days after the date of notice,~~
2144 ~~administrative enforcement action may be taken, as long as the requirements of 2.9-3 and~~
2145 ~~2.9-4 are met.~~

2146 ~~(b) An obligor may negotiate a plan with the Agency to have a license issued or renewed~~
2147 ~~after it has been restricted, limited, suspended or refused.~~

2148 ~~(c) The obligor may submit a written request for a hearing on the reasonableness of the~~
2149 ~~plan within ten (10) business days after the terms of the plan are agreed upon.~~

2150 ~~(d) If the Agency and the obligor are unable to reach agreement on the terms of a plan, a~~
2151 ~~hearing may be conducted. The Family Court may order a plan by setting payments in the~~
2152 ~~amounts and at the times it considers reasonable.~~

2153 ~~2.9-3. Staying Administrative Enforcement Actions. Administrative enforcement actions shall be~~
2154 ~~stayed by the Agency while the obligor and the Agency are negotiating a plan, or, if a hearing is~~
2155 ~~requested, until the Family Court determination has been made. To stay an administrative~~
2156 ~~enforcement action means the following:~~

2157 ~~(a) The obligor shall not be certified for denial, nonrenewal, restriction, or suspension of~~
2158 ~~professional, occupational, fishing, recreational, motor vehicle and/or Oneida-issued~~
2159 ~~licenses.~~

2160 ~~(b) Any frozen financial accounts shall remain frozen and shall not be seized.~~

2161 ~~(c) Personal property that has been seized shall not be sold.~~

2162 ~~2.9-4. Suspension of Administrative Enforcement Actions.~~

2163 ~~(a) When a plan has been negotiated between the obligor and the Agency, or the Family~~
2164 ~~Court has determined that a plan is reasonable or has ordered a plan, the Agency shall~~
2165 ~~suspend administrative enforcement actions as long as the obligor complies with the plan.~~

2166 ~~(b) If an obligor makes a full arrears payment, the administrative enforcement action shall~~
2167 ~~be suspended.~~

2168 ~~2.9-5. Proceeding with Administrative Enforcement Actions. The Agency may continue with the~~
2169 ~~administrative enforcement action if:~~

2170 ~~(a) the obligor and the Agency are unable to negotiate a plan.~~

2171 ~~(b) the Family Court determines that the plan is not reasonable.~~

2172 ~~(c) the Family Court does not order a plan.~~

2173 ~~2.9-6. Disclosure of Income and Assets. The request to negotiate a plan shall include an agreement~~
2174 ~~by the obligor to provide the Agency with a full disclosure of income and assets available. The~~
2175

2176 ~~obligor shall provide complete income and assets information to the Agency within five (5)~~
2177 ~~business days of the request to negotiate a payment plan.~~

2178 ~~2.9-7. Terms of an Alternative Payment Plan.~~

2179 ~~(a) An alternative payment plan may include a lump sum payment, or periodic payments~~
2180 ~~on the arrears, or both, subject to the following standards:~~

2181 ~~(1) The sum of any periodic payment established under the plan and any other~~
2182 ~~payment of support ordered by the Family Court, when subtracted from the~~
2183 ~~obligor's gross income, may not leave the obligor below 100% of the poverty line~~
2184 ~~established under 42 USC 9902 (2) unless the obligor agrees otherwise.~~

2185 ~~(2) When establishing an alternative payment plan, the Agency shall consider the~~
2186 ~~factors used by the Family Court in determining whether the use of the percentage~~
2187 ~~standard is unfair to the child or any of the parties.~~

2188 ~~(b) Periodic payments under the plan may be made through wage withholding in amounts~~
2189 ~~in addition to the amount ordered in the child support order that is in effect.~~

2190 ~~2.9-8. Default on an Alternative Payment Plan. In the event that the obligor defaults on the plan,~~
2191 ~~the Agency shall notify the obligor in writing that an administrative enforcement action shall be~~
2192 ~~implemented unless the lien is paid in full.~~

2193 ~~2.9-9. Renegotiation of an Alternative Payment Plan. After the entry of an alternative payment~~
2194 ~~plan, the plan may be renegotiated upon the written request of the obligor or Agency if the~~
2195 ~~requesting party can show a substantial change in circumstances. A substantial change in~~
2196 ~~circumstances includes any of the following:~~

2197 ~~(a) A change in the obligor's income or assets, including the sale or purchase of real or~~
2198 ~~personal property.~~

2199 ~~(b) A change in the obligor's earning capacity.~~

2200 ~~(c) Any other factor that the Agency determines is relevant.~~

2201 ~~2.9-10. Obligors with Cases in Multiple Jurisdictions.~~

2202 ~~(a) When multiple child support agencies initiate administrative enforcement actions~~
2203 ~~against the same obligor, and the obligor negotiates an alternative payment plan with one~~
2204 ~~of the agencies, the plan does not preclude any other child support agency from proceeding~~
2205 ~~with its administrative enforcement action.~~

2206 ~~(b) If a child support agency which has a lien against property of an obligor negotiates an~~
2207 ~~alternative payment plan with the obligor, the agency may receive proceeds from the sale~~
2208 ~~of the obligor's personal property under the lien including, but not limited to, proceeds~~
2209 ~~from administrative enforcement actions taken by other child support agencies.~~

2210
2211 ~~End.~~

2212 ~~Emergency Adopted BC 06-30-08-C (Expired)~~

2213 ~~Emergency Extended BC 12-10-08-H (Expired)~~

2214 ~~Permanently Adopted BC 06-24-09-B~~

2215 ~~Emergency Amended BC 10-28-09-E~~

2216 ~~Amended BC 02-24-10-G~~

2217 ~~Amended BC 02-23-11-E~~

2218 ~~Amended BC 06-22-11-K~~

2219 ~~Amended BC 10-10-12-C~~

2220 ~~Amended BC 08-13-14-E~~

2221

Title 7. Children, Elders and Family - Chapter 704
shakoti'nukú·lale? latiksashúha?
They watch over the children
CHILD SUPPORT

704.1. Purpose and Policy	704.10. Modification of a Child Support Order
704.2. Adoption, Amendment, Repeal	704.11. Modification of a Child Support Order for an Incarcerated Parent
704.3. Definitions	704.12. Compliance Plan
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704.5. Initiating an Action for Child Support	704.14. Alternative Payment Plans
704.6. Child Support Hearing Procedures	704.15. Administrative Enforcement Action
704.7. Determining the Child Support Obligation	704.16. Family Court Contempt Action
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704.9. Child Support Order	704.18. Right of Appeal

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704.1. Purpose and Policy

704.1-1. *Purpose.* The purpose of this law is to:

- (a) Establish the legal responsibility of parents to provide financially for their children's general well-being;
- (b) Make support payments more equitable by ensuring consistent treatment of persons in similar circumstances;
- (c) Make support payments based on the real earning capability of parents; and
- (d) Improve the efficiency of child support establishment and enforcement.

704.1-2. *Policy.* It is the policy of this law to:

- (a) establish an adequate standard of support for children whose paternity has been established or acknowledged;
- (b) encourage the use of stipulations to resolve disputes over child support obligations; and
- (c) limit the use and disclosure of personal information received or maintained by the Nation's Family Court and/or the Oneida Nation Child Support Agency in order to protect the privacy rights of all parties and children who are involved in proceedings or actions under this law.

704.2. Adoption, Amendment, Repeal

704.2-1. This law was adopted by the Oneida Business Committee by resolution BC-06-24-09-B and amended by resolutions BC-02-24-10-G, BC-02-23-11-E, BC-06-22-11-K, BC-10-10-12-C, BC-08-13-14-E, and BC-__-__-__-__.

704.2-2. This law may be amended or repealed by the Oneida Business Committee or the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

704.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

704.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

704.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

33 **704.3. Definitions**

34 704.3-1. This section shall govern the definitions of words and phrases used within this law. All
35 words not defined herein shall be used in their ordinary and everyday sense.

36 (a) “Administrative enforcement action” means enforcement action taken by the Oneida
37 Nation Child Support Agency to enforce a child support order without obtaining an order
38 from the Family Court.

39 (b) “Agency” means the Oneida Nation Child Support Agency established to administer
40 and supervise the Nation’s child support enforcement program.

41 (c) “Alternative payment plan” means a negotiated agreement between the Agency and an
42 obligor, or an order set by the Family Court, to establish terms and conditions for the
43 payment of arrears.

44 (d) “Basic support costs” means food, shelter, clothing, transportation, personal care, and
45 incidental recreational costs.

46 (e) “Business day” means Monday through Friday from 8:00 a.m. to 4:30 p.m., excluding
47 holidays recognized by the Nation.

48 (f) “Child” means a biological or adopted child of the obligor under the age of eighteen
49 (18), or any person who is less than nineteen (19) years old if he or she is pursuing a high
50 school diploma or its equivalent from an accredited course of instruction.

51 (g) “Child support” means the total financial obligation a parent has towards his or her
52 child as established through judicial and/or administrative processes.

53 (h) “Child Support Obligation of Low-Income Payers Schedule” means the Wisconsin
54 Department of Children and Families Child Support Obligation of Low-Income Payers at
55 the Federal Poverty Guidelines, found in DCF 150 Appendix C.

56 (i) “Child support order” means a judgment of the Family Court or a court of competent
57 jurisdiction ordering payment of child support which provides monetary support, health
58 care, arrearages, or reimbursement, and which may include related costs and fees, interest
59 and penalties, income withholding, attorney’s’ fees and other relief.

60 (j) “Contempt” means a willful disregard of the authority of a court or disobedience to its
61 lawful orders.

62 (k) “Current six (6) month treasury bill rate” means the yield of a U.S. government security
63 with a term of six (6) months.

64 (l) “Custodial parent” means the parent who exercises physical custody of the child
65 pursuant to a custody order, on the basis of agreement between the parents or in the absence
66 of one parent. A legal guardian with primary physical custody of the child or children and
67 standing in the position of the parent shall have the same rights to child support as a
68 custodial parent.

69 (m) “Employer” means any individual, business, government, institution, or other entity
70 paying wages to one or more employees.

71 (n) “Equity” means the fair market value of property minus the liens on that property with
72 priority over the child support lien.

73 (o) “Equivalent care” means a period of time during which the parent cares for the child
74 that is not overnight, but is determined by the court to require the parent to assume the
75 basic support costs that are substantially equivalent to what the parent would spend to care
76 for the child overnight. Blocks of time with the child of at least six (6) hours may be
77 considered the equivalent of a half-day if a meal is provided during that time period. Two
78 (2) half-day blocks may be considered the equivalent of an overnight.

79 (p) “Family Court” means the branch of the Nation’s Judiciary that is designated to handle
80 all matters related to the family and/or children.

81 (q) “Gross income” means any form of payment due to an individual regardless of source,
82 including, but not limited to:

- 83 (1) Salary and wages, including overtime pay;
- 84 (2) Interest and investment income;
- 85 (3) Social Security disability and old age insurance benefits under 42 U.S.C. §401
86 to 433;
- 87 (4) Net proceeds resulting from worker’s compensation or other personal injury
88 awards intended to replace income;
- 89 (5) Unemployment insurance;
- 90 (6) Income continuation benefits;
- 91 (7) Voluntary deferred compensation and employee contributions to the following:
92 employee benefit plan, profit-sharing, pension or retirement account;
- 93 (8) Military allowances and veterans disability compensation benefits;
- 94 (9) Undistributed income of a corporation or any partnership in which the parent
95 has an ownership interest sufficient to individually exercise control or to access the
96 earnings of the business, unless the income included is an asset;
- 97 (10) Per capita distribution payments;
- 98 (11) Lease or rental income;
- 99 (12) Prizes over one thousand dollars (\$1,000); and
- 100 (13) All other income, whether taxable or not, except that gross income does not
101 include any of the following:
 - 102 (A) Child support;
 - 103 (B) Foster care payments;
 - 104 (C) Kinship care payments;
 - 105 (D) Public assistance benefits, except that child care subsidy payments shall
106 be considered income to a child care provider;
 - 107 (E) Food stamps;
 - 108 (F) Public assistance or financial hardship payments paid by a county or a
109 Nation;
 - 110 (G) Supplemental Security Income under 42 U.S.C. §1381 to 1383(f) and
111 state supplemental payments; or
 - 112 (H) Payments made for social services.

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

116 (s) “Immediate family member” means an individual’s husband, wife, mother, father, step-
117 mother, step-father, son, daughter, step-son, step-daughter, brother, sister, step-brother,
118 step-sister, grandparent, grandchild, mother-in-law, father-in-law, daughter-in-law, son-in-
119 law, brother-in-law or sister-in-law and any of the these relations attained through legal
120 adoption.

121 (t) “Income withholding” means the process whereby a court order, Family Court order,
122 or voluntary wage assignment directs an employer, bank, or agent holding monies or
123 property of an obligor, to make payments or deliver property to satisfy a child support
124 obligation.

- 125 (u) “Intact family” means a family in which the child or children and the obligor reside in
126 the same household and the obligor shares his or her income directly with the child or
127 children and has a legal obligation to support the child or children.
- 128 (v) “Legally incompetent adult” means a person at least eighteen (18) years old who has
129 been declared incompetent by a court of competent jurisdiction because he or she is
130 temporarily or permanently impaired to the extent that the person lacks sufficient
131 understanding to make or communicate responsible personal decisions.
- 132 (w) “Lien amount” means the difference between the monthly amount of support due and
133 the arrears in a case.
- 134 (x) “Lien docket” means the registry kept by the State of Wisconsin containing the names
135 of people who owe past-due child support.
- 136 (y) “Low-income obligor” means an obligor for whom the Family Court uses the monthly
137 support amount provided in the schedule in the Child Support Obligation of Low-Income
138 Payers Schedule based on the Family Court’s determination that the obligor’s total
139 economic circumstances limit his or her ability to pay support at standard percentages and
140 the obligor’s income is at a level set forth in the schedule in the Child Support Obligation
141 of Low-Income Payers Schedule.
- 142 (z) “Marital child” means a child born during the marriage of his or her parents. In
143 addition, if the father and mother of a non-marital child enter into a lawful marriage or a
144 marriage which appears and they believe is lawful, except where the parental rights of the
145 mother were terminated before either of these circumstances, the child becomes a marital
146 child and shall enjoy all of the rights and privileges of a marital child as if he or she had
147 been born during the marriage of the parents. The children of all marriages declared void
148 under the law are nevertheless marital children.
- 149 (aa) “Monthly income” means the obligor’s annual gross income or, if applicable, the
150 obligor’s annual income modified for business expenses; plus the obligor’s annual income
151 imputed based on earning capacity; plus the obligor’s annual income imputed from assets;
152 divided by twelve (12).
- 153 (bb) “Nation” means the Oneida Nation.
- 154 (cc) “Non-custodial parent” means the parent of a child who does not hold primary care,
155 custody and/or control of a child.
- 156 (dd) “Non-legally responsible relative” means a person connected with a child by blood,
157 marriage, or adoption who assumes responsibility for the care of a child without legal
158 custody, but is not in violation of a court order. A non-legally responsible relative does
159 not include a relative who has physical custody of a child during a court-ordered visitation
160 period.
- 161 (ee) “Obligee” means the person or entity to whom child support is owed.
- 162 (ff) “Obligor” means the person who is obliged to pay child support to the obligee.
- 163 (gg) “Ownership interest” means any personal financial interest.
- 164 (hh) “Parent” means the biological or adoptive parent of the child.
- 165 (ii) “Payor” means a person or entity with a legal obligation, as an employer, buyer of
166 goods, debtor, or otherwise, to pay an obligor.
- 167 (jj) “Reservation” means all lands within the exterior boundaries of the Reservation of the
168 Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, and
169 any lands added thereto pursuant to federal law.
- 170 (kk) “Serial family obligor” means an obligor with an existing legal obligation for child
171 support who incurs an additional legal obligation for child support in a subsequent family
172 as a result of a child support order.

173 (ll) “Shared-placement obligor” means a parent who has an ordered period of placement
174 of at least twenty-five percent (25%), is ordered by the Family Court to assume the child’s
175 basic support costs in proportion to the time that the parent has placement of the child and
176 is determined to owe a greater support amount than the other parent.

177 (mm) “Split-placement obligor” means an obligor who has two (2) or more children and
178 who has physical placement of one (1) or more children but not all of the children.

179 (nn) “Stipulation” means a voluntary agreement between parties concerning some relevant
180 point.

181 (oo) “Substantial change of income” means the obligor has a significant change in his or
182 her finances that would lead to a change in child support of more than fifteen percent (15%)
183 and fifty dollars (\$50.00) per month.

184 (pp) “Variable costs” means the reasonable costs above basic support costs incurred by or
185 on behalf of a child, including but not limited to, the cost of child care, tuition, a child’s
186 special needs, and other activities that involve substantial cost.

187 (qq) “Threshold” means an amount, expressed as either a percentage of the monthly
188 amount due, a fixed dollar amount, or both, that the lien amount must equal or exceed
189 before an administrative enforcement action may be used to enforce a child support order.

191 **704.4. Jurisdiction**

192 704.4-1. The Family Court has jurisdiction over any action brought under this law.

193 704.4-2. *Personal Jurisdiction.* Personal jurisdiction over an individual under this law may be
194 established where one party or a child of the parties is any of the following:

195 (a) a member of the Nation;

196 (b) a resident of the Reservation who is also a member of an Indian tribe, band or
197 community which is recognized by a State or the federal government;

198 (c) a resident of the Reservation who is also the biological parent of the child that is
199 enrolled or is eligible for enrollment with the Nation; or

200 (d) an individual who consents to the jurisdiction of the Family Court by one (1) of the
201 following means:

202 (1) Filing an action with the Family Court;

203 (2) Knowingly and voluntarily giving written consent to the jurisdiction of the
204 Family Court;

205 (3) Entering a notice of appearance before the Family Court in an action without
206 concurrently preserving the defense of lack of personal jurisdiction or filing a
207 motion to dismiss for lack of personal jurisdiction within thirty (30) days of entering
208 the notice of appearance; or

209 (4) Appearing in an action before the Family Court without asserting the defense
210 of lack of personal jurisdiction.

211 704.4-3. Personal jurisdiction over the other party may be established using any method provided
212 by law, including long-arm jurisdiction procedures as provided for in Section 201 of the Uniform
213 Interstate Family Support Act as referred to in 42 U.S.C. §666.

214 704.4-4. *Transfer of Cases from Other Courts.* If personal jurisdiction over the parties has been
215 established under this law, the Family Court has jurisdiction over any action transferred to the
216 Family Court from any court of competent jurisdiction.

217

218 **704.5. Initiating an Action for Child Support**

219 704.5-1. Every parent has a duty to support each and every child of that parent. A child support
220 order may be obtained from the Family Court by either submitting a stipulation to the Family Court
221 for approval or by filing a petition for child support with the Family Court.

222 (a) If a party to the action is a minor or is a legally incompetent adult, the Family Court
223 may appoint a guardian ad litem to represent such party in the action.

224 704.5-2. *Initiation of Action by the Agency.* For assistance in initiating a child support order a
225 party may request the services of the Agency or may be referred to the Agency from an entitlement
226 program.

227 (a) Within thirty (30) days of receiving a completed application for services or a referral,
228 the Agency shall meet with the custodial parent.

229 (b) Within seven (7) business days of the meeting with the custodial parent, the Agency
230 shall send a Letter of Request for Support and Financial Disclosure form to the non-
231 custodial parent.

232 (c) If the non-custodial parent fails to respond to or take action on the Letter of Request
233 for Support and Financial Disclosure form within ten (10) business days the Agency may
234 initiate a hearing in accordance with this law.

235 (d) If the non-custodial parent responds within the required time period after receiving a
236 Letter of Request for Support and Financial Disclosure form, the parties shall attempt to
237 enter into a stipulation.

238 704.5-3. *Initiation of Action by a Party Not the Agency.* Any of the following individuals may
239 initiate an action for the establishment of child support at any time by filing a petition with the
240 Family Court:

241 (a) a custodial parent;

242 (b) a child's mother;

243 (c) a child's father;

244 (d) a child's guardian ad litem;

245 (e) a child's non-legally responsible relative; or

246 (f) a legally incompetent adult's guardian ad litem.

247 704.5-4. *Stipulation.* The parties may enter into a stipulation at any time as to the level of the
248 child support obligation.

249 (a) The Agency shall assist parties in reaching a stipulation upon request or when the
250 parties are referred to the Agency by an entitlement program. Parties may also submit a
251 stipulation to the Family Court for approval without the Agency's assistance.

252 (b) In order for a stipulation to be valid the following conditions shall be met:

253 (1) The stipulation shall be in writing, signed, and notarized;

254 (2) If the parties deviate from the percentage standards, the stipulation shall state
255 the amount of support that would have been ordered by the percentage standards
256 and the reasons for deviating from the percentage standards;

257 (3) All parties shall sign the stipulation free of duress and coercion; and

258 (4) The Family Court shall make written findings that the stipulation is appropriate,
259 using the criteria for deviating from standard percentages as a guideline, if
260 applicable.

261 (c) After the stipulation is approved and filed by the Family Court, it shall have the same
262 force and effect as an order issued by the Family Court. The obligation of the obligor to
263 pay child support shall commence on the date specified in the agreement, but no later than
264 the date the stipulation is approved and filed by the Family Court.

265 704.5-5. *Petition to Establish Child Support*. If the parties do not enter into a stipulation, then a
266 petition to establish child support may be filed with the Family Court. The petition to establish
267 child support may be filed as a separate proceeding or in connection with a petition for child
268 custody.

269 (a) *Requirements of the Petition*. The petition to establish child support shall include the
270 following:

271 (1) The name, date of birth, address, and tribal affiliation of the petitioner,
272 respondent, and child for whom support is requested;

273 (A) If the address of the respondent is unknown, other departments of the
274 Nation shall cooperate with the Family Court, at the Family Court's request,
275 to provide the Family Court with the respondent's address. Any such Family
276 Court requests shall be made in such a way which protects the privacy rights
277 of all parties and children who are involved in proceedings or actions under
278 this law.

279 (2) With whom the child currently resides;

280 (3) When and how paternity was established;

281 (4) Name and date of birth of other children of the parties, and the child support
282 obligation for those children, if applicable;

283 (5) Whether either party is receiving state or tribal benefits, and if so, what benefits;

284 (6) Whether any other action to determine child support has been commenced or
285 is pending in a court of another jurisdiction and whether a child support order has
286 been entered by another court;

287 (7) Financial information such as the parties' income;

288 (8) The relief the petitioner is requesting, which shall include, but is not limited to,
289 establishment of support, request for support back to date of filing, and/or any other
290 relief the court may deem just and equitable;

291 (9) *Confidential Petition Addendum*. The confidential petition addendum is a
292 separate form which has the parties and the child's name, date of birth and social
293 security number. This form shall be kept separate from the petition and shall be
294 maintained in a confidential file. The form shall be available only to the parties, the
295 parties' attorneys or advocates, the Agency, or any person authorized by the Family
296 Court to have access to the form.

297 (b) *Nondisclosure of Information in Protected Cases*. Upon a finding, which may be made
298 ex parte, that the health, safety or welfare of a party or child would be unreasonably put at
299 risk by the disclosure of identifying information, or if an existing order so provides, the
300 Family Court shall order that the address of the child or party, or other identifying
301 information, not be disclosed in a pleading or other document filed in a proceeding under
302 this law.

303 (c) *Hearing Date*. Upon receipt of a petition, the Family Court shall schedule a hearing to
304 determine child support to be held at a time after the filing of the petition and consistent
305 with the manner of service.

306 (d) *Summons*. All parties shall be notified of the petition and of all hearings, and shall be
307 given an opportunity to be heard.

308 (1) *Service of the Summons*. The summons, which notices the initiation of an
309 action, shall be served by certified mail (return receipt requested) or in person
310 within fifteen (15) calendar days after the petition is filed with the Family Court.
311 The summons shall include the Family Court clerk's return address, with a notice

312 to file an answer to that address. Any notice after the summons shall be served by
313 first-class mail to the recently verified last-known address of the party.

314 (A) *Certified mail.* Certified mail sent to a party's most recently verified
315 last-known address but returned because it was unclaimed or refused shall
316 constitute constructive service. Certified mail returned for other reasons
317 shall require service by other methods pursuant to the Oneida Judiciary
318 Rules of Civil Procedure.

319 (B) *Publication.* When a responding party cannot be found for personal
320 service after diligent attempts and attempts to serve the responding party by
321 certified mail have failed, the petitioner shall use service by publication.
322 The publication shall be in the Nation's newspaper or a newspaper of
323 general circulation in the county of residence of the respondent, if known.
324 The publication shall be designated as a Legal Notice and any confidential
325 information shall be redacted.

326 (i) If service by publication is used and there is insufficient time for
327 notice and answer pursuant to this law, the Family Court shall re-
328 schedule the hearing appropriately and may permit extended time
329 deadlines for default orders and for hearings in order to provide for
330 fair notice and opportunity for the party to respond.

331 (2) *Requirements of the Summons.* The summons to be served on the
332 respondent(s), along with the petition, shall include the following notice, in addition
333 to providing a time, place, and date for appearance:

334 (A) That if he or she chooses not to appear at the hearing or enter a defense
335 to the petition challenging the authority of the Family Court to hear the
336 matter by the date of the hearing, the hearing shall proceed on the basis of
337 the petitioner's evidence;

338 (B) That a child support order may require the person found to be the
339 obligor to pay child support until the child reaches eighteen (18) years of
340 age or until the child graduates from high school, or its equivalent, up to age
341 nineteen (19);

342 (C) That the person found to be the obligor may have his or her license(s)
343 suspended or denied for failure to pay child support, in addition to other
344 enforcement actions;

345 (D) That the person found to be the obligor's employer or others with
346 evidence of the his or her income may be subpoenaed to provide the Family
347 Court with records of his or her earnings;

348 (E) That if the person found to be the obligor is unemployed, it shall still
349 be determined that he or she is able to provide some degree of child support
350 and an order of support shall be calculated according to this law unless the
351 Family Court makes written findings ordering otherwise; and

352 (F) That any answer to the petition shall be filed with the Family Court
353 within twenty (20) calendar days of the date of service of the petition, and
354 a copy served on the other party.

355 (e) *Answers.* Answers shall be filed with the Family Court and served on the petitioner
356 within twenty (20) calendar days of the date of service of the petition in accordance with
357 the Nation's laws and policies governing civil procedure.

358 (f) *Subpoenas*. Upon request of either party, the Family Court shall issue subpoenas to
359 any person in possession of relevant information to appear or produce documents to the
360 Family Court. Failure to comply with such a subpoena may be punishable as contempt.
361

362 **704.6. Child Support Hearing Procedures**

363 704.6-1. The factual determinations made at a hearing shall include, but is not limited to, the
364 income and expense information necessary to determine the appropriate level of support according
365 to this law.

366 704.6-2. The Family Court may utilize discovery procedures and contempt powers, as authorized
367 by any law, policy, or rule of the Nation to obtain information relevant to the establishment or
368 enforcement of child support. These procedures may include the following:

369 (a) Issue subpoenas requiring necessary and relevant parties to appear in person and
370 provide testimony;

371 (b) Issue subpoenas requiring the production of evidence;

372 (c) Obtain information about property or assets to assess its value or funding source for
373 lien or seizure actions;

374 (d) Obtain information about the income of any party to the action; and/or

375 (e) Issue contempt findings for failure to comply with the lawful order of the Family Court.

376 704.6-3. Both parties have the right to representation by an attorney and/or advocate at his or her
377 own expense. The Nation shall not be required to pay for any fees and/or expenses incurred by any
378 party in connection with proceedings under this law.

379 704.6-4. *Temporary Orders*. At any time after a child's parentage has been established, the Family
380 Court may make a temporary order for the payment of child support and the child's health care
381 expenses. Before making a temporary order, the Family Court shall consider all factors that the
382 Family Court is required to consider when granting a final child support order. If the Family Court
383 makes a temporary child support order that deviates from the amount of support that would be
384 required by using the percentage standard, the requirements of section 704.7-8 shall be complied
385 with.

386 704.6-5. *Default*. If the respondent fails to appear at the hearing upon a showing of valid service
387 and the petitioner presents evidence of the obligation by the absent party, a child support order
388 shall be entered pursuant to the evidence.

389 704.6-6. *Hearings and Records Closed*. Child support proceedings shall be closed to any person
390 other than those necessary to the action or proceeding. Records of child support cases shall remain
391 confidential and shall only be viewed by the parties, the legal guardian of a party who is a minor,
392 the parties' attorney or advocate, guardian ad litem, Judges and staff assigned to the case, and those
393 other persons who first obtain a written release from a party to view material contained in the
394 record.
395

396 **704.7. Determining the Child Support Obligation**

397 704.7-1. The Family Court shall determine child support payments by using the percentage
398 standards established in section 704.7-2 of this law, except as provided elsewhere in this law. The
399 obligor's monthly income shall be considered in determining his or her child support obligation.

400 704.7-2. *Percentage Standards to Determine the Amount of Child Support*.

401 (a) The following percentages shall be applied to the portion of an obligor's monthly
402 income available for child support that is less than seven thousand dollars (\$7,000):

403 (1) seventeen percent (17%) for one (1) child;

404 (2) twenty-five percent (25%) for two (2) children;

- 405 (3) twenty-nine percent (29%) for three (3) children;
406 (4) thirty-one percent (31%) for four (4) children; and
407 (5) thirty-four percent (34%) for five (5) or more children.
408 (b) The following percentages shall be applied to the portion of an obligor's monthly
409 income available for child support that is greater than or equal to seven thousand dollars
410 (\$7,000) and less than or equal to twelve thousand five hundred dollars (\$12,500):
411 (1) fourteen percent (14%) for one (1) child;
412 (2) twenty percent (20%) for two (2) children;
413 (3) twenty-three percent (23%) for three (3) children;
414 (4) twenty-five percent (25%) for four (4) children; and
415 (5) twenty-seven percent (27%) for five (5) or more children.
416 (c) The following percentages shall be applied to the portion of an obligor's monthly
417 income available for child support that is greater than twelve thousand five hundred dollars
418 (\$12,500):
419 (1) ten percent (10%) for one (1) child;
420 (2) fifteen percent (15%) for two (2) children;
421 (3) seventeen percent (17%) for three (3) children;
422 (4) nineteen percent (19%) for four (4) children; and
423 (5) twenty percent (20%) for five (5) or more children.

424 704.7-3. *Determining Income Modified for Business Expenses.* In determining an parent's
425 monthly income, the Family Court may adjust an parent's gross income as follows:

- 426 (a) Adding wages paid to dependent household members.
427 (b) Adding undistributed income that the Family Court determines is not reasonably
428 necessary for the growth of the business. The parent shall have the burden of proof to show
429 that any undistributed income is reasonably necessary for the growth of the business.
430 (c) Reducing gross income by the business expenses that the Family Court determines are
431 reasonably necessary for the production of that income or operation of the business and
432 that may differ from the determination of allowable business expenses for tax purposes.

433 704.7-4. *Determining Income Imputed Based on Earning Capacity.* When a parent's income is
434 less than the parent's earning capacity or is unknown, the Family Court may impute income to the
435 parent at an amount that represents the parent's ability to earn.

- 436 (a) The parent's ability to earn may be based on the parent's:
437 (1) education, training, and recent work experience;
438 (2) earnings during previous periods;
439 (3) current physical and mental health;
440 (4) history of child care responsibilities as the parent with primary physical
441 placement; and
442 (5) the availability of work in or near the obligor's community.
443 (b) If evidence is presented that due diligence has been exercised to ascertain information
444 on the parent's actual income or ability to earn and that information is unavailable, the
445 Family Court may impute to the parent the income that a person would earn by working
446 thirty-five (35) hours per week for the federal minimum hourly wage. In addition to
447 imputed income, the Family Court may order the parent to search for a job or participate
448 in a work experience and job training program.
449 (c) If a parent has gross income or income modified for business expenses below his or
450 her earning capacity, the income imputed based on earning capacity shall be the difference
451 between the parent's earning capacity and the parent's gross income or income modified
452 for business expenses.

453 704.7-5. *Determining Income Imputed from Assets.*

454 (a) The Family Court may impute a reasonable earning potential to a parent's assets if the
455 Family Court finds both of the following:

456 (1) The parent has ownership and control over any real or personal property,
457 including but not limited to, life insurance, cash and deposit accounts, stocks and
458 bonds, business interests, net proceeds resulting from worker's compensation or
459 other personal injury awards not intended to replace income, and cash and corporate
460 income in a corporation in which the obligor has an ownership interest sufficient to
461 individually exercise control and the cash or corporate income is not included as
462 gross income.

463 (2) The parent's assets are underproductive and at least one (1) of the following
464 applies:

465 (A) The parent has diverted income into assets to avoid paying child
466 support.

467 (B) Income from the parent's assets is necessary to maintain the child or
468 children at the standard of living they would have had if they were living
469 with both parents.

470 (b) The Family Court shall impute income to assets by multiplying the total net value of
471 the assets by the current six (6) month treasury bill rate or any other rate that the Family
472 Court determines is reasonable and subtracting the actual income from the assets that were
473 included as gross income.

474 704.7-6. *Adjustment for Child's Social Security Benefits.* The Family Court may consider benefits
475 received by a child under 42 U.S.C. §402(d) based on a parent's entitlement to federal disability
476 or old-age insurance benefits under 42 U.S.C. §401 to 433 and adjust an obligor's child support
477 obligation by subtracting the amount of the child's benefit. In no case may this adjustment require
478 the obligee to reimburse the obligor for any portion of the child's benefit. If the obligor is receiving
479 the child's benefit, the support amount is either the percentage standard applied to the obligor's
480 income or the amount of the child's benefit, whichever is greater.

481 (a) *Determining the Child Support Obligations of Shared-Placement Parent when the*
482 *Child Receives Social Security Benefits.* If the shared-placement guidelines under section
483 704.8-2 apply, the child's benefit is split between the parents in proportion to the amount
484 of time the child spends with each parent. Add the proportion of the child's benefit that
485 represents the proportion of time the child spends with the parent not receiving the benefit
486 to the support obligation of the parent who is receiving the child's benefit. Child support
487 shall be determined as follows:

488 (1) Determine each parent's monthly income available for child support under
489 section 704.7-2. If a parent has one (1) or more previous child support obligations,
490 determine the parent's monthly income available for child support adjusted for the
491 previous obligations as provided in section 704.8-1. Include the parent's federal
492 disability or old age insurance benefits under 42 U.S.C. §401 to 433 in that parent's
493 income, but do not include the child's benefit under 42 U.S.C. §402 (d) in either
494 parent's income.

495 (2) Multiply each parent's monthly income available for child support by the
496 appropriate percentage standard under section 704.7-2.

497 (3) Multiply each amount determined under section 704.7-6(a)(2) by one hundred
498 and fifty percent (150%).

499 (4) Multiply the amount determined for each parent in section 704.7-6(a)(3) by the
500 proportion of time that the child spends with the other parent.

501 (5) Multiply the amount of the child's benefit by the proportion of the time the
502 child spends with the parent who is not receiving the child's benefit.

503 (6) Add the amount in section 704.7-6(a)(5) to the child support obligation
504 calculated in section 704.7-6(a)(4) for the parent who is receiving the child's
505 benefit.

506 (7) Offset the resulting amounts against each other. The parent with the greater
507 child support obligation is the shared-placement obligor. The shared-placement
508 obligor shall pay either the greater of the amount determined in this subsection or
509 the amount determined using the appropriate percentage standard under section
510 704.7-2.

511 704.7-7. *Claiming Children for Tax Purposes.* The Family Court may address who may claim
512 the child for tax purposes or accept a stipulation entered into by the parties regarding children and
513 taxes.

514 704.7-8. *Deviation from the Percentage Standards.* Upon request by a party, the Family Court
515 may modify the amount of child support payments determined by the percentage standards if, after
516 considering the following factors, the Family Court finds by the greater weight of the credible
517 evidence that use of the percentage standards is unfair to the child or to any of the parties:

- 518 (a) The financial resources of the child;
- 519 (b) The financial resources of both parents;
- 520 (c) Maintenance received by either party;
- 521 (d) The needs of each party in order to support himself or herself at a level equal to or
522 greater than the federal poverty line as established under 42 U.S.C. §9902(2);
- 523 (e) The needs of any person, other than the child, whom either party is legally obligated to
524 support;
- 525 (f) The standard of living the child would have enjoyed if his or her parents were living
526 together;
- 527 (g) The desirability that the custodial parent remain in the home as a full-time parent;
- 528 (h) The cost of day care if the custodial parent works outside the home, or the value of
529 custodial services performed by the custodial parent if the custodial parent remains in the
530 home;
- 531 (i) The award of substantial periods of physical placement to both parents;
- 532 (j) Extraordinary travel expenses incurred in exercising the right to periods of physical
533 placement;
- 534 (k) The physical, mental, and emotional health needs of the child, including any costs for
535 health insurance;
- 536 (l) The child's educational needs;
- 537 (m) The tax consequences to each party;
- 538 (n) The best interests of the child;
- 539 (o) The earning capacity of each parent, based on each parent's education, training and
540 work experience and the availability of work in or near the parent's community; and
- 541 (p) Any other factors which the Family Court in each case determines are relevant.

542 704.7-9. *Past-due and Arrears obligations.*

- 543 (a) A party may request payment of arrears or past-due child support as follows:
 - 544 (1) In an action regarding paternity, back to the date of birth of the child or date of
545 application, whichever is later;
 - 546 (2) In a child support establishment or modification pursuant to this law, back to
547 the date of application, review, or referral; or

- 548 (3) In an establishment or modification of placement pursuant to an action
549 regarding divorce, annulment and legal separation or child custody, placement, and
550 visitation, back to the date of filing, or as otherwise ordered by the Family Court.
551 (b) A payment for arrears or a past-due payment shall be set based on the amount due and
552 the income available to pay current support.
553 (c) Once current child support is ended in any manner prescribed by law, child support
554 shall continue to be paid at the same rate, until all arrears or past due child support is paid
555 in full.

556
557 **704.8. Determining the Child Support Obligation in Special Circumstances**

558 *704.8-1. Determining the Child Support Obligation of a Serial-Family Obligor.*

559 (a) *Applicability.* This applies only if the support obligation being calculated is for children
560 from a subsequent family or subsequent paternity judgment or acknowledgment. An
561 obligor may not use the provisions of this section as a basis for seeking modification of an
562 existing order based on a subsequently incurred legal obligation for child support.

563 (b) *Determination.* For a serial-family obligor, the child support obligation incurred for a
564 marital or non-marital child in a subsequent family as a result of a child support order may
565 be determined as follows:

- 566 (1) Determine the obligor's monthly income.
567 (2) Determine the order of the obligor's legal obligations for child support by
568 listing them according to the date each obligation is incurred.
569 (A) For a marital child, the legal obligation for child support is incurred on
570 the child's date of birth.
571 (B) For a non-marital child, the legal obligation for child support is incurred
572 on the date that paternity is legally established.
573 (C) For a non-marital paternal child in an intact family, it is incurred on the
574 date of adoption or the date that paternity is legally established.
575 (D) For a non-marital maternal child in an intact family, it is incurred on
576 the child's date of birth.
577 (3) Determine the first child support obligation as follows:
578 (A) If the obligor is subject to an existing support order for that legal
579 obligation, except a shared-placement order, the support for that obligation
580 is the monthly amount of that order; or
581 (B) If the obligor is in an intact family, has primary placement of another
582 child, or is subject to a shared-placement order, the support is determined
583 by multiplying the appropriate percentage for that number of children by
584 the obligor's monthly income.
585 (4) Adjust the monthly income by subtracting the support for the first legal
586 obligation from the obligor's monthly income.
587 (5) Determine the second child support obligation as follows:
588 (A) If the obligor is subject to an existing support order for that legal
589 obligation, except a shared-placement order, the support for that obligation
590 is the monthly amount of that order; or
591 (B) If the obligor is in an intact family or is subject to a shared-placement
592 order, the support is determined by multiplying the appropriate percentage
593 for that number of children by the obligor's monthly income.

594 (6) Adjust the monthly income a second time by subtracting the support for the
595 second legal obligation from the first adjusted monthly income.

596 (7) Repeat the procedure for determining the child support obligation and adjusting
597 the monthly income for each additional legal obligation for child support the serial
598 family obligor has incurred.

599 (8) Multiply the appropriate percentage for the number of children subject to the
600 new order by the final adjusted monthly income to determine the new child support
601 obligation.

602 *704.8-2. Determining the Child Support Obligations of Shared-Placement Parents.*

603 (a) *Applicability.* The shared-placement formula may be applied when both of the
604 following conditions are met:

605 (1) Both parents have periods of placement of at least twenty-five percent (25%)
606 or ninety-two (92) days a year. When calculating periods of placement based on
607 equivalent care, the total number of overnights may exceed three hundred and sixty-
608 five (365). The period of placement for each parent shall be determined by
609 calculating the number of overnights or equivalent care ordered to be provided by
610 the parent and dividing that number by the total number of overnights in a year.
611 The combined periods of placement for both parents shall equal one hundred
612 percent (100%).

613 (2) Each parent is ordered by the Family Court to assume the child's basic support
614 costs in proportion to the time that the parent has placement of the child.

615 (b) *Determination.* The child support obligations for parents who meet the requirements
616 for the shared-placement formula may be determined as follows:

617 (1) Determine each parent's monthly income.

618 (A) In determining whether to impute income based on earning capacity
619 for an unemployed parent or a parent employed less than full time, the
620 Family Court shall consider benefits to the child of having a parent remain
621 in the home during periods of placement and the additional variable day
622 care costs that would be incurred if the parent worked more.

623 (2) Multiply each parent's monthly income by the appropriate percentage standard.

624 (3) Multiply each amount determined under section 704.8-2(b)(2) by one hundred
625 and fifty percent (150%).

626 (4) Multiply the amount determined for each parent under section 704.8-2(b)(3) by
627 the proportion of the time that the child spends with the other parent to determine
628 each parent's child support obligation.

629 (5) Offset resulting amounts under section 704.8-2(b)(4) against each other. The
630 parent with a greater child support obligation is the shared-placement obligor. The
631 shared-placement obligor shall pay the lesser of the amount determined under this
632 section or the amount determined using the appropriate percentage standard. If the
633 shared-placement obligor is also a low-income obligor, the child support obligation
634 may be the lesser of the amount determined under the shared placement
635 determination or the low-income determination.

636 (6) In addition to the child support obligation determined under section 704.8-
637 2(b)(5), the Family Court shall assign responsibility for payment of the child's
638 variable costs in proportion to each parent's share of physical placement, with due
639 consideration to a disparity in the parents' incomes.

640 (A) The Family Court shall direct the manner of payment of a variable cost
641 order to be either between the parents or from a parent to a third-party
642 service provider.

643 (B) The Family Court shall not direct payment of variable costs to be made
644 to the Agency or the Agency's designee, except as incorporated in the child
645 support order.

646 (7) A change in the child's variable costs shall not in and of itself be considered a
647 substantial change in circumstances sufficient to justify a modification of a
648 judgment or order under section 704.10.

649 **704.8-3. *Determining the Child Support Obligations of Split-Placement Parents.***

650 (a) *Applicability.* The split-placement formula may be applied when parents have two (2)
651 or more children and each parent has placement of one (1) or more but not all of the
652 children.

653 (b) *Determination.* The child support obligation for a split-placement parent may be
654 determined as follows:

655 (1) Determine each parent's monthly income.

656 (2) Determine the appropriate percentage standard for the number of total children.

657 (3) Divide the appropriate percentage standard for the number of total children by
658 the total number of children.

659 (4) Multiply the number calculated in section 704.8-3(b)(3) by the number of
660 children placed with each parent.

661 (5) Multiply each parent's monthly income by the number calculated in 704.8-
662 3(b)(4) based on the number of children placed with the other parent to determine
663 each parent's child support obligation; and

664 (6) Offset resulting amounts under section 704.8-3(b)(5) against each other. The
665 parent with a greater child support obligation is the split-placement obligor.

666 **704.8-4. *Determining the Child Support Obligation of a Low-Income Obligor.***

667 (a) *Applicability.* If an obligor's total economic circumstances limit his or her ability to
668 pay support at the level determined by the standard percentage standards, then the low-
669 income obligor standards found in the Child Support Obligation of Low-Income Payers
670 Schedule may be used.

671 (b) *Determination.* The Family Court may use the monthly support amount provided in
672 the Child Support Obligation of Low-Income Payers Schedule as the support amount for
673 an obligor with a monthly income at a level set forth in the schedule.

674 (1) If an obligor's monthly income is below the lowest income level in the Child
675 Support Obligation of Low-Income Payers Schedule, the Family Court may set an
676 order at an amount appropriate for the obligor's total economic circumstances. This
677 amount may be lower than the lowest support amount in the Child Support
678 Obligation of Low-Income Payers Schedule

679

680 **704.9. Child Support Order**

681 **704.9-1. *Expression of Ordered Support.*** The child support amount shall be expressed as a fixed
682 sum.

683 **704.9-2. *Interest on Arrears.*** The Nation shall not charge an obligor ordered to pay child support
684 interest on any arrears.

685 **704.9-3. *Income Withholding.*** The child support order shall provide for immediate income
686 withholding.

- 687 (a) A copy of the Family Court's income withholding order shall be sent by the Agency to
688 a payor within three (3) business days of the entry of the order of the Family Court by mail,
689 fax, or electronic means.
- 690 (b) An order to withhold income shall be binding against future payors upon actual notice
691 of the income withholding order through notice by mail, fax, or electronic means.
- 692 (c) Income shall not be subject to withholding only where:
693 (1) One of the parties demonstrates, and the Family Court finds, that there is good
694 cause not to require income withholding due to one of the following:
695 (A) There is an error in the amount of current or overdue support; or
696 (B) The identity of the obligor is mistaken.
697 (2) The parties reach a written agreement which provides for an alternative
698 arrangement that is approved by the Family Court.
- 699 (d) No payor shall refuse to honor an income withholding order executed pursuant to this
700 law. A payor shall begin withholding income immediately after notice of an income
701 withholding order made pursuant to this law. Within five (5) business days after the payor
702 pays the obligor, the payor shall send the amount withheld to the Wisconsin Support
703 Collections Trust Fund.
- 704 (e) A payor shall be liable for one hundred percent (100%) of the child support order, or
705 the amount of money that should have been withheld from the obligor's earnings,
706 whichever is the lesser amount, if the payor:
707 (1) Fails or refuses, after being noticed of an income withholding order, to deduct
708 or promptly remit the amounts of money required in the order;
709 (2) Fails or refuses to submit an answer to the notice of income withholding after
710 being noticed; or
711 (3) Is unwilling to comply with the other requirements of this law.
- 712 (f) A payor shall not discharge from employment, refuse to employ, or otherwise take
713 disciplinary action against any obligor solely because he or she is subject to income
714 withholding.
715 (1) When the Family Court finds that a payor has taken any of these actions, the
716 payor shall be liable for a civil penalty. Any payor who violates any provision of
717 this paragraph shall be liable in a civil action for reasonable damages suffered by
718 an obligor as a result of the violation, and an obligor discharged or demoted in
719 violation of this paragraph shall be entitled to be reinstated to his or her former
720 position.
721 (2) The statute of limitations for actions under this section shall be one (1) year.
- 722 (g) A payor who repeatedly fails to comply with an income withholding order as required
723 by this law may be subject to a fine, not to exceed five hundred dollars (\$500), or have its
724 Oneida vendor license revoked or suspended, if applicable, until compliance with this law
725 is assured.
726 (1) The vendor license issuing agency shall comply with the Family Court order to
727 revoke or suspend a vendor license.
- 728 (h) If income withholding is inapplicable, ineffective or insufficient to ensure payment of
729 child support, the Family Court may require the obligor to establish an account for the
730 purpose of transferring child support payments.
- 731 (i) The total amount withheld under an income withholding order shall not exceed the
732 maximum amount permitted under section 303(b) of the Consumer Credit Protection Act
733 (15 U.S.C. §1673(b)).

734 (j) Non-Indian off-reservation payors shall be subject to income withholding under 28
735 U.S.C. §1738B.

736 704.9-4. *Conditions of the Order.* The Family Court may require a party, or both parties, to use
737 the services available to him or her to obtain and maintain regular employment and/or job training.

738 704.9-5. *Support Order Notice Requirements.* Each order for child support shall include:

739 (a) An order that the obligor and obligee notify the Agency of any change of address or
740 name change within ten (10) business days of such change; and

741 (b) An order that the obligor notify the Agency and the obligee of any change of employer
742 or substantial change of income within ten (10) business days of the change.

743 704.9-6. *Enforcement of Order.* A child support order under this section is enforceable as
744 contempt.

745 704.9-7. *Collection and Distribution of Child Support.* The Agency shall collect and distribute
746 child support monies pursuant to regulations set forth in the Social Security Act 45 CFR 309.115.

747 704.9-8. *Trust.* The Family Court may protect and promote the best interests of the minor children
748 by setting aside a portion of the child support that either party is ordered to pay in a separate fund
749 or trust for the support, education, and welfare of such children.

750 704.9-9. *Non-Cash Payments.*

751 (a) Non-cash payments may be used to satisfy part or all of a child support order if the
752 parties and the Family Court agree to allow non-cash payments. Non-cash payments shall
753 not be used to fulfill arrears. If non-cash payments are allowed, the order shall:

754 (1) state the specific dollar amount of the support obligation;

755 (2) state the maximum amount (in dollars) of non-cash payment that the obligee
756 will accept;

757 (3) describe the type of non-cash payment that is permitted;

758 (4) provide that non-cash payment cannot be used to satisfy assigned child support
759 obligations.

760 (b) When both parents are in agreement that non-cash payments may be used to satisfy a
761 child support obligation, the non-cash payment may include, but is not limited, to the
762 following:

763 (1) Clothing;

764 (2) Groceries;

765 (3) Child Care;

766 (4) Deer/Venison;

767 (5) Wood;

768 (6) Transportation;

769 (7) Skilled trades or services, such as car repairs, lawn care and snow removal;
770 and/or

771 (8) Gift cards.

772 (c) When a non-cash payment is used to satisfy part or all of a child support order, the
773 obligor and obligee shall submit any forms required by the Agency within the month that
774 the non-cash payment is made. If there are less than five (5) business days left in the month
775 when a non-cash payment is made, the obligor and obligee have five (5) business days to
776 submit any required forms to the Agency. The Agency shall be responsible for applying
777 the non-cash payment towards the child support order during the appropriate month.
778

779 **704.10. Modification of a Child Support Order**

780 704.10-1. *Review of the Child Support Order.* Every two (2) years, the Agency shall conduct a
781 review of the child support order. The Agency shall notify the non-custodial parent, custodial
782 parent, and any interested party that a review of their child support order shall be conducted.

783 704.10-2. *Modification of Child Support Sought by the Agency.* After the two (2) year review is
784 conducted by the Agency, the Agency shall seek an order to modify the child support obligation if
785 there is a substantial change in circumstances, unless otherwise stipulated by the parties. A
786 substantial change in circumstances includes, but is not limited to:

- 787 (a) the child's placement is changed;
- 788 (b) either parent or the child has a significant change in his or her finances that would lead
789 to a change in child support of more than fifteen percent (15%) and fifty dollars (\$50.00)
790 per month;
- 791 (c) the obligee is receiving public assistance benefits and is required to have a current
792 support order in place;
- 793 (d) it has been twenty-four (24) months since the date of the last child support order or
794 revision to the child support order, unless the child support amount is expressed as a
795 percentage; or
- 796 (e) a change has occurred and if the current circumstances had been in place at the time
797 the order was issued, a significantly different order would have been issued.

798 704.10-3. *Modification of Child Support Sought by the Parties.* Either party, not including the
799 Agency, may file a motion for a modification of a child support order at any time based upon a
800 substantial change of circumstances supported by affidavit.

- 801 (a) Such motion shall state why the previous decision should be prospectively modified.
- 802 (b) The motion and affidavit shall be served by the moving party on the responding party
803 by first-class mail to the recently verified last-known address, or by any method provided
804 by law.
- 805 (c) A hearing date shall be scheduled no sooner than ten (10) calendar days after the date
806 of service.

807 704.10-4. An obligor shall not raise a substantial change in circumstances as a reason not to pay
808 a current child support order or arrears. If a child support order becomes unjust due to a substantial
809 change in circumstances of the obligor, the obligor has the duty to file a petition or motion with
810 the Family Court for a modification to the child support order at that time.

811

812 **704.11. Modification of a Child Support Order for an Incarcerated Parent**

813 704.11-1. In the event an obligor is incarcerated for one hundred and eighty (180) days or more,
814 the obligor shall have the right to have the Agency review his or her child support order to
815 determine if modification or suspension of the child support order is appropriate. The obligor shall
816 notice the Agency of his or her incarceration.

- 817 (a) An ordered child support obligation shall be suspended for an incarcerated obligor who
818 has been sentenced to one hundred and eighty (180) days or more and has an income of
819 less than two hundred dollars (\$200) per month.
- 820 (b) If while incarcerated the obligor's income is two hundred dollars (\$200) or more per
821 month the Agency shall review the order and seek temporary modification of the child
822 support order based on the incarcerated obligor's income, if necessary.
- 823 (c) Child support obligations shall not be suspended or modified for an obligor who is
824 incarcerated for a criminal offense which includes:

- 825 (1) felony failure to pay support;

826 (2) a crime against a child; and/or

827 (3) a crime against the obligee.

828 (d) Past due child support related debt and/or arrears shall not be suspended or reduced as
829 a result of the obligor's incarceration without stipulation by the parties.

830 704.11-2. *Notification of Review.* Within fifteen (15) business days of the receipt by the Agency
831 of verification of the obligor's incarceration, the Agency shall send out a letter to the parties of the
832 case informing them of the obligor's right to have his or her child support obligation reviewed,
833 and of the Agency's intent to review the current child support order.

834 704.11-3. *Agency Review of Order.* The Agency shall review the obligor's child support order
835 and make one of the following determinations:

836 (a) that the obligor's income while incarcerated is two hundred dollars (\$200) or more per
837 month, and the Agency shall seek temporary modification of the obligor's child support
838 order based on the incarcerated obligor's income, if necessary; or

839 (b) that the obligor's income while incarcerated is less than two hundred dollars (\$200)
840 per month, and the Agency shall seek temporary suspension of the obligor's child support
841 order while incarcerated.

842 704.11-4. *Suspension of Order by the Agency.* If the Agency determines the obligor's income is
843 less than two hundred dollars (\$200) per month while incarcerated, the Agency shall file with the
844 Family Court a Motion and Order to Suspend without a request for a hearing with notice to all
845 parties that the child support order shall be suspended.

846 (a) Either party shall have the right to object to the suspension of the order within ten (10)
847 business days of the date of the notice by filing such objection with the Family Court and
848 providing a copy of the objection to the Agency.

849 (b) If no objection to the suspension is received, the Family Court shall enter the order as
850 proposed.

851 (c) Upon receipt of an objection from either party, the Family Court shall schedule a
852 hearing on the issue.

853 704.11-5. *Modification of Order by the Agency.* If the Agency determines the obligor's income
854 is two hundred dollars (\$200) per month or more while incarcerated, the Agency shall file with the
855 Family Court a Motion to Modify.

856 (a) The Family Court shall schedule a hearing on the motion with the Agency providing
857 notice to all parties with the proposed modification to the child support order by first class
858 mail at least ten (10) business days prior to the hearing.

859 704.11-6. *Modification of the Order by the Incarcerated Parent.* The incarcerated parent may
860 seek modification of his or her own child support order by filing a motion to modify with the
861 Family Court in accordance with section 704.10-3.

862 704.11-7. If during the term of incarceration, the Agency receives notification of a change in the
863 obligor's employment and/or income, the Agency shall review the obligor's order and determine
864 if the obligor's income is two hundred dollars (\$200) or more per month, and whether it is
865 necessary to temporarily modify or suspend the obligor's child support order.

866 (a) If the Agency determines that suspension of the obligor's order is necessary, then the
867 procedure for filing a Motion and Order to Suspend without a request for a hearing
868 described in section 704.11-4 shall be followed.

869 (b) If the Agency determines that modification of the obligor's order is necessary, then the
870 procedure for filing a Motion to Modify described in section 704.11-5 shall be followed.

871 704.11-8. *Reinstatement of Prior Order.* Sixty (60) days after the obligor's release from
872 incarceration, the child support order shall be administratively reinstated by the Agency to the

873 previous child support order in effect before the suspension or modification of the order based on
874 the obligor's incarceration.

875 (a) The Agency shall send notice to both parties of the obligor's release from incarceration
876 and the intent of the Agency to reinstate the original order.

877

878 **704.12. Compliance Plan**

879 704.12-1. If at any time the obligor is, or may become, non-compliant with his or her child support
880 order by failing to pay support as ordered or meeting a required obligation or action, the Agency
881 shall meet with the obligor to develop a compliance plan.

882 704.12-2. An Appointment Letter may be sent by the Agency at any time deemed appropriate, but
883 the Agency shall send out the Appointment Letter at least thirty (30) days prior to the initiation of
884 any enforcement action.

885 (a) The Letter shall request the party meet with the Agency to discuss barriers to payment
886 and how to avoid future enforcement action.

887 (b) If the party does not respond to the Letter within five (5) business days after receipt of
888 the letter, the Agency may proceed with appropriate enforcement action.

889 (c) If the obligor responds to the Letter, the Agency shall interview the party to determine
890 the reasons and barriers for the non-compliance and create a compliance plan. The
891 compliance plan may include an increase in payment and/or any activity that is necessary
892 to assist in payment, including programs that focus on:

- 893 (1) Employment and training;
- 894 (2) Social service and mental health;
- 895 (3) Physical and learning disabilities;
- 896 (4) Tribal traditions and customs;
- 897 (5) Family counseling and parenting; and
- 898 (6) Any other program deemed necessary.

899 (d) If the party successfully completes the terms of the compliance plan, no further
900 enforcement action is necessary. However, if the party fails to complete the compliance
901 plan, the Agency shall proceed with appropriate enforcement action.

902

903 **704.13. Enforcement of an Order**

904 704.13-1. An obligor may be subject to enforcement actions when the obligor is at least one (1)
905 month delinquent in paying his or her child support obligation. Enforcement actions may include
906 administrative enforcement action by the Agency and enforcement action by the Family Court.

907 (a) An obligor shall be provided with notice of an enforcement action of at least thirty (30)
908 days before an enforcement action is used, unless another timeline is specified.

909 (b) An enforcement action shall be stayed and/or suspended after notice is given to the
910 obligor if the obligor pays the debt in full or enters into, and maintains, an alternative
911 payment plan and/or a compliance plan with the Agency.

912 704.13-2. *Agency Responsibilities in the Enforcement of an Order.* The Agency shall have the
913 following responsibilities in the enforcement of an order:

- 914 (a) Track and document the progress of an obligor who is under an enforcement action;
- 915 (b) Take additional enforcement action when an obligor fails to comply with a previous
916 enforcement action;
- 917 (c) Document the reasons why an enforcement action is not taken, when such action would
918 have been appropriate under the circumstances; and

919 (d) Assist in refunding amounts that were improperly withheld, terminate income
920 withholding when appropriate, and allocate amounts across multiple cases.

921 704.13-3. *Notice to the Obligor of Delinquency.* In the event that an obligor owes a debt equal to
922 or exceeding the monthly amount due, the Agency shall send a notice of delinquency to the obligor.
923 The notice of delinquency shall inform the obligor of the following:

- 924 (a) The total amount of the delinquency; and
- 925 (b) The enforcement action that may be taken as a result of the delinquency.

926 704.13-4. *Notice to the Obligor of Enforcement Action.* After the obligor has been noticed of his
927 or her delinquency, and at least twenty (20) days prior to an enforcement being used against an
928 obligor, the Agency shall send a notice of enforcement action to the obligor.

- 929 (a) The notice of enforcement action shall inform the obligor of the following:
 - 930 (1) The total amount of the delinquency;
 - 931 (2) The enforcement action that may be taken as a result of the delinquency;
 - 932 (3) The obligor may request, in writing to the Agency, to negotiate an alternative
933 payment plan with the Agency within ten (10) business days after the notice in order
934 to stay any enforcement action;
 - 935 (4) The obligor has ten (10) business days after the notice of enforcement action to
936 file an objection with the Agency presenting good cause why an arrears payment
937 or other enforcement action should not be implemented. The only allowable
938 objections are:

- 939 (A) There is an error in the amount of current or overdue support; or
- 940 (B) The identity of the obligor is mistaken.

941 (b) If the obligor does not file an objection or request to negotiate an alternative payment
942 plan:

- 943 (1) the enforcement action shall be taken; and/or
- 944 (2) an income withholding order, or revised order if one is already in place, shall
945 be imposed on the payor. No more than an additional twenty percent (20%) of the
946 current support payment order can be withheld to satisfy the delinquency provided
947 that the total amount withheld does not exceed forty percent (40%) of the obligor's
948 monthly income.

949 (c) If a permissible objection is filed, the obligor shall be entitled to a hearing before any
950 enforcement action is taken.

951 704.13-5. *Use of Mail for Notices.* The Agency shall send notices related to the delinquency of
952 an obligor and enforcement of a child support order by mail to the last-known mailing address
953 provided by the obligor.

954 (a) If the notice is returned, the Agency shall send notice to the obligor using the current
955 employer mailing address provided by the obligor.

956 (b) If the notice to the obligor mailed to the obligor's employer is returned, the Agency
957 shall use all appropriate tribal, federal, state and local resources to ascertain an obligor's
958 current mailing address.

959 (c) If those resources are used for a period of thirty (30) days and a verified mailing address
960 has not been identified, the Agency may proceed with the administrative enforcement
961 action.

962 704.13-6. *Notice to the Obligee of Enforcement Proceedings.* The Agency shall provide written
963 notice to the obligee when an enforcement action has been initiated against the obligor or when
964 the obligor requests a hearing and the hearing has been scheduled. The notice to the obligee shall
965 be sent at the same time notice is sent to the obligor.

966 704.13-7. *Notice to Individuals Other Than the Obligor with a Recorded Ownership Interest in*
967 *Property.* The Agency shall provide notice related to the seizure of property to any individual,
968 other than the obligor, with a recorded ownership interest in property subject to seizure. The
969 individual may request a hearing for a determination of the proportion of the value of the property
970 that is attributable to his or her net contribution to the property. The hearing shall be requested
971 within thirty (30) days after the notice was received by the individual.

972

973 **704.14. Alternative Payment Plans**

974 704.14-1. *Applicability of Alternative Payment Plans.* When an obligor is subject to
975 administrative enforcement action, he or she may negotiate an alternative payment plan with the
976 Agency.

977 704.14-2. *Negotiation of an Alternative Payment Plan After Receiving Notice of an Enforcement*
978 *Action.*

979 (a) In order to negotiate an alternative payment plan, an obligor shall submit a written
980 request to the Agency.

981 (1) A written request to negotiate an alternative payment plan received by the
982 Agency within ten (10) business days after the date of notice shall stay any
983 administrative enforcement action.

984 (2) If a written request to negotiate an alternative payment plan is received by the
985 Agency more than ten (10) business days after the date of notice, administrative
986 enforcement action may be taken.

987 (3) If the Agency agrees to negotiate an alternative payment plan after the ten (10)
988 business days after the date of notice, the Agency and obligor may agree to stay or
989 suspend the administrative enforcement action.

990 (b) An obligor may negotiate a plan with the Agency to have a license suspension lifted.

991 (c) *Hearings for Negotiations of an Alternative Payment Plan.* The obligor may submit a
992 written request for a hearing with the Family Court regarding negotiations of an alternative
993 payment plan in the following circumstances:

994 (1) The obligor and the Agency have agreed to terms of a plan, but the obligor
995 wants the Family Court to consider the reasonableness of the plan due to a
996 substantial change of circumstances since the plan was agreed to by the Agency
997 and the obligor.

998 (A) The obligor may submit this written request for a hearing on the
999 reasonableness of the plan within ten (10) business days after the terms of
1000 the plan are agreed upon.

1001 (2) The obligor and the Agency are unable to reach agreement on the terms of a
1002 plan.

1003 (A) The Family Court may order a plan by setting conditions and/or
1004 payments in the amounts and at the times it considers reasonable.

1005 (d) *Proceeding with Administrative Enforcement Actions.* The Agency may continue with
1006 the administrative enforcement action if:

1007 (1) the obligor and the Agency are unable to negotiate a plan;

1008 (2) the Family Court determines that the plan is not reasonable; and/or

1009 (3) the Family Court does not order a plan.

1010 704.14-3. *Disclosure of Income and Assets.* The request to negotiate a plan shall include an
1011 agreement by the obligor to provide the Agency with a full disclosure of income and assets

1012 available. The obligor shall provide complete income and assets information to the Agency within
1013 five (5) business days of the request to negotiate a plan.

1014 704.14-4. *Terms of an Alternative Payment Plan.*

1015 (a) An alternative payment plan may include a lump-sum payment, or periodic payments
1016 on the arrears, or both, subject to the following standards:

1017 (1) The sum of any periodic payment established under the plan and any other
1018 payment of support ordered by the Family Court, when subtracted from the
1019 obligor's gross income, may not leave the obligor below one hundred percent
1020 (100%) of the poverty line established under 42 U.S.C. §9902 (2) unless the obligor
1021 agrees otherwise.

1022 (2) When establishing an alternative payment plan, the Agency shall consider the
1023 factors used by the Family Court in determining whether the use of the percentage
1024 standard is unfair to the child or any of the parties.

1025 (b) Periodic payments under the plan may be made through income withholding in
1026 amounts in addition to the amount ordered in the child support order that is in effect.

1027 704.14-5. *Staying Administrative Enforcement Actions.* Administrative enforcement actions shall
1028 be stayed by the Agency while the obligor and the Agency are negotiating a plan, or, if a hearing
1029 is requested because an agreement cannot be reached or the reasonableness of the plan is
1030 questioned, until the Family Court determination has been made. To stay an administrative
1031 enforcement action means the following:

1032 (a) The obligor shall not be certified for denial, nonrenewal, restriction, or suspension of
1033 any State or Oneida-issued licenses;

1034 (b) Any frozen financial accounts shall remain frozen and shall not be seized; and

1035 (c) Personal property that has been seized shall not be sold.

1036 704.14-6. *Suspension of Administrative Enforcement Actions.*

1037 (a) When a plan has been negotiated between the obligor and the Agency, or the Family
1038 Court has determined that a plan is reasonable or has ordered a plan, the Agency shall
1039 suspend administrative enforcement actions as long as the obligor complies with the plan
1040 or requests a hearing because of a substantial change in circumstances which makes the
1041 plan unreasonable.

1042 (b) If an obligor makes an arrears payment agreeable to the Agency, the administrative
1043 enforcement action shall be suspended.

1044 704.14-7. *Default on an Alternative Payment Plan.* In the event that the obligor defaults on the
1045 plan, the Agency shall notify the obligor in writing that an administrative enforcement action shall
1046 be implemented unless the child support lien is paid in full.

1047 704.14-8. *Renegotiation of an Alternative Payment Plan.* After the entry of an alternative payment
1048 plan, the plan may be renegotiated upon the written request of the obligor or Agency if the
1049 requesting party can show a substantial change in circumstances. A substantial change in
1050 circumstances includes any of the following:

1051 (a) A change in the obligor's income or assets, including the sale or purchase of real or
1052 personal property;

1053 (b) A change in the obligor's earning capacity; and/or

1054 (c) Any other factor that the Agency determines is relevant.

1055

1056 **704.15. Administrative Enforcement Action**

1057 704.15-1. The Agency shall have the authority to use administrative enforcement actions to
1058 enforce a child support order without obtaining an order from the Family Court in the event that
1059 an obligor is at least one (1) month delinquent in paying his or her child support obligations.

1060 704.15-2. *Liens*. The Agency shall have an obligor placed on the lien docket if the obligor owes
1061 a debt in one or more of the obligor's cases equal to or exceeding the monthly amount due or five
1062 hundred dollars (\$500.00), whichever is greater.

1063 (a) *Lien Amount*. The lien amount on the lien docket shall equal the sum of lien amounts
1064 from the cases in which the lien amount meets or exceeds the lien threshold.

1065 (b) *Filing Date*. The filing date on the lien docket is the date that a lien is first docketed
1066 and delivered to the register of deeds. The filing date is the effective date of the lien. The
1067 effective date does not change if the lien amount is adjusted up or down within five (5)
1068 years after the date that the lien is first docketed.

1069 (c) *Lien Priority*. The child support lien shall have priority over all other liens on property
1070 except:

1071 (1) tax and special assessment liens;

1072 (2) purchase money mortgages;

1073 (3) construction liens;

1074 (4) environmental liens;

1075 (5) liens that are filed or recorded before the child support lien becomes effective;
1076 and

1077 (6) any other lien given priority under the law.

1078 (d) Property subject to a lien includes personal property in which the obligor has a recorded
1079 ownership interest.

1080 (e) *Effect on a Good Faith Purchaser*. A child support lien is not effective against a good
1081 faith purchaser of titled personal property unless the lien is recorded on the title.

1082 (f) *Credit Bureau Reporting*. The Agency may report the total amount of an obligor's
1083 liens to the credit bureau, so long as the lien is fully enforceable and the case is not barred
1084 from credit bureau reporting.

1085 (g) *Agency Lien Responsibilities*. The Agency shall be responsible for:

1086 (1) updating the lien docket periodically;

1087 (2) providing a copy of the lien docket to the appropriate register of deeds;

1088 (3) responding to inquiries concerning information recorded on the lien docket;

1089 (4) ensuring the satisfaction of a lien is recorded on the lien docket;

1090 (5) renewing a lien if the lien amount equals or exceeds the lien threshold at the
1091 end of the five (5) year effective period;

1092 (A) When a lien is renewed, the date on which the lien is renewed shall
1093 become the effective date of the lien, and a new five (5) year period shall
1094 commence.

1095 (6) sending the obligor a notice when a lien has been renewed; and

1096 (7) developing procedures for releasing a lien and releasing specific property from
1097 a lien.

1098 (h) *Financial Record Review*.

1099 (1) An obligor may request a financial record review in writing to the Agency
1100 within ten (10) business days of the date of notice of a lien, to determine the
1101 correctness of the financial records in a case.

- 1102 (2) Upon receiving a request for a financial record review, the Agency shall, at no
1103 charge to the obligor, provide the obligor with:
1104 (A) all relevant financial records;
1105 (B) information explaining how to interpret the records; and
1106 (C) a form the obligor may use to identify any alleged errors in the records.
1107 (3) Within twenty (20) days after receiving the relevant financial records, the
1108 obligor may:
1109 (A) request a meeting with the Agency to review the financial records and
1110 to discuss any alleged errors; and/or
1111 (B) provide a statement of alleged error on the documents.
1112 (i) The Agency shall review the records to determine whether the
1113 alleged error is correct and provide a written determination within
1114 sixty (60) days after the obligor's request for a financial record
1115 review is received as to whether the lien against the obligor is in the
1116 correct amount.
1117 (4) The Agency may proceed with the lien if:
1118 (A) the obligor does not request a meeting with the Agency or provide a
1119 statement of alleged error within twenty (20) days after receiving the
1120 financial records;
1121 (B) no errors are found in the financial records of the case; or
1122 (C) the arrears exceed the required threshold amount after any errors in the
1123 financial records are corrected.

1124 704.15-3. *Seizure of Property*. The Agency shall have the authority to seize property, whether an
1125 account or personal property, of an obligor. The Agency shall presume that an obligor's equity or
1126 ownership in the property is an equal pro-rata share of the equity or ownership based on the number
1127 of individuals with a recorded ownership interest in the property.

1128 (a) *Account Seizure*. Once a lien is placed against an obligor, the Agency may initiate an
1129 account seizure if the lien amount in the obligor's case equals or exceeds three hundred
1130 percent (300%) of the monthly amount due in the order, or one thousand dollars (\$1,000),
1131 whichever is greater.

1132 (1) The Agency may not issue a notice of seizure unless the sum of the funds in all
1133 of the obligor's financial accounts, minus expected seizure fees and any early
1134 withdrawal penalty, exceeds five hundred dollars (\$500). The first five hundred
1135 dollars (\$500) of each account shall not be frozen and/or seized.

1136 (2) The notice issued by the Agency shall instruct the financial institution of the
1137 following:

1138 (A) The maximum amount frozen in an account may not exceed the amount
1139 specified by the Agency in the notice.

1140 (B) The maximum amount frozen in an account may not exceed the
1141 obligor's ownership interest.

1142 (C) A financial institution is not liable for encumbering or surrendering any
1143 assets held by the financial institution in response to instructions from the
1144 Agency for the purpose of enforcing a child support order.

1145 (b) *Seizure of Personal Property*. Once a lien is placed against an obligor, the Agency
1146 may initiate the seizure of personal property if the lien amount equals or exceeds six
1147 hundred percent (600%) of the monthly amount due in the order.

1148 (1) The Agency may seize personal property if the obligor's equity in the property,
1149 minus expected seizure fees, exceeds five hundred dollars (\$500) per item total.

1150 (2) Ceremonial or religious property and/or real property are exempt and shall not
1151 be seized by the Agency.

1152 (3) *Process for Seizing Property.* The Agency shall follow the following process
1153 for seizing personal property:

1154 (A) The Agency shall notify the obligor of the intent to request the Family
1155 Court to issue an order of execution for the seizure of property.

1156 (B) The Agency shall request the Family Court to grant a written order of
1157 execution for the seizure of property. The Agency shall provide the Family
1158 Court an affidavit that notice of this request has been provided to the
1159 obligor.

1160 (C) Upon issuance of a written order of execution by the Family Court,
1161 non-exempt personal property may be seized and sold in a reasonable
1162 manner.

1163 704.15-4. *Attachment of Per Capita Payments.* The Agency may initiate the attachment and/or
1164 seizure of per capita payments of members of the Nation in accordance with applicable laws of the
1165 Nation.

1166 704.15-5. *License Suspension.* The Agency may initiate the suspension or denial of both State
1167 and Oneida issued licenses if there is a lien against an obligor that equals or exceeds three hundred
1168 percent (300%) of the monthly amount due in the child support order, or one thousand dollars
1169 (\$1000), whichever is greater.

1170 (a) The types of State or Oneida issued licenses that the Agency may initiate the suspension
1171 or denial of include, but are not limited to, vendor, professional, occupational, hunting,
1172 fishing, recreational, and/or motor vehicle licenses.

1173 (b) The Agency shall not initiate the suspension of an occupational and/or motor vehicle
1174 license if:

1175 (1) there is an order in place that prohibits the suspension of the license;

1176 (2) the obligor has filed for bankruptcy; or

1177 (3) action has already been taken to suspend the license.

1178 (c) When an Oneida-issued license is suspended, that suspension shall be binding on and
1179 given effect by the license issuing agencies. Orders affecting licenses issued by other
1180 governmental agencies shall be sent to such agencies for enforcement.

1181 704.15-6. *Lump-Sum Pension Payments, Judgments, and Settlements Intercepts.* Once an obligor
1182 has been placed on the lien docket the Agency may initiate the intercept of lump-sum pension
1183 payments, judgments and/or settlements.

1184 (a) When initiating the intercept of lump-sum pension payments, judgments and/or
1185 settlements, the Agency shall specify in the notice that the amount withheld from the lump-
1186 sum pension payment, judgment or settlement may not exceed the obligor's ownership
1187 interest in the payment.

1188 704.15-7. *Tax and Lottery Intercepts.* The Agency may coordinate with a federal or state agency
1189 in order to enforce a child support order through a tax and/or lottery intercept. Once an obligor
1190 has been notified that his or her tax refund and/or lottery winnings may be intercepted, that notice
1191 is valid until all arrears are paid in full.

1192 (a) *Federal Tax Intercept.* The Agency may certify a federal tax intercept when the
1193 requirements pertaining to federal tax intercept contained in an agreement between the
1194 State and the Nation have been met.

1195 (b) *Wisconsin State Tax and/or Lottery Intercept.* The Agency may certify a Wisconsin
1196 state tax intercept and/or a Wisconsin state lottery intercept, when the lottery winnings are
1197 one thousand dollars (\$1,000) or more, when the following requirements are met:

- 1198 (1) The arrears shall be at least one hundred and fifty dollars (\$150);
1199 (2) The arrears shall be at least thirty (30) days old; and
1200 (3) The arrears shall be for a minor child or a child who has reached the age of
1201 eighteen (18) within the last twenty (20) year.

1202 704.15-8. *Passport Denial*. If a federal tax intercept is in place and the obligor owes two thousand
1203 five hundred dollars (\$2,500) or more in arrears, an obligor may be denied a passport. The arrears
1204 must meet the criteria for federal tax intercept in order for passport denial to be used as an
1205 enforcement tool. An obligor shall be removed from the passport denial list if:

- 1206 (a) The federal tax intercept certification amount is zero (0);
1207 (b) The obligor makes a lump-sum payment and/or negotiates a payment plan with the
1208 Agency;
1209 (c) The obligor has to travel abroad because of a life-or-death situation involving an
1210 immediate family member; or
1211 (d) The obligor was denied a passport in error.

1212
1213 **704.16. Family Court Contempt Action**

1214 704.16-1. If the Agency does not have the authority to conduct the appropriate enforcement action,
1215 or the obligor is unresponsive to the enforcement actions being imposed by the Agency, the
1216 Agency shall file a motion for contempt with the Family Court. During a contempt proceeding the
1217 Family Court may order any of the enforcement actions the Agency is authorized to implement, in
1218 addition to the contempt actions described in this section.

1219 704.16-2. *Contempt*. The Family Court may hold an obligor who fails to comply with a lawful
1220 child support order in contempt. An obligor found to be in contempt shall be subject to any of the
1221 following punishments:

1222 (a) *Community Service*. The Family Court may order an obligor to perform community
1223 service. The number of hours of work required may not exceed what would be reasonable
1224 considering the amount of arrears the obligor owes. The obligor shall be provided a written
1225 statement of the terms of the community service order and that the community service order
1226 is monitored. The order shall specify:

- 1227 (1) how many hours of community service the obligor is required to complete;
1228 (2) the time frame in which the hours must be completed;
1229 (3) how the obligor will report his or her hours; and
1230 (4) any other information the Family Court determines is relevant.

1231 (b) *Fines*. An obligor found in contempt of court may be fined in an amount not to exceed
1232 one thousand dollars (\$1,000.00) per act of contempt and may not exceed five thousand
1233 dollars (\$5,000.00) in total. In instances of continuing contempt, each day shall constitute
1234 a separate act of contempt.

1235 (c) *Incarceration*. The Family Court may order an obligor be incarcerated. Before a jail
1236 sentence is imposed, the Family Court shall provide other conditions that require a certain
1237 amount of money be paid or action be taken for an obligor to avoid incarceration.

1238 (d) *Criminal Non-Support*. A criminal non-support action may be initiated, in the
1239 appropriate county, against an obligor who has the ability to pay child support and willfully
1240 or intentionally failed to pay and the obligor knew or reasonably should have known he or
1241 she was legally obligated to provide.

1242 (e) *Bonds and Other Guarantees*. The Family Court may require an obligor to provide a
1243 surety, bond or guarantee to secure the payment of arrears, if income withholding is not
1244 applicable, practical, or feasible to secure payment of arrears.

1245 (f) *Claims Against Estates.* The Family Court may approve a claim for past and future
1246 support against an obligor’s estate. The Family Court may issue a restraining order against
1247 an estate from which an obligor will inherit.
1248

1249 **704.17. Full Faith and Credit for Foreign Child Support Orders**

1250 704.17-1. Child support orders, judgments, or decrees of other federally recognized tribes, and
1251 states that relate to child support shall be recognized and modified in accordance with the
1252 requirements under the Full Faith and Credit for Child Support Orders Act, 28 U.S.C. 1738B.

1253 704.17-2. A foreign order is authenticated by reasonable proof that the document tendered to the
1254 Family Court is a true certified copy of the foreign order as it is recorded in the agency or court of
1255 the issuing jurisdiction. An authentication stamp issued by a court clerk or custodian of records,
1256 or a court seal, is sufficient evidence of authenticity.

1257 704.17-3. Unless defects in jurisdiction are apparent on the face of the foreign order, the person
1258 contesting enforcement of the order has the burden of showing the order is not valid. Upon a
1259 failure to respond to notice of the order and to timely contest it, the Family Court shall enforce it
1260 as an order of the Family Court.

1261 704.17-4. If a foreign order is brought before the Family Court solely for an interpretation of the
1262 terms of the order, and the order has been recognized and given full faith and credit by the Family
1263 Court, the Family Court shall interpret the order by applying the law of the forum that issued the
1264 foreign order.
1265

1266 **704.18. Right of Appeal**

1267 704.18-1. *Appeals of Administrative Enforcement Action.* Any enforcement action implemented
1268 by the Agency may be appealed to the Family Court within thirty (30) calendar days after the date
1269 that the action is enforced. The decision of the Family Court as to the Agency’s administrative
1270 enforcement action shall be final and non-appealable.

1271 704.18-2. *Appeals of Family Court Decisions.* A party may appeal a Family Court decision, other
1272 than the decision of the Family Court in regard to administrative enforcement action as referenced
1273 in section 704.18-1, to the Nation’s Court of Appeals within thirty (30) calendar days after the date
1274 the Family Court made the decision. The review of the Court of Appeals shall be based on the
1275 record and the original decision of the Family Court.
1276

1277 *End.*

1278 Emergency Adopted - BC-06-30-08-C (Expired)
1279 Emergency Extended – BC-12-10-08-H (Expired)
1280 Permanently Adopted- BC-06-24-09-B
1281 Emergency Amended - BC-10-28-09-E
1282 Amended - BC-02-24-10-G
1283 Amended - BC-06-22-11-K
1284 Amended - BC-10-10-12-C
1285 Amended – BC-08-13-14-E
1286 Amended – BC-__-__-__-__
1287

FINANCE ADMINISTRATION

Fiscal Impact Statement



MEMORANDUM

TO: Larry Barton, Chief Financial Officer
 Ralinda Ninham-Lamberies, Assistant Chief Financial Officer

FROM: Rae Skenandore, Financial Management Analyst

DATE: December 4, 2019

RE: **Fiscal Impact of the Amendments to the Child Support Law**

I. Estimated Fiscal Impact Summary

Law: Amendments to the Child Support Law		Draft 3
Implementing Agency	Oneida Child Support Agency Oneida Judiciary Oneida Police Department	
Estimated time to comply	10 days, in compliance with the Legislative Procedures Act	
Estimated Impact	Current Fiscal Year	10 Year Estimate
Total Estimated Fiscal Impact	Indeterminate	Indeterminate

II. Background

This Law was adopted by the Oneida Business Committee by resolution BC-06-24-09-B and amended by resolutions BC-02-24-10-G, BC-02-23-11-E, BC-06-22-11-K, BC-10-10-12-C, and BC-08-13-14-E. A public meeting was held on October 17, 2019. The amendments to the legislation are the following:

- The adopted Rules were moved into the Law.
 - Calculation examples from the rules were deleted
- Notice for Initiation of Action is now delayed until the agency meets with the custodial parent which is required to occur within 30 days from a referral or application.
 - Letter of Request for Support and Financial Disclosure form to the non-custodial parent is changed from five (5) business days to seven (7) business days.
 - Number of Letters required is decreased from two (2) letters to one (1) letter before initiating a hearing.

- The required wait time for a hearing request is reduced from fifteen (15) days to ten (10) days.
- Requirements of the Petition.
 - More detailed information is required on the petition.
- A new provision has been added to limit access to identifying information
- Child Support Hearings.
 - Factual Determinations at Hearings shall include, “but not be limited to,” income and expense information.
 - Records for Child Support Cases will be kept confidential.
- Family Court Authority
 - a new provision has been added allowing the Family Court to order a parent to search for a job or participate in a work experience or job training program [7 O.C. 704.7-4(b)].
- A new formula had been added to specifically address shared placement parents whose child receives social security benefits.
- The dependency exemption was eliminated and a new provision added to give the Family Court authority to accept a stipulation entered into by the parties regarding children and taxes.
- The legal obligation for child support for non-marital children will now be incurred on the date that paternity was legally established rather than the date that the child support order is entered.
- Changes have been made to how overnights and periods of equivalent care are calculated in determining child support for shared-placement parents.
- A new provision has been added stating that a change in the child’s variable costs will not, in and of itself, be considered a “substantial change in circumstances” to justify a modification of a child support order. The decision as to modify an order is up to the Family Court.
- The formula for calculating child support obligation for a split-placement parent has been clarified.
- The option to agree to a percentage of income has been deleted. The Child Support amount must be expressed as a fixed sum.
- Child Support withholding orders now include “by mail, fax or electronic means.”
- The list of non-cash options for child support payments has been updated to add “gift cards”
- The language on how to modify a child support order has been clarified.
- The definition of a significant change in finances has been changed to more than 15% AND fifty dollars per month.
- **Modification of Child Support for Incarcerated Parent.**
 - A new section regarding incarcerated parents has been added to the Law.
 - This new provision allows for the temporary suspension or modification of a child support order for an incarcerated parent who has been sentenced to at least one hundred and eighty (180) days in jail or prison.
 - If the obligor has an income of less than \$200 dollars per month, the Child Support order may be temporarily suspended.
 - If the obligor has an income of \$200 per month or more, the Child Support order may be temporarily modified based on the obligor’s income.
 - Child Support orders will not be suspended for individuals incarcerated for the following crimes:
 - Felony failure to pay support;

- Crime against a child; or
 - Crime against the obligee (i.e., the other parent).
 - Past due arrears will not be suspended or reduced.
- Compliance Plans
 - “any other programs deemed necessary” was added to the list of acceptable programs that can be included in a compliance plan.
 - Changes were made to the notice and timelines for initiating compliance plans
 - Notice of delinquency and notice of enforcement timerframes have been shortened from sixty (60) days to to thirty (30) days.
- Alternative Payment Plans
 - The section on obligors with cases in multiple jurisdiction has been removed.
 - The amount of payment required to suspend enforcement action has been changed from “full” arrears to “an arrears payment agreeable to the Agency.”
- Administrative Enforcement Actions
 - deleted “only as a last resort” from the agency’s ability to suspend an individuals occupational and/or motor vehicle license.
 - Passport denial threshold has been lowered from \$5,000 to \$2,500.
 - The provision to deny State issued grants and loans has been deleted.
- A definition for “contempt - a willful disregard of the authority of the court or disobedience to its lawful orders” has been added.

III. Methodology and Assumptions

A “Fiscal Impact Statement” means an estimate of the total identifiable fiscal year financial effects associated with legislation and includes startup costs, personnel, office, documentation costs, as well as an estimate of the amount of time necessary for an agency to comply with the Law after implementation.

Finance does NOT identify the source of funding for the estimated cost or allocate any funds to the legislation.

The analysis was completed based on the information provided as of the date of this memo.

III. Executive Summary of Findings

According to Trina Schuyler, the Child Support Director at the Oneida Nation Child Support Agency, there are no fiscal impacts for the Child Support Law amendments. There are no start-up costs, no increases in personnel, office costs or documentation costs. The Child Support Agency will be prepared to implement all changes when approved.

While not an amendment to the current law, Finance would be remiss if we did not convey the concerns specifically expressed by the Judiciary regarding the fiscal impact of the power of incarceration. Their comments are below.

“The law continues to reference incarceration (See Section 9.E. of Analysis to Draft 3 of amendments to Child Support Law). As the Oneida Nation does not have a jail, incarceration cannot be used unless there are contracts in place that would allow the Nation to utilize a jail (e.g. Brown or Outagamie County). Whether to pursue such an agreement is a policy decision for the LOC and/or Oneida Business Committee. If agreements are entered, then the future budget of the Court and/or OPD will have to account for the cost of incarceration before incarceration could be ordered. Federal law prohibits the child support agency from using their IV-D funds on expenditures for jailing of parents in Tribal IV-D cases. As these are individuals who are not paying their court ordered child support, cost recovery for the incarceration may prove to be difficult (per capita, if received, would be attached to satisfy what is likely to be a high amount of child support arrears). The future budget of OPD may have to account for jail transport. A rule addressing incarceration would have to be drafted by the Family Court to address the incarceration process”.

III. Financial Impact

The Fiscal Impact of implementing this legislation is indeterminate due to the unknown costs of exercising the power to incarcerate expressed by the Judiciary.

IV. Recommendation

Finance Department does not make a recommendation in regards to course of action in this matter. Rather, it is the purpose of this report to disclose potential financial impact of this legislation, so that the Oneida Business Committee and General Tribal Council has the information with which to render a decision.



Legislative Operating Committee
December 18, 2019

Citations Law

Submission Date: 5/15/19	Public Meeting: 11/22/19
LOC Sponsor: Jennifer Webster	Emergency Enacted: n/a

Summary: *This item came to the LOC as a result of the development of the amendments to the Domestic Animals law. The development of a Citations law will ensure that the Nation provides 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.*

5/15/19 LOC: Motion by Jennifer Webster to add the Citations Law to the active files list with Jennifer Webster as the sponsor; seconded by Kirby Metoxen. Abstained by Ernest Stevens III and Daniel Guzman King. Motion carried.

5/21/19: *Work Meeting.* Present: Clorissa N. Santiago, Brandon Wisneski, Jennifer Falck, Eric Boulanger, Chad Wilson, Kelly McAndrews, Wes Martin, Tsyoslake House. The purpose of this work meeting was to review and discuss the initial draft of the Citations law with the departments and entities that are currently involved in the handling of citations. The Oneida Law Office, Legal Resource Center, and Oneida Police Department provided suggestions and recommendations to the LRO staff. LRO will update the draft.

5/23/19: *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Ernest Stevens III, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Kristen Hooker. The purpose of this work meeting was to discuss and plan for how the LOC will collaborate with the Judiciary on the development of this Law.

6/13/19: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Daniel Guzman King, Ernest Stevens III, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Destiny Prendiville, Laura Laitinen-Warren. The purpose of this work meeting was to review the draft of the Law, and for the LOC to provide input. The LOC provided the LRO with revisions to be made to the law, and areas that should be researched. LOC also determined that the law should not move forward until the Judiciary has been consulted.

8/6/19: *Work Meeting.* Present: Clorissa N. Santiago, Brandon Wisneski, Eric Boulanger, Lisa Skenandore, Patricia Degrand, Kristina Denny, Kelly McAndrews. The purpose of this work meeting was to review the proposed draft of the Law to ensure that the processes and timelines included are realistic and can be implemented successfully.

8/29/19: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Ernest Stevens III, Daniel Guzman King, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was to review and discuss the proposed revisions to the draft of the Citations law based on the comments collected from the Oneida Police Department, Oneida Law Office, and Judiciary.

10/2/19 LOC: Motion by Daniel Guzman King to accept the draft Citations law and Legislative Analysis and defer to a work meeting for further consideration; seconded by Kirby Metoxen. Motion carried unanimously.

10/2/19: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Ernest Stevens III, Daniel Guzman King, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Jameson Wilson. The purpose of this work meeting was to review the legislative analysis and make decisions regarding the policy considerations contained in the law.

10/16/19 LOC: Motion by Jennifer Webster approve the public meeting packet, with the updated draft and analysis, and forward the Citation Law to a public meeting to be held on November 22, 2019; seconded by Daniel Guzman King. Motion carried unanimously.

11/22/19: *Public Meeting Held.* Present: Jennifer Webster, Daniel Guzman King, Kirby Metoxen, Ernest Stevens III, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Lee Cornelius, Rae Skenandore, Mollie Passon. There were no oral comments made during this public meeting.

12/3/19: *Public Comment Period Closed.* There was one (1) submission of written comments received during the public comment period.

Next Steps:

- Accept the public comments and public comment review memorandum and defer to a work meeting for further consideration.



TO: Legislative Operating Committee (LOC)
FROM: Clorissa N. Santiago, Legislative Reference Office, Staff Attorney *CNS*
DATE: December 18, 2019
RE: Citations Law: Public Meeting Comment Review

On November 22, 2019, a public meeting was held regarding the proposed Citations law (“the Law”). The public comment period was then held open until December 3, 2019. This memorandum is submitted as a review of the written comments received during the public comment period.

The public meeting draft, and public meeting transcript, and written comments received are attached to this memorandum for review.

Comment 1 – Service of Citation:

807.4. Commencement of a Citation Action

807.4-2. Authority to Issue. An officer may issue a citation to any person he or she has reasonable grounds to believe has committed a violation of a law of the Nation that expressly permits the issuance of a citation.

Jeff Mears (written): Service of Citation – For laws like the Oneida Tribal Environmental Response law and Food Service Code, the defendant may be a company, business, or Oneida division or department. Will the service of a citation of a person be required? For such laws, it is important that citations are not attached to specific individuals, but rather the business entity, as citations may be based on the violation history of the business.

Response

The commenter questions whether under the proposed Law citations can only be issued to a person, because under some laws of the Nation it may be necessary to issue a citation to a business or department of the Nation.

The Law provides that an officer may issue a citation to any *person* he or she has reasonable grounds to believe has committed a violation of a law of the Nation that expressly permits the issuance of a citation. [8 O.C. 807.4-2]. Although each law of the Nation that provides specific citation authority may include more specific information on who may be issued a citation, this Law does not currently provide clarification on if only a person may be issued a citation, or if a business entity can also be issued a citation.

The Legislative Operating Committee should consider adding clarification to the Law on who may be issued a citation. It is recommended that the Legislative Operating Committee make the following revision to the Law to expand what the term “person” means:

807.3. Definitions

807.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(i) "Person" means a natural person, sole proprietorship, partnership, corporation, limited liability company or any other form of a legal entity.

LOC Consideration**Comment 2 – Qualifications of an Authorized Attorney:****807.3. Definitions**

807.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Authorized attorney" means an attorney of the Nation who represents the department or entity of the officer who issued the citation.

807.5. Stipulations

807.5-1. *Authority for Stipulations and Case Settlement.* An authorized attorney of the Nation is granted the discretion to seek the settlement of a citation.

(a) When seeking to enter into a stipulation the authorized attorney shall explain to the defendant all provisions included in the stipulation as required by section 807.5-2(a)-(d).

807.5-2. *Form of Stipulation.* Any stipulation between an authorized attorney and the defendant shall be in writing and signed. The stipulation shall include the following:

- (a) A summary of the citation violation information included on the citation;
- (b) The details of the stipulation including any fine, penalty, condition, or payment plan the defendant shall comply with;
- (c) A statement that by entering into the stipulation the defendant is admitting that he or she committed the act for which the citation was issued or is entering a plea of no contest and thereby waives his or her right to contest the citation with the Court; and
- (d) A statement that all parties signed the agreement free of duress and coercion.

807.5-3. *Submission of the Stipulation to the Court.* If the authorized attorney and defendant reach an agreement through the stipulation, the stipulation shall be submitted to the Court for the Court's approval.

- (a) If the Court enters an order approving the stipulation as written, a copy of the order shall be provided to the authorized attorney and defendant.
- (b) If the Court does not enter an order approving the stipulation as written or requests clarification, the Court shall schedule the matter for a hearing. The Court shall provide the authorized attorney and defendant notice of the hearing date and written explanation as to why the Court did not approve the stipulation of the parties.

807.5-4. If the authorized attorney and defendant do not reach an agreement as to a stipulation, then the parties shall proceed with the citation hearing process.

807.5-5. Compliance with a stipulation shall be monitored by the authorized attorney. The authorized attorney may file a motion with the Court to enforce the terms of a stipulation or file a motion for contempt if the defendant is non-compliant with the terms of the stipulation.

Jeff Mears (written): Stipulations – The only qualification is “authorized attorney of the Nation.” In other jurisdictions this is either a position elected or hired based on qualifications. This law establishes authority but does not establish competencies. Oneida has built an organization to best serve Oneida people with agency expertise and judiciary expertise, yet much of the decision-making power will rest with an “authorized attorney of the Nation.” With the diverse affected entities and related legislation listed, how will the authorized attorney interact with the organization to consider things like trapping, hazardous discharges, food safety, and dangerous animals, during the process?

Response

The commenter states that the Law lacks competencies and qualifications for the authorized attorney position, and then expresses concern that “much of the decision-making power will rest with the ‘authorized attorney’ of the Nation.”

The Law defines an authorized attorney as an attorney of the Nation who represents the department or entity of the officer who issued the citation. [8 O.C. 807.3-1(a)]. The Law does not provide qualifications for authorized attorneys of the Nation because the purpose of this Law is to provide a consistent process for handling citations of the Nation, not set employment standards for the individuals employed by the Nation as attorneys.

Qualifications for attorneys hired by the Nation are set through specific job descriptions. Attorneys of the Nation must have obtained a Juris Doctorate degree from an accredited law school and be licensed to practice law in the State of Wisconsin. Attorneys of the Nation must also meet other qualifications such as minimum number of years of experience, or knowledge and experience regarding specific subject matters. Attorneys are then assigned to specific departments and/or areas of the Nation and are expected to diligently represent the interests of their areas and learn the various laws, policies, and/or rules governing those areas.

It is inaccurate to say that much of the decision-making power will rest with the authorized attorney of the Nation. Although the Law does delegate authority to the authorized attorney to seek the settlement of a citation, that authority is not unilateral. [8 O.C. 807.5-1]. The stipulation must be agreed to by the defendant and contain:

- A summary of the citation violation information included on the citation;
- The details of the stipulation including any fine, penalty, condition, or payment plan the defendant shall comply with;
- A statement that by entering into the stipulation the defendant is admitting that he or she committed the act for which the citation was issued or is entering a plea of no contest and thereby waives his or her right to contest the citation with the Court; and
- A statement that all parties signed the agreement free of duress and coercion.

[8 O.C. 807.5-2(a)-(d)].

If the authorized attorney and defendant reach an agreement through the stipulation, then the stipulation is submitted to the Court for the Court's approval. [8 O.C. 807.5-3]. The Court has the authority to approve or deny a stipulation. If the Court approves the stipulation as written, then an order is entered and a copy of the order is provided to the authorized attorney and defendant. [8 O.C. 807.5-3(a)]. If the Court does not approve the stipulation, or requests clarification on the stipulation, then the Court shall not enter an order, and will instead schedule the matter for a hearing. [8 O.C. 807.5-3(b)].

Therefore, based on the fact that the authorized attorneys do in fact have to meet basic qualifications, and are not unilaterally given all decision power in regard to stipulations, there is no recommended revision based on this comment.

LOC Consideration

Comment 3 – Standards for the Burden of Proof:

807.6. Hearing Procedure

807.6-2. Citation Hearing. For all persons entering a plea contesting the fact that he or she committed the act for which a citation was issued, the Court shall schedule a hearing as expeditiously as possible, provided that it shall be scheduled within ninety (90) days of the date of the pre-hearing when possible.

(a) The burden of proof at the citation hearing shall be by clear and convincing evidence.

Jeff Mears (written): Citation Hearing Burden of Proof – We will need training for evidence “clear and convincing” and “preponderance of the evidence.”

Response

The commenter provides that training on the various standards of evidence will be needed by the departments.

The burden of proof at a citation hearing is “clear and convincing evidence.” [8 O.C. 807.6-2(a)]. This means that there must be evidence which shows that the alleged violation is highly probable or probably certain to have occurred.

The Oneida Judiciary Rules of Civil Procedure allows for a law of the Nation to specify the burden of proof to be used by the Court for deciding matters related to that law. [8 O.C. 803.4-8]. If no burden of proof is specified, then the “preponderance of the evidence” burden is used. The

preponderance of the evidence burden is the most commonly used and also is the lowest standard of proof for civil actions. It means that there is evidence that shows that the alleged violation more likely than not occurred, or that there is sufficient evidence that there is a greater than fifty percent (50%) chance that the claim is true.

The Legislative Operating Committee made the decision to include the higher burden of proof of clear and convincing evidence in the Law. This was an effort to ensure that members of the community are not unduly penalized, and only penalized when the Nation and its agencies (represented by its authorized attorney) can meet this higher burden of proof.

It is not necessarily the departments of the officers of the Nation themselves that have to be well versed in the various burdens of proof, as it will be the responsibility of the authorized attorney to meet the clear and convincing evidence standard during the citation hearing. An officer of the Nation only needs to have reasonable grounds to believe that a person has committed a violation of a law of the Nation that expressly permits the issuance of a citation in order to issue a citation to a person. [8 O.C. 803.4-2].

There is no recommended revision to the Law based on this comment. If a department of a Nation who is authorized by a law of the Nation to issue a citation for a violation of said law needs further clarification on the burden of proof to be met by the authorized attorney during a citation hearing, then it is recommended that the department reach out to their authorized attorney for further clarification and/or training on the matter.

LOC Consideration

Comment 4 – Timing and Transparency:

Jeff Mears (written): Timing and Transparency – The Oneida Citations law affects numerous Oneida entities, like Conservation wardens and related legislation like the Hunting, Fishing, and Trapping Law. The public comment period from the public hearing of November 22, 2019 to the close on December 3, 2019 includes the two-day Thanksgiving holiday and the nine-day Wisconsin gun deer season. This is literally the worst 10-day period of the year to solicit input from Oneida Conservation wardens or Oneida deer hunters.

Response

The commenter expresses dissatisfaction with when the public meeting and public comment period was held for the Law.

Public meetings for proposed legislation are governed by the Legislative Procedures Act (LPA). The LPA provides a process for the adoption of laws of the Nation that takes into account

comments from members of the Nation and agencies of the Nation. [1 O.C. 109.1-1, 109.1-2]. The LPA requires that a public meeting be held for every piece of legislation to solicit oral comments, and that the public meeting is followed by a public comment period, where written comments can be submitted, that remains open for no less than five (5) business days after the public meeting is held. [1 O.C. 109.8-1].

The LPA provides specific requirements for how the community and agencies of the Nation are notified of the public meeting and public comment period. A notice for the public meeting is required to be developed and contain the name, address, phone number, and other appropriate information to submit comments on the legislation, as well as the date, time, and place of the public meeting and the time period in which comments must be received. [1 O.C. 109.8-2]. At least ten (10) days before a public meeting is held, the public meeting notice must be published in the Kalihwisaks, and the public meeting notice, legislation, legislative analysis, and fiscal impact statement if available, are required to be made publicly available on the Oneida Register and electronically provided to all managers and directors. [1 O.C. 109.8-2(a)-(c)].

Additionally, the LPA requires all appropriate managers or directors to direct comments be provided during the comment period or at a public meeting by those employees of the Nation who have special knowledge or expertise on the legislation. [1 O.C. 109.8-4(a)].

In regard to the proposed Citations law, at the October 16, 2019, Legislative Operating Committee meeting the Legislative Operating Committee approved the public meeting materials and set a public meeting date of November 22, 2019.

The public meeting notice, proposed citations law, and legislative analysis were then made available on the Oneida Register, as well as electronically provided to all directors, managers, and supervisors of the Nation on October 16, 2019. Although the LPA only requires these materials be noticed ten (10) business days prior to the public meeting, in this case notice was provided twenty-seven (27) business days before the public meeting. The public meeting notice was then published in the Kalihwisaks on November 7, 2019.

The Legislative Operating Committee held a public meeting for the proposed Law on November 22, 2019. The public comment period for this legislative item was then held open for five (5) business days until December 3, 2019.

Therefore, although the public comment period did include the Thanksgiving and Indian Day holidays, the public meeting and public comment period still met, and exceeded, all requirements of the LPA. Members of the community were adequately noticed of when the public meeting and public comment period would occur, and all managers, supervisors, and directors, including those of the Conservation Wardens, were informed of the obligation to direct any necessary comments be provided by any employee who may have special knowledge or expertise on the legislation.

LOC Consideration

Comments 5 and 6 – Consultation and Outreach:

Jeff Mears (written): Consultation and outreach – Environmental Health & Safety was not included in the development.

Jeff Mears (written): Consultation and Outreach. There are 17 laws of the Oneida Nation cited, that authorize citations, that the proposed Citations law will apply to. Of those 17 laws cited, Environmental Health & Safety has authority to enforce 11. Environmental Health & Safety was not invited to participate in development of the Citations Law.

CITATIONS LAW

LEGISLATIVE ANALYSIS

SECTION 3. CONSULTATION AND OUTREACH

A. Representatives from the following departments or entities participated in the development of this law and legislative analysis: Oneida Police Department, Oneida Law Office, Oneida Judiciary, Oneida Legal Resource Center, and Oneida Environmental Resource Board.

Response

The commenter states that the Environmental Health and Safety Department was not included in the development of this Law even though there are many laws of the Nation that authorize the Environmental Health and Safety Department to issue citations.

The Legislative Operating Committee is delegated the authority to development legislation of the Nation. [1 O.C. 109.4-2]. It is within the Legislative Operating Committee's discretion and authority to collaborate with various departments on the Nation on the development of proposed legislation when the Legislative Operating Committee determines it is necessary and relevant.

Although the Citations law is a new law for the Nation, it is not a new concept or process. Authority to issue a citation is referenced in some manner in nineteen (19) laws of the Nation. Many of those laws even include reference to a process for how those citations are handled.

During the development of the most recent amendments to the Domestic Animals law the citation process was discussed with representatives from the Oneida Environmental Health, Safety and Land Division, Oneida Comprehensive Health Division – Community Health, Environmental Resource Board, Oneida Police Department, Oneida Conservation Department, and Oneida Law Office. It was discussed that although the Domestic Animals law contained some process for how citations are handled there were many gaps in the process, specifically relating to after a citation is issued and the resulting court procedure. [3 O.C. 304.13]. That lack of clarity of the citation process contained in the law resulted in differences in interpretation between the Judiciary and Oneida Law Office. It was then identified that the citation process was used and referenced in many more laws of the Nation other than the Domestic Animals law, so the Legislative Operating Committee ultimately decided that a Citations law should be developed as a stand alone law so a

consistent process can be created for all laws the delegate the authority to issue citations, instead of just updating the process contained within the Domestic Animals law.

For the development of this Law, once it was determined that the gaps in the process that needed to be addressed primarily focused on the interaction of the key players throughout the court process the Legislative Operating Committee collaborated with the Oneida Police Department, Oneida Judiciary, Oneida Legal Resource Center, and the Oneida Law Office. From the Oneida Law Office Attorney Kelly McAndrews was specifically collaborated with, as she represents a majority of the departments or areas that are delegated the authority to issue a citation. The Legislative Operating Committee worked with the Oneida Law Office, Oneida Judiciary, and Oneida Legal Resource Center based on the subject matter expertise those areas could provide on the development of court process and the interactions of the various players within those processes. The Legislative Operating Committee collaborated with the Oneida Police Department based on the fact that the Oneida Police Department is the only known entity actively issuing citations. The Oneida Conservation Department was also invited to initial work meetings on this matter, but did not attend.

The Legislative Operating Committee understands that during the development of legislation there may be entities that will be affected in some way by legislation that are not chosen to directly participate in the development of amendments. For those entities, the public meeting and subsequent public comment period, as required by the Legislative Procedures Act, is the opportunity to participate in the legislative process by providing any comments or questions the department may have. [1 O.C. 109.8]. All departments of the Nation are encouraged to participate during a public meeting and share any insights or expertise with the Legislative Operating Committee.

Additionally, the Legislative Operating Committee holds its meetings on the first and third Wednesday of every month at 9:00 a.m. in the Norbert Hill Center Business Committee Conference Room. If a department, or community member, feels as if they have information they would like to share with the Legislative Operating Committee regarding proposed legislation then the Legislative Operating Committee encourages attendance at the meetings and participation by asking questions and/or providing input during those meetings. Legislative Operating Committee meeting agendas are sent out electronically via e-mail and published on the Nation's website at least three (3) business days before the Legislative Operating Committee meeting. The Citations law has been present on three (3) Legislative Operating Committee meeting agendas thus far.

The Environmental Health, Safety, and Land Division is delegated the authority to issue citations in the following six (6) laws of the Nation:

1. Tribal Environmental Response Law;
2. Well Abandonment Law;
3. Onsite Waste Disposal Ordinance;
4. Oneida Food Service Code;
5. Tattoo and Body Piercing Law; and
6. Non-Metallic Mine Reclamation Law.

Of the six (6) laws mentioned above, this Law does not apply to the citations referenced in the Non-Metallic Mine Reclamation law since the Non-Metallic Mine Reclamation law delegates hearing authority to the Oneida Land Commission and not the Oneida Judiciary. [8 O.C. 807.7-1].

Although the Environmental Health, Safety, and Land Division is delegated authority to issue citations, the Division, or more specifically the Environmental Health and Safety Department, was not included in the Legislative Operating Committee's initial work group due to the fact that the Department's authority to issue citations was not changing. Therefore, the Legislative Operating Committee decided to focus its work with those areas that could provide subject matter expertise on the development of court procedure.

Although the Environmental Health and Safety Department was not included in the initial work group, they were consulted during the development of the legislative analysis. The Environmental Health and Safety Department was consulted in regard to specific authority to issue citations and whom in the Environmental Health and Safety Department would be responsible for that action. The Environmental Health and Safety Department was also later encouraged to submit public comments on the Law.

Ultimately, it is the Legislative Operating Committee that delegated the authority to development legislation of the Nation. [1 O.C. 109.4-2]. The Legislative Operating Committee appreciates and encourages participation and collaboration with all departments of the Nation and members of the community, even in that participation occurs in different ways.

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

LOC Consideration

Comment 7 – Process for Internal Input on Legislation:

Jeff Mears (written): Agency comments and public comments. The Oneida public should expect that the Oneida government has a process for internal input from Affected Entities to proposed laws before they are submitted for public comment. The Oneida Legislative Procedures Act appears to mandate management to direct staff with expertise to provide comments during the public comment time frame. Environmental Health & Safety does not have legislative procedures experts.

Title 1. Government and Finances - Chapter 109

LEGISLATIVE PROCEDURES ACT

109.8-4. Comments and Testimony. The Legislative Operating Committee shall consider fully, all written comments and oral testimony received during the public comment period and any public meeting on the legislation.

(a) All appropriate managers or directors shall direct comments to be provided during the comment period or at a public meeting by those Tribal employees who have special knowledge or expertise on the legislation.

Response

The commenter states that the Nation should have a process for internal input from entities of the Nation before proposed legislation is submitted for public comment.

The public meeting and accompanying public comment period as required by the Legislative Procedures Act is the Nation's process for collecting comments and input from internal departments or entities or members of the community. [1 O.C. 109.8]. The Legislative Operating Committee is required to then fully consider all written comments and oral testimony that is received during the public meeting and public comment period and determine if any changes to the proposed legislation is needed based on those comments. [1 O.C. 109.8-4].

The commenter is correct in stating that the Legislative Procedures Act requires all appropriate managers or directors to direct comments be provided during the comment period or at a public meeting by those employees of the Nation who have special knowledge or expertise on the legislation. [1 O.C. 109.8-4(a)]. A department does not need to have its own legislative procedures expert to participate in the legislative process. The electronic notice of a public meeting that is sent out to all directors, supervisors, and managers of the Nation includes a statement referencing the requirement of the Legislative Procedures Act that employees who may have specialized knowledge be directed to provide comment on the legislation. [1 O.C. 109.8-2(a)-(c)]. The directors, managers, and supervisors are required to direct employees that may have specialized knowledge of the subject matter of the legislation to participate, it is not just employees who may have specialized knowledge of the legislative process.

Additionally, if a department of the Nation has questions on the legislative process the department can contact the Legislative Reference Office at LOC@oneidanation.org. The Legislative Reference Office has met with various departments to provide more information on the legislative process.

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

LOC Consideration

Title 8. Judiciary - Chapter 807
Kayan[^]sla OI\$wa>
Laws of issues/matters
CITATIONS

807.1. Purpose and Policy
807.2. Adoption, Amendment, Repeal
807.3. Definitions
807.4. Commencement of a Citation Action

807.5. Stipulations
807.6. Hearing Procedure
807.7. Exclusion

807.1. Purpose and Policy

807.1-1. *Purpose.* The purpose of this law is to provide a process that governs all citations that fall under the jurisdiction of the Oneida Nation.

807.1-2. *Policy.* It is the policy of the Nation to 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.

807.2. Adoption, Amendment, Repeal

807.2-1. This law was adopted by the Oneida Business Committee by resolution BC-__-__-__-__.

807.2-2. This law may be amended or repealed by the Oneida Business Committee and/or General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

807.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

807.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

807.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

807.3. Definitions

807.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) “Authorized attorney” means an attorney of the Nation who represents the department or entity of the officer who issued the citation.

(b) “Citation” means a legal document that serves as a notice or summons to appear in a court of the Nation in response to a charge against an individual of a violation of law.

(c) “Court” means the Nation’s Trial Court, Family Court, or any other specific courts or divisions of the Nation’s Judiciary created by a law of the Nation which have been granted jurisdiction to hear matters of citations.

(d) “Court of Appeals” means the branch of the Nation’s Judiciary delegated the authority of final appeals within the Nation’s Judiciary, as authorized by Oneida General Tribal Council resolution GTC-03-19-17-A.

(e) “Judiciary” means the Oneida Nation Judiciary, which is the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B, and then later authorized to administer the judicial authorities and responsibilities of the Nation by Oneida General Tribal Council resolution GTC-03-19-17-A.

(f) “Nation” means the Oneida Nation.

38 (g) “No contest” means a plea by which a defendant will accept the charged violation of
39 law but does not plead or admit guilt.

40 (h) “Officer” means an individual authorized by a law of the Nation to issue a citation for
41 a violation of said law.

42
43 **807.4. Commencement of a Citation Action**

44 807.4-1. *Action*. The issuance of a citation shall commence a civil action in the Judiciary for a
45 violation of a law of the Nation for the purpose of collecting a fine or penalty imposed by the law
46 in the name of the Nation.

47 807.4-2. *Authority to Issue*. An officer may issue a citation to any person he or she has reasonable
48 grounds to believe has committed a violation of a law of the Nation that expressly permits the
49 issuance of a citation.

50 807.4-3. *Form of Citation*. A citation shall contain the following information:

51 (a) The name of the officer who issued the citation.

52 (b) The name, address, and date of birth of the defendant.

53 (c) The enrollment number and/or license number of the defendant, if applicable.

54 (d) Information about the alleged violation including:

55 (1) the violation alleged;

56 (2) the law violated;

57 (3) the time and place of the occurrence of the violation; and

58 (4) a description of the violation.

59 (e) A notice to appear at a date, time and place for the citation pre-hearing, and a statement
60 as to whether the appearance at the pre-hearing is mandatory.

61 (f) Provisions for payment of citation and stipulation in lieu of an appearance in Court, if
62 applicable.

63 (g) Notice that if the defendant does not pay the citation or stipulate to an agreement prior
64 to the pre-hearing and fails to appear in Court at the time fixed in the citation or provide
65 written notice to the Court that he or she is contesting the citation, the Court may issue a
66 default judgment which may include any fine amount due, restitution and/or suspension of
67 any rights, privileges, or licensures, or any other penalty authorized by law.

68 (h) Notice that failure to satisfy a fine, restitution, or any other part of the judgment, may
69 result in per capita attachment, wage garnishment, revocation, suspension of any rights,
70 privileges, licensures, and/or any other action authorized by law and/or other collection
71 processes available to the Court.

72 (i) Any other relevant information.

73 807.4-4. *Service of a Citation*. The defendant is served with a citation when one of the following
74 occurs:

75 (a) *Personal Service*. The citation is provided to the defendant directly by the officer, or
76 a copy of the citation is left at the defendant’s home or usual place of abode by the officer:

77 (1) in the presence of a competent family member at least fourteen (14) years of
78 age who shall be informed of the contents of the citation; or

79 (2) in the presence of a competent adult who resides in the home or usual place of
80 abode of the defendant, who shall be informed of the contents of the citation.

81 (b) *Mail Service*. If personal service is not possible, and the defendant’s address is known
82 or with reasonable diligence can be ascertained, then mail service may be used. For service
83 by mail, a copy of the citation may be delivered to the defendant’s last known address by
84 certified mail with return receipt. The certified mail return receipt shall be signed by the

85 defendant or a competent family member at least fourteen (14) years of age or an adult who
86 resides in the home of the defendant.

87 (1) The certified mail return receipt shall be filed with the Court as proof of service.

88 (c) *Service by Publication.* If after a showing of due diligence personal service and mail
89 service were not possible, then service may be completed by publication as a last resort.
90 The publication shall be in the Nation’s newspaper and shall be designated as “Legal
91 Notice.” The department of the officer and/or authorized attorney shall publish this notice
92 at least two (2) times within a thirty (30) day period. The two (2) notices shall be published
93 a minimum of ten (10) days before the citation pre-hearing.

94 (1) Copies of the two (2) published notices and written report stating the facts
95 surrounding the failure of personal and mail service shall be filed with the Court as
96 proof of service.

97 (2) If service by publication is required and there is insufficient time for proper
98 service before the pre-hearing, the Court may, on its own, order different time limits
99 for service by publication and/or re-schedule the pre-hearing appropriately in order
100 to provide for fair notice and opportunity for the defendant to respond.

101 (3) The Court may order the defendant to reimburse the department of the officer
102 and/or the authorized attorney for any costs incurred from service by publication.

103 807.4-5. *Filing of a Citation.* Absent exigent circumstances, the department of the officer who
104 issued the citation shall file the citation with the Court along with any applicable proof of service
105 at least thirty (30) days prior to the date of the pre-hearing.

106 (a) Citations may be filed in person or electronically transmitted to the Court. Citations
107 that are electronically transmitted to the Court are deemed filed upon confirmation of
108 receipt by the Clerk of Court assigned to the branch of the Judiciary that will hear the
109 citation.

110 (b) After filing the citation with the Court, the department of the officer who issued the
111 citation shall forward the citation and all relevant accompanying information to the
112 authorized attorney. Relevant information to accompany the citation may include, but is
113 not limited to, a narrative by the officer and/or history of violations by the defendant.

114 807.4-6. *Amendments to the Citation.* A citation may be amended by an officer or the authorized
115 attorney prior to the citation pre-hearing. A copy of the amended citation shall be provided to the
116 defendant in accordance with section 807.4-4, and filed with the Court, at least five (5) days before
117 the citation pre-hearing. After the hearing, the citation may only be amended at the discretion of
118 the Court, upon notice to the parties and an opportunity to be heard.

119 **807.5. Stipulations**

121 807.5-1. *Authority for Stipulations and Case Settlement.* An authorized attorney of the Nation is
122 granted the discretion to seek the settlement of a citation.

123 (a) When seeking to enter into a stipulation the authorized attorney shall explain to the
124 defendant all provisions included in the stipulation as required by section 807.5-2(a)-(d).

125 807.5-2. *Form of Stipulation.* Any stipulation between an authorized attorney and the defendant
126 shall be in writing and signed. The stipulation shall include the following:

127 (a) A summary of the citation violation information included on the citation;

128 (b) The details of the stipulation including any fine, penalty, condition, or payment plan
129 the defendant shall comply with;

130 (c) A statement that by entering into the stipulation the defendant is admitting that he or
131 she committed the act for which the citation was issued or is entering a plea of no contest

132 and thereby waives his or her right to contest the citation with the Court; and

133 (d) A statement that all parties signed the agreement free of duress and coercion.

134 807.5-3. *Submission of the Stipulation to the Court.* If the authorized attorney and defendant reach
135 an agreement through the stipulation, the stipulation shall be submitted to the Court for the Court's
136 approval.

137 (a) If the Court enters an order approving the stipulation as written, a copy of the order
138 shall be provided to the authorized attorney and defendant.

139 (b) If the Court does not enter an order approving the stipulation as written or requests
140 clarification, the Court shall schedule the matter for a hearing. The Court shall provide the
141 authorized attorney and defendant notice of the hearing date and written explanation as to
142 why the Court did not approve the stipulation of the parties.

143 807.5-4. If the authorized attorney and defendant do not reach an agreement as to a stipulation,
144 then the parties shall proceed with the citation hearing process.

145 807.5-5. Compliance with a stipulation shall be monitored by the authorized attorney. The
146 authorized attorney may file a motion with the Court to enforce the terms of a stipulation or file a
147 motion for contempt if the defendant is non-compliant with the terms of the stipulation.
148

149 **807.6. Hearing Procedure**

150 807.6-1. *Citation Pre-Hearing.* All citations shall include a pre-hearing date with the Court which
151 shall be set at least thirty (30) days after the citation was issued, unless stated otherwise by a law
152 of the Nation.

153 (a) Appearance at the pre-hearing shall be mandatory only when a law, policy, rule, or
154 resolution of the Nation requires a mandatory appearance for that specific violation of law.

155 (b) If an appearance is not mandatory, and a person does not wish to contest the citation,
156 a person may pay the fine and/or penalty as listed on the citation prior to the pre-hearing
157 date.

158 (1) If the person pays the fine and/or penalty as listed on the citation prior to the
159 pre-hearing date the citation shall be considered satisfied.

160 (c) If a person wishes to contest the citation, the person shall provide notice to the Court
161 in one (1) of the following manners:

162 (1) appear at the pre-hearing to contest the citation; or

163 (2) if an appearance is not mandatory, send written notice to the Court, with a copy
164 to the Oneida Law Office, prior to the pre-hearing notifying the Court that the
165 defendant wishes to contest the citation.

166 (d) At the pre-hearing the Court shall accept pleas which either contest or admit committing
167 the act for which the citation was issued, or a plea of no contest.

168 (1) If the defendant admits committing the act for which the citation was issued
169 the Court shall provide a statement that by admitting that he or she committed the
170 act for which the citation was issued the defendant thereby waives his or her right
171 to contest the citation with the Court. The Court shall obtain an affirmative
172 acknowledgment from the defendant of that waiver of rights.

173 (e) In addition to scheduling requested hearings, the Court may also make conditional
174 orders at the pre-hearing which are effective until the matter is resolved.

175 (f) If a defendant does not appear at the pre-hearing or submit written notice that he or she
176 is contesting the citation when there is a non-mandatory appearance, and the defendant has
177 not entered into a stipulation or paid the fine and/or penalty as listed on the citation, the
178 Court may proceed to enter a default judgment.

179 (1) A default judgment may include any fine amount due, restitution, suspension
180 of any rights, privileges, or licensures, and/or any other penalty authorized by law.

181 (2) Unless otherwise noted by the Court, a defendant shall have ninety (90) days
182 to satisfy a default judgment by paying any fine and/or complying with any
183 condition or penalty ordered.

184 807.6-2. *Citation Hearing.* For all persons entering a plea contesting the fact that he or she
185 committed the act for which a citation was issued, the Court shall schedule a hearing as
186 expeditiously as possible, provided that it shall be scheduled within ninety (90) days of the date of
187 the pre-hearing when possible.

188 (a) The burden of proof at the citation hearing shall be by clear and convincing evidence.

189 (b) As a result of the citation hearing the Court may issue an order which includes a
190 determination as to the underlying violation of law as well as any fine amount, restitution,
191 suspension of any rights, privileges, or licensures, and/or any other penalty as authorized
192 by law.

193 (c) A defendant who fails to satisfy a lawful order of the Court shall be subject to
194 punishment for contempt of court which may include fines, revocation and/or suspension
195 of any rights, privileges, licensures, or any other action authorized by law.

196 (d) The defendant's failure to satisfy a fine and/or restitution may result in per capita
197 attachment, wage garnishment and/or other collection processes available to the Court.

198 807.6-3. *Appeals of the Court's Determinations.* Any person wishing to contest the determination
199 of the Court may appeal to the Nation's Court of Appeals in accordance with the Rules of Appellate
200 Procedure.

201

202 **807.7. Exclusion**

203 807.7-1. This law shall not apply to any law of the Nation which delegates hearing authority to a
204 hearing body other than the Oneida Judiciary.

205

206 *End.*

207

208 Adopted – BC-__-__-__-__

209



**LEGISLATIVE OPERATING COMMITTEE
PUBLIC MEETING
Citations Law**

Business Committee Conference Room-2nd Floor Norbert Hill Center
November 22, 2019 12:00 p.m.

Present: Jennifer Webster, Daniel Guzman King, Kirby Metoxen, Ernest Stevens III, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Lee Cornelius, Rae Skenandore, Mollie Passon.

Jennifer Webster: Good Afternoon. The time is 12:01 p.m. and today's date is Friday, November 22, 2019. I will now call to order the public meeting for the proposed Citations law.

The Legislative Operating Committee is hosting this public meeting to gather feedback from the community. The public meeting is not a question and answer period. The LOC will review and consider all comments received during the public comment period. The LOC will respond to all comments received in a memorandum, which will be submitted in the meeting materials of a future LOC meeting.

All persons who wish to present oral testimony need to register on the sign in sheet at the back of the room. If you leave an email address on the sign in sheet, we can ensure you receive a copy of the memorandum.

Additionally, written comments may be submitted to the Nation's Secretary's Office or to the Legislative Reference Office in person, by U.S. mail, interoffice mail, e-mail or fax as provided on the public meeting notice. These comments must be received by close of business day on Tuesday, December 3, 2019.

In attendance from the LOC is Kirby Metoxen, Daniel Guzman King, and myself, Jenny Webster.

The LOC may impose a time limit for all speakers pursuant to Section 109.8-3(c) of the Legislative Procedures Act. As the presiding LOC member, I am imposing a time limit of five (5) minutes. This time limit shall be applied equally to all persons.

Also in attendance from LOC is Ernie Stevens.

We will now begin today's public meeting for the proposed Citations law. The purpose of this law is to 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.

Those who wish to speak please come to the microphone. And we will allow five (5) minutes again. And we will keep this open until 12:15 p.m. to allow time for people to get here. Is there anybody signed in to speak? So we will just keep it open for the next fifteen (15) minutes.

Okay, it is 12:15 p.m., with there no other speakers registered, the public meeting for the proposed Citations law is now closed at 12:15 p.m.

Once again written comments may be submitted until close of business day on Tuesday, December 3, 2019. Thank you.

-End of Meeting-

To: Pat Pelky, EHSL Division Director
From: Jeff Mears, Deputy Director – EHS
Date: December 3, 2019
RE: Oneida Nation Citation Law Comments

Introduction

The Citations Packet notice was received on Friday November 22, 2019 announcing a public meeting at noon and deadline for public comments December 3, 2019.

SECTION 1. EXECUTIVE SUMMARY

REQUESTER: LOC	SPONSOR: Jennifer Webster	DRAFTER: Clorissa N. Santiago	ANALYST: Brandon Wisneski
Intent of the Proposed Law	To establish a consistent process for citations issued for violations of laws of the Nation, including: <ul style="list-style-type: none"> - What must appear on a citation form; - How a citation must be served; - A process for entering into stipulation agreements to settle citations; - A process for how individuals can contest their citations in court; and - Timelines and procedures for citation hearings. 		
Purpose	To provide a process that governs all citations that fall under the jurisdiction of the Oneida Nation [8 O.C. 807.1-1].		
Affected Entities	Any person issued a citation under the laws of the Nation; Agencies responsible for enforcement and issuing citations under the laws of the Nation (Oneida Police Department, Conservation Wardens, Oneida Environmental Health Safety and Land Division, Licensing Department), the Nation’s Judiciary, Oneida Law Office, GTC Legal Resource Center, Utilities Department, and Oneida Land Commission.		
Related Legislation	Domestic Animals law; Hunting, Fishing and Trapping law; All-Terrain Vehicle law; Public Use of Tribal Land law; Recycling and Solid Waste Disposal law; Tribal Environmental Response law; Well Abandonment law; Onsite Waste Disposal Ordinance; Water Resources law; Emergency Management and Homeland Security law; Tobacco law; Oneida Food Service Code; Tattoo and Body Piercing law; Notary Act; Non Metallic Mine Reclamation law; Zoning and Shoreland Protection law; Marriage law, Sanitation Ordinance, Rules of Civil Procedure; Rules of Appellate Procedure, Judiciary Law Rule No. 1 – Oneida Trial Court Rules.		
Public Meeting	A public meeting has not yet been held.		
Fiscal Impact	A fiscal impact statement has not yet been requested.		

Summary of comments/concerns

- Timing and Transparency – The Oneida Citations law affects numerous Oneida entities, like Conservation wardens and related legislation like the Hunting, Fishing, and Trapping Law. The public comment period from the public hearing of November 22, 2019 to the close on December 3, 2019 includes the two-day Thanksgiving holiday and the nine-day Wisconsin gun deer season. This is literally the worst 10-day period of the year to solicit input from Oneida Conservation wardens or Oneida deer hunters.
- Consultation and outreach – Environmental Health & Safety was not included in the development.
- Service of Citation – For laws like the Oneida Tribal Environmental Response law and Food Service Code, the defendant may be a company, business, or Oneida division or department. Will the service of a citation of a person be required? For such laws, it is important that citations are not attached to specific individuals, but rather the business entity, as citations may be based on the violation history of the business.
- Stipulations – The only qualification is “authorized attorney of the Nation.” In other jurisdictions this is either a position elected or hired based on qualifications. This law establishes authority but does not establish competencies. Oneida has built an organization to best serve Oneida people with agency expertise and judiciary expertise, yet much of the decision-making power will rest with an “authorized attorney of the Nation.” With the diverse affected entities and related legislation listed, how will the authorized attorney interact with the organization to consider things like trapping, hazardous discharges, food safety, and dangerous animals, during the process?
- Citation Hearing Burden of Proof – We will need training for evidence “clear and convincing” and “preponderance of the evidence.”

Agency comments and public comments

The Oneida public should expect that the Oneida government has a process for internal input from *Affected Entities* to proposed laws before they are submitted for public comment. The Oneida Legislative Procedures Act appears to mandate management to direct staff with expertise to provide comments during the public comment time frame. Environmental Health & Safety does not have legislative procedures experts.

Title 1. Government and Finances - Chapter 109
LEGISLATIVE PROCEDURES ACT

109.8-4. Comments and Testimony. The Legislative Operating Committee shall consider fully, all written comments and oral testimony received during the public comment period and any public meeting on the legislation.

(a) All appropriate managers or directors shall direct comments to be provided during the comment period or at a public meeting by those Tribal employees who have special knowledge or expertise on the legislation.

Consultation and Outreach

There are 17 laws of the Oneida Nation cited, that authorize citations, that the proposed Citations law will apply to. Of those 17 laws cited, Environmental Health & Safety has authority to enforce 11. Environmental Health & Safety was not invited to participate in development of the Citations Law.

CITATIONS LAW

LEGISLATIVE ANALYSIS

SECTION 3. CONSULTATION AND OUTREACH

A. Representatives from the following departments or entities participated in the development of this law and legislative analysis: Oneida Police Department, Oneida Law Office, Oneida Judiciary, Oneida Legal Resource Center, and Oneida Environmental Resource Board.

Service of Citation

C. Service of a Citation. When an officer issues a citation, the citation must be “served” on the individual alleged to have violated the law [8 O.C. 807.4-4].

- Personal Service. An officer must first attempt to personally serve the citation on the defendant (i.e. hand the citation to the defendant) or leave a copy of the citation at the defendant’s home in the presence of a competent family member at least fourteen (14) years of age or an adult who resides in the home of the defendant.

Stipulations

D. Stipulations. An authorized attorney of the Nation is granted the discretion to seek the settlement of the citation. This means that the Nation and the defendant can agree to a lower fine amount or other condition to settle the case [8 O.C. 807.5].

- Who is an Authorized Attorney of the Nation? An attorney of the Nation who represents the department or entity of the officer who issued the citation, such as the attorney for the Oneida Police Department [8 O.C. 807.3-1]. Attorneys of the Nation work in the Oneida Law Office.
- Form of Stipulation. The stipulation, or agreement, between the Nation’s attorney and defendant must be in writing, signed by both parties, and include the following information:

- A summary of the violation that resulted in the citation,
- The details of the stipulation including any fine, penalty, condition or payment plan the defendant must comply with,
- A statement that the defendant admits that he or she committed the act or is entering a plea of no contest and waives his or her right to contest the citation in Court; and
- A statement that all parties signed the agreement free of duress and coercion.
- Current Practice. It is the Nation’s current practice to offer stipulations to defendants for violations of the Nation’s Domestic Animals law. Stipulations typically involve the Nation lowering a fine amount. Currently, this practice is not outlined in detail in any law of the Nation.
 - Comparison to State of WI. For cases in Wisconsin circuit court, stipulations are typically handled by the prosecutor’s office. Oneida Nation does not have a prosecutor or exercise criminal jurisdiction, so in this instance, the Nation is represented by an attorney of the Law office who assumes these responsibilities for violations the Nation’s civil laws.
- Effect. Although offering stipulations is the current practice of the Nation, placing the process in the law will formally establish this authority for the authorized attorneys of the Nation.

Citation Hearing – Burden of Proof

Effect. This law sets a higher burden of proof than the Judiciary is currently using for citation hearings under the laws of the Nation. This means that the Nation and its agencies (represented by its authorized attorney) will have to meet this higher burden of proof when a citation is challenged by a defendant. This will only apply to citation hearings. All other hearings of the court will utilize the “clear and convincing evidence” standard unless otherwise noted in another law of the Nation.



Legislative Operating Committee
December 18, 2019

Vehicle Driver Certification and Fleet Management Law Amendments

Submission Date: 2/7/18	Public Meeting: n/a
LOC Sponsor: Jennifer Webster	Emergency Enacted: n/a

Summary: *The Human Resources Department and the Law Office have recommended changes to this law since its recent adoption and implementation.*

2/7/18 LOC: Motion by Ernest Stevens III to add the Vehicle Driver and Fleet Management amendments to active files list as a medium priority and assign Jennifer Webster as the sponsor. Seconded by Kirby Metoxen. Motion carried unanimously.

7/15/19: *Work Meeting.* Present: Clorissa N. Santiago, Brandon Wisneski, Matthew J. Denny, Nic Reynolds, Barbara Kolitsch, Robert Keck, Destiny Prendiville. The purpose of this work meeting was to begin discussing potential amendments to the law. The work group reviewed the law line by line and discussed revisions that should be presented to the LOC for consideration.

7/29/19: *Work Meeting.* Present: Clorissa N. Santiago, Brandon Wisneski, Matthew J. Denny, Nic Reynolds, Robert Keck, Wendy Alvarez, Gunladunt Webster. The purpose of this work meeting was to continue discussing potential amendments to the law. The work group continued reviewing the law line by line and discussing revisions that should be presented to the LOC for consideration.

8/13/19: *Work Meeting.* Present: Clorissa N. Santiago, Brandon Wisneski, Barbara Kolitsch, Nic Reynolds, Robert Keck, Wendy Alvarez, Gunladunt Webster. The purpose of this work meeting was to continue discussing potential amendments to the Vehicle Driver Certification and Fleet Management law, as well as review research that was conducted on questions that arose during prior work meetings.

9/4/19: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Ernest Stevens III, Daniel Guzman King, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Jameson Wilson. The purpose of this work meeting was to discuss a plan to move this item forward, as well as begin discussion policy considerations that will affect potential amendments to this law.

10/2/19: *Work Meeting.* Present: Clorissa N. Santiago, Brandon Wisneski, Nic Reynolds, Robert Keck, Wendy Alvarez, Gunladunt Webster, Rick Fuss. After the previous three work meetings with HRD and Risk Management the LRO took many of their suggestions and recommendations and brought that information to the LOC. The LOC began making policy considerations. The purpose of this work meeting was to review the first draft of the proposed amendments to the

Law and obtain input from the effected entities so that information can be brought back to the LOC.

10/16/19: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Daniel Guzman King, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was to review an updated draft of the proposed amendments and begin making policy considerations.

10/24/19: *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Ernest Stevens III, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was to review an updated draft of the proposed amendments, and make decisions as to how to move this item forward. LRO will schedule a work meeting between LOC, HRD, Risk Management, and Fleet Management.

11/5/19: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Daniel Guzman King, Ernest Stevens III, Jenifer Falck, Clorissa N. Santiago, Brandon Wisneski, Robert Keck, Wendy Alvarez, Gunladunt Webster, Matthew J. Denny, Leyne Orosco. The purpose of this work meeting was to review the proposed draft and discuss any potential revisions that need to be made before it is placed on the LOC agenda on December 4, 2019.

12/4/19 LOC: Motion by Ernest Stevens III to approve the draft and legislative analysis of the amendments to the Vehicle Driver Certification and Fleet Management law and forward to a work meeting for further discussion; seconded by Kirby Metoxen. Motion carried unanimously.

12/4/19: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Ernest Stevens III, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was to discuss and consider the considerations contained in the legislative analysis, as well as the comments that were received during the LOC meeting. LRO will update the draft and analysis based on these discussions, and prepare a public meeting packet to come to the next LOC meeting.

Next Steps:

- Approve the public meeting packet and forward the Vehicle Driver Certification and Fleet Management law amendments to a public meeting to be held on January 16, 2020.

Title 2. Employment - Chapter 210

Lotí'sles Kayanl'ásla Khale? Nya?teka?sléhtake Lonatlíhute? Kayanl'ásla
they're driving law and a variety of vehicles the responsibility is attached to them
VEHICLE DRIVER CERTIFICATION AND FLEET MANAGEMENT

210.1. Purpose and Policy	210.5. Responsibilities of a Certified Driver
210.2. Adoption, Amendment, Repeal	210.6. Fleet Vehicles
210.3. Definitions	210.7. Motor Vehicle Crashes or Damage to Vehicles
210.4. Driver Certification	210.8. Suspension of Driver Certification and Other Enforcement

1
2 **210.1. Purpose and Policy**
3 210.1-1. *Purpose.* The purpose of this law is to establish standards that certify employees, elected
4 and appointed officials, and volunteers to drive a fleet vehicle or personal vehicle on official
5 business and regulate the use of all vehicles owned and leased by the Nation.
6 210.1-2. *Policy.* It is the policy of the Nation to ensure the safety of the community and employees
7 of the Nation; minimize the Nation's liability when physical damage to vehicles and/or property
8 damage occurs as a result of a motor vehicle crash; and improve the efficiency and effectiveness
9 of the use of vehicles owned by the Nation.
10
11 **210.2. Adoption, Amendment, Repeal**
12 210.2-1. This law was adopted by the Oneida Business Committee by resolution BC-06-28-17-C,
13 and amended by resolution BC-__-__-__-__.
14 210.2-2. This law may be amended or repealed by the Oneida Business Committee and/or Oneida
15 General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.
16 210.2-3. 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.
19 210.2-4. 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.
21 210.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.
22
23 **210.3. Definitions**
24 210.3-1. 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) "Area manager" means an employee's supervisor's supervisor; or, an individual
27 designated to be the area manager by a General Manager position.
28 (b) "Business day" means Monday through Friday, from 8:00 a.m. to 4:30 p.m.; excluding
29 the Nation's holidays.
30 (c) "Employee" means an individual employed by the Nation, but does not include elected
31 or appointed officials, or employees of a chartered corporation of the Nation.
32 (d) "Entity" means a department, enterprise, program, board, committee or commission of
33 the Nation.
34 (e) "Employee Assistance Program" means a professional counseling program staffed by
35 clinical social workers licensed by the State of Wisconsin which offers services to the
36 Nation's employees and family members.
37 (f) "Fleet vehicle" means a vehicle owned or leased by the Nation.
38 (g) "Moving violation" means any violation of motor vehicle or traffic law that is
39 committed by the driver of a vehicle while the vehicle is moving. A moving violation does

40 not include parking violations, equipment violations, or paperwork violations relating to
41 insurance, registration or inspection.

42 (h) “Nation” means the Oneida Nation.

43 (i) “Prohibited drug” means marijuana, cocaine, opiates, amphetamines, phencyclidine
44 (PCP), hallucinogens, methaqualone, barbiturates, narcotics, and any other substances
45 included in Schedules I through V, as defined by Section 812 of Title 21 of the United
46 States Code. Prohibited drugs also includes prescription medication or over-the-counter
47 medicine when used in an unauthorized or unlawful manner.

48 (j) “Supervisor” means the direct supervisor of an employee. For volunteers, elected or
49 appointed officials, or employees without a direct supervisor, it means the Human
50 Resources Department or any party who has been designated by the Human Resources
51 Department as responsible for performing a supervisor’s responsibilities under this law.

52 (k) “Weapon” means a firearm, knife, electric weapon, club, or any other object intended
53 to cause harm to oneself or others.

54

55 **210.4. Driver Certification**

56 210.4-1. An individual shall obtain driver certification from the Human Resources Department
57 before operating a fleet vehicle or personal vehicle on official business.

58 210.4-2. *Qualifications for Certification.* In order to receive driver certification a person shall:

59 (a) Be eighteen (18) years of age or older;

60 (b) Hold a valid Wisconsin driver’s license;

61 (1) A person who holds a valid driver’s license from a state other than Wisconsin
62 shall have thirty (30) days after his or her first day of employment or service to
63 obtain a Wisconsin driver’s license.

64 (c) Have a driving record that does not reflect any of the following conditions:

65 (1) Three (3) or more moving violations and/or at-fault motor vehicle crashes in
66 the past two (2) years; and/or

67 (2) An operating while intoxicated (OWI), driving under the influence (DUI), or
68 prohibited alcohol concentration (PAC) citation within the last twelve (12) months.

69 (d) Complete all driver training requirements imposed by the Nation or any federal or state
70 agency regulations;

71 (e) Satisfy any other requirements specific to the job description and/or vehicle that may
72 be used by or assigned to the person; and

73 (f) Maintain one (1) of the following minimum insurance requirements for a personal
74 vehicle if the individual may use his or her personal vehicle to conduct official business:

75 (1) the individual’s insurance covers:

76 (A) one hundred thousand dollars (\$100,000) per person;

77 (B) three hundred thousand dollars (\$300,000) per motor vehicle crash for
78 bodily injury; and

79 (C) twenty-five thousand dollars (\$25,000) property damage; or

80 (2) the individual’s insurance covers two hundred and fifty thousand dollars
81 (\$250,000) combined single limit.

82 210.4-3. The Nation’s Human Resources Department shall be responsible for determining whether
83 an individual meets all the qualifications before approving or denying a driver certification.

84 (a) An individual shall provide his or her appropriate license, training certification, and
85 insurance information to the Human Resources Department.

86 (b) The Human Resources Department shall have the authority to check the driving record
87 of an individual at any time.

88 (c) The Human Resources Department shall maintain a current list of all certified drivers
89 and provide the list to Fleet Management, Risk Management, and Central Accounting on a
90 regular basis.

91 210.4-4. A supervisor shall ensure that an individual has received his or her driver certification
92 from the Human Resources Department before allowing the individual to drive a fleet vehicle or a
93 personal vehicle on official business.

94

95 **210.5. Responsibilities of a Certified Driver**

96 210.5-1. *General Responsibilities.* While operating a fleet vehicle or a personal vehicle on official
97 business, an individual shall:

98 (a) Abide by all traffic laws;

99 (b) Wear a seat belt and require any passengers to wear a seat belt at all times;

100 (c) Not drive while under the influence of prohibited drugs and/or alcohol;

101 (d) Not drive if impaired by a medical or physical condition or other factor that affects a
102 driver's motor skills, reaction time, or concentration;

103 (e) Not carry a weapon, whether in the open or concealed;

104 (1) *Exemption.* An individual who is carrying a weapon in the course of performing
105 his or her official duties, or is participating in cultural activities or ceremonies is
106 exempt from this requirement.

107 (f) Not transport prohibited drugs and/or alcohol;

108 (1) *Exemption.* An employee of the Nation who is transporting prohibited drugs
109 and/or alcohol in the course of performing his or her job duties is exempt from this
110 requirement.

111 (g) Not deliver goods or services for personal gain, or operate private pools where the
112 riders pay the driver; and

113 (h) Not use electronic devices in an unlawful manner.

114 210.5-2. *Training Responsibilities.* An individual with driver certification shall: complete the
115 driver safety training provided and monitored by the Human Resources Department every three
116 (3) years.

117 ~~(a) Complete the driver safety training provided for and monitored by the Human~~
118 ~~Resources Department every three (3) years; and~~

119 ~~(b) Maintain~~ (a) Exemption. An individual who is required to maintain compliance with
120 any specialized driver safety training requirements imposed by state or federal regulatory
121 agencies shall be exempt from the requirement to complete the driver safety training
122 provided by the Human Resources Department.

123 210.5-3. *Fleet Vehicle Responsibilities.* When operating a fleet vehicle, an individual shall:

124 (a) Complete a vehicle mileage log;

125 (b) Not transport unauthorized passengers;

126 (c) Notify the Fleet Management Department immediately of any problems with a fleet
127 vehicle that may be a safety or mechanical hazard, or of any incidents that result in the
128 inability of a fleet vehicle to complete a trip;

129 (d) Be personally responsible for all traffic citation costs, parking ticket costs, or any
130 similar expense related to vehicle use;

131 (e) Use Oneida Retail locations for fueling fleet vehicles, unless the fleet vehicle needs
132 fuel before it can be taken to an Oneida Retail location;

133 (f) Not smoke or use electronic smoking devices or permit others to smoke or use
134 electronic smoking devices in the fleet vehicle; and

135 (g) Ensure the interior of the vehicle is kept in good condition, clean, and free of debris.

136 210.5-4. *Personal Vehicle Responsibilities.* When operating a personal vehicle on official
137 business, an individual shall:

138 (a) Obtain permission from his or her supervisor to operate a personal vehicle on official
139 business; and

140 (b) Submit all required documents for mileage reimbursement, if seeking reimbursement
141 for miles driven while conducting official business, within thirty (30) days of driving the
142 miles or by the end of the current fiscal year, whichever is sooner.

143 (1) Not seeking mileage reimbursement does not exempt an individual from the
144 provisions of this law.

145 210.5-5. *Notification Requirements.* An individual shall notify his or her supervisor if he or she:

146 (a) Has his or her driver's license suspended or revoked by the State, or has his or her
147 driver's license become invalid for any other reason;

148 (b) Meets any of the conditions for disciplinary action as provided in section 210.8-7;
149 and/or

150 (c) Has any impairment by a medical or physical condition or other factor that affects his
151 or her motor skills, reaction time, or concentration.

152

153 **210.6. Fleet Vehicles**

154 210.6-1. *Fleet Management Department.* The Nation's Fleet Management Department shall
155 purchase, manage, and monitor the use of the Nation's fleet vehicles. The Fleet Management
156 Department's responsibilities shall include, but are not limited to:

157 (a) Maintain a list of all fleet vehicles that are available for use, including vehicles
158 permanently assigned to specific entities of the Nation;

159 (b) Remove unsafe vehicles from the fleet;

160 (c) Obtain estimates of and schedule fleet vehicle repairs when necessary;

161 (d) Install or remove equipment on fleet vehicles;

162 (e) Ensure the Nation's logo is on all fleet vehicles; and

163 (f) Ensure that all fleet vehicles are equipped with a mileage log and an auto incident kit
164 which contains forms and instructions for reporting any incident.

165 210.6-2. *Automotive Department.* The Automotive Department shall service and maintain fleet
166 vehicles according to factory recommendations, or the maintenance schedule established by the
167 Automotive Department, whichever is stricter. Any vehicle deemed unsafe by the Automotive
168 Department shall be reported to the Fleet Management Department.

169 210.6-3. *Risk Management Department.* The Risk Management Department shall be responsible
170 for securing and maintaining insurance coverage for all fleet vehicles. Additional responsibilities
171 of the Risk Management Department shall include, but is not limited to:

172 (a) Providing auto insurance identification cards in every fleet vehicle;

173 (b) Processing all submitted vehicle claims and related information; and

174 (c) Submitting claims to the insurance company.

175 210.6-4. *Use of a Fleet Vehicle.* A fleet vehicle may be permanently assigned to an entity for use
176 or requested for use on a temporary basis. A fleet vehicle shall be used for conducting official
177 business of the Nation. When used for travel purposes, a fleet vehicle may also be used for
178 incidental purposes such as travel to and from lodging and/or meal sites.

179 (a) *Prohibited Use of a Fleet Vehicles.* A fleet vehicle shall not be used for any of the
180 following purposes:

181 (1) Personal use for non-business purposes;

182 (2) Towing cargo for personal reasons;

183 (3) Hauling loads that could structurally damage the vehicle; and/or

184 (4) Jump starting vehicles, other than fleet vehicles.

185 210.6-5. *Permanently Assigned Fleet Vehicles.* The Fleet Management Department may
186 permanently assign a fleet vehicle to an entity if the entity meets the minimum mileage criteria as
187 established by the Fleet Management Department.

188 (a) *Exception to Minimum Mileage Criteria.* The Fleet Management Department may
189 grant an entity an exception to the minimum mileage criteria.

190 (b) An entity who is permanently assigned a fleet vehicle shall regularly schedule
191 maintenance work and safety checks with the Automotive Department.

192 (c) An entity that is permanently assigned a fleet vehicle is responsible for ensuring that
193 any individual who drives the vehicle has his or her driver certification.

194 210.6-6. *Temporary Use of a Fleet Vehicle.* An individual in an entity that is not permanently
195 assigned a fleet vehicle may request to use a fleet vehicle for the purpose of conducting official
196 business by submitting a request to the Fleet Management Department.

197 (a) Requests for the use of a fleet vehicle shall be made at least one (1) week in advance,
198 unless urgent circumstances arise.

199 (b) Before determining whether a fleet vehicle is available, or approving the use of a fleet
200 vehicle, the Fleet Management Department shall confirm that:

201 (1) The individual requesting the fleet vehicle has his or her driver certification;

202 (2) The individual has authorization to use the fleet vehicle from his or her
203 supervisor, if an employee, or by the individual's entity, if the individual is an
204 elected or appointed official of the Nation or volunteer; and

205 (3) Any passengers are authorized to travel in a fleet vehicle.

206 (c) The Fleet Management Department may combine vehicle use for travel to the same
207 destination.

208 (d) The Fleet Management Department may cancel reservations that are not fulfilled in a
209 timely manner.

210 210.6-7. *Authorized Passengers.* In addition to the employees, elected or appointed officials, or
211 volunteers who are authorized to use a fleet vehicle, the following individuals shall be authorized
212 to be a passenger in a fleet vehicle:

213 (a) Individuals being transported as part of a program or service of the Nation;

214 (b) Individuals being transported during the normal and ordinary course of representing
215 and/or conducting business on behalf of the Nation; and/or

216 (c) Any other individual who is authorized to be a passenger by the Fleet Management
217 Department.

218 210.6-8. *Modifications to Fleet Vehicles.* Modifications to fleet vehicles for personal reasons are
219 not permitted. Modifications to fleet vehicles for operating purposes may be allowed only with the
220 approval of the Fleet Management Department.

221 (a) Radar detection devices shall not be installed or used in fleet vehicles.

222 210.6-9. *Rental Vehicles.* An individual shall have his or her driver certification before using a
223 rental vehicle to conduct official business. An individual shall operate the rental vehicle with the
224 same responsibilities and restrictions as a fleet vehicle.

225 (a) A vehicle shall be rented in accordance with the Nation's laws and policies governing
226 travel. Every vehicle rented shall include the purchase of the maximum collision damage
227 waiver offered by the rental company.

228

229 **210.7. Motor Vehicle Crashes or Damage to Vehicles**

230 210.7-1. In the event of a motor vehicle crash or damage involving the fleet vehicle or personal
231 vehicle driven on official business, an individual shall be subject to the following reporting
232 requirements; provided that, if an individual sustains injuries that make it impossible to meet the

233 reporting deadlines identified herein; the driver shall instead make the required reports as soon as
234 he or she is able to do so:

235 (a) immediately report the crash or damage to local law enforcement if it results in any of
236 the following:

- 237 (1) death of a person;
- 238 (2) an injury to the driver or another person that requires medical attention;
- 239 (3) damage to property that does not belong to the driver or the Nation; or
- 240 (4) a vehicle being disabled and/or needing to be towed.

241 (b) immediately report the motor vehicle crash or damage to his or her supervisor; and
242 (c) provide the Fleet Management Department and Risk Management Department with a
243 completed auto incident report by the end of the next business day immediately following
244 the motor vehicle crash or damage.

245 210.7-2. *Internal Review.* The Fleet Management Department and Risk Management Department
246 shall coordinate and conduct an internal review of the auto incident report for a motor vehicle crash
247 and/or damage to a vehicle.

248 (a) Fleet Management and Risk Management may recommend whether an individual
249 should be subject to disciplinary action based on the motor vehicle crash or incident
250 resulting in damage to a vehicle.

251 (b) The internal review shall be completed as soon as possible after a motor vehicle crash
252 has been reported.

253 (c) Following an internal review, Fleet Management and Risk Management shall issue a
254 report. Copies of the report shall be:

- 255 (1) provided to the driver, the driver's supervisor, and the driver's area manager;
256 and
- 257 (2) provided to the Human Resources Department if the Fleet Management
258 Department and Risk Management Department recommend disciplinary action.

259 **210.8. Suspension of Driver Certification and Other Enforcement**

261 210.8-1. Suspension of driver certification is the suspension of an individual's ability to drive a
262 fleet vehicle or personal vehicle on official business and is not a leave from work. Suspension of
263 driver certification is non-appealable.

264 210.8-2. *Qualifications for Suspension.* A supervisor shall suspend an individual's driver
265 certification if the individual's driver's license is suspended or revoked by the State or becomes
266 invalid for any other reason.

267 (a) ~~The suspension of an individual's driver certification based on a violation involving~~
268 ~~drugs and/or alcohol shall be accompanied by a referral from the~~ supervisor shall, when
269 necessary, refer drivers to the ~~Nation's~~ Employee Assistance Program ~~for an assessment~~
270 ~~of the individual. in accordance with applicable laws and policies of the Nation.~~

271 210.8-3. *Length of Suspension.* The individual's driver certification shall be suspended until a
272 time in which the individual has obtained a valid driver's license and meets the qualifications for
273 reinstatement of driver certification.

274 210.8-4. *Notification of Suspension.* The supervisor shall notify the Human Resources
275 Department in writing if he or she suspends the driver certification of an individual and shall
276 provide the basis for the suspension. Once notified of a suspension of driver certification the
277 Human Resources Department shall remove the individual from the list of current certified drivers.

278 210.8-5. *Reasonable Accommodations to Suspension.* If the suspension of an individual's driver
279 certification affects the individual's ability to perform his or her job duties, a supervisor may take
280 one of the following actions:

- 281 (a) Reassign the individual to a position which does not require driving;

- 282 (b) Provide non-driving accommodation within the position;
- 283 (c) Remove the driving requirement from the job description;
- 284 (d) Place the individual on unpaid leave until the individual obtains his or her driver
- 285 certification; or
- 286 (e) Terminate the individual because a valid driver's license is an essential requirement of
- 287 the position.

288 210.8-6. *Reinstatement of Driver Certification.* An individual may have his or her driver
289 certification reinstated upon a review by the Human Resources Department that the individual
290 again meets all the qualifications for driver certification provided for in section 210.4-2.

291 210.8-7. *Other Enforcement Actions.* A supervisor may take disciplinary action against an
292 individual in accordance with the Nation's laws and policies governing employment if the
293 individual is an employee, or in accordance with the laws and policies of the Nation governing
294 sanctions and penalties if the individual is an elected or appointed official of the Nation, for any
295 of the following actions:

- 296 (a) Failing to comply with any provision of this law;
- 297 (b) Failing to complete any applicable driver training requirements;
- 298 (c) Driving a fleet vehicle without being certified under the provisions of this law;
- 299 (d) Admitting to, or being determined to be, partially or entirely at fault in a motor vehicle
- 300 crash involving vehicle damage, property damage, or personal injury; and
- 301 (e) Not maintaining the minimum insurance requirements for a personal vehicle.

302
303 *End.*

304 Adopted BC-06-28-17-C.

305 Amended BC-__-__-__-__.

ONEIDA NATION PUBLIC MEETING NOTICE**Thursday, January 16, 2020, 12:15 pm**Norbert Hill Center-Business Committee Conference Room
N7210 Seminary Rd., Oneida, Wisconsin**Find Public Meeting Materials at**

Oneida-nsn.gov/government/register/public meetings

Send Public Comments to

LOC@oneidanation.org

Ask Questions here

LOC@oneidanation.org

920-869-4312

**VEHICLE DRIVER CERTIFICATION AND FLEET MANAGEMENT LAW AMENDMENTS**

The purpose of this law is to establish standards that certify employees, elected and appointed officials, and volunteers to drive a fleet vehicle or personal vehicle on official business and regulate the use of all vehicles owned and leased by the Nation.

The amendments to the Vehicle Driver Certification and Fleet Management law will:

1. Revise the qualifications to become a certified driver of the Nation;
2. Revise and simplify the process for suspending a person's driver certification;
3. Clarify that other violations of this law that do not result in the suspension or revocation of a driver's license will be handled by disciplinary action instead of suspension of driver certification;
4. Revise the restriction on driving while using prescription or over the counter medications;
5. Require mileage reimbursement requests to be submitted within 30 days of driving the miles or by the end of the fiscal year, whichever is sooner;
6. Ban the use of e-cigarettes in fleet vehicles; and
7. Clarify that weapons are banned in fleet vehicles and personal vehicles used for official business.

PUBLIC COMMENTS PERIOD CLOSSES THURSDAY, JANUARY 23, 2020

During the Public Comment Period, anyone may submit written comments. Comments may be submitted to the Oneida Nation Secretary's Office or the Legislative Reference Office in person, by U.S. mail, interoffice mail, or e-mail.

PROVIDING EFFECTIVE PUBLIC COMMENTS

Providing public comment is an important way to make your voice heard in decision making. Public comments can strengthen a decision or provide different perspectives. The Legislative Operating Committee wants to hear from you!



✓ READ THE PUBLIC MEETING MATERIALS: Before you provide comments familiarize yourself with the legislation. A public meeting packet is made for every public meeting and it includes 1) a notice with the date, time, location, 2) a draft of the proposed legislation, and 3) a plain language review of the legislation and its impact on the Oneida Nation.

✓ PREPARE YOUR COMMENTS: When you are familiar with the legislation, start to prepare comments. The LOC is responsible for reviewing every comment received. To get your message across effectively, frame your comment clearly and concisely. Here is an example of how to create an effective comment:

Least Effective Comment	More Effective Comment	Most Effective Comment
The requirements for obtaining driver certification are too strict.	We should look at decreasing the age requirement for driver certification.	In section 210.4-2 the requirement to be at least 18 years old should be revised to 16 years old to allow more people who are employed by the Nation to be a certified driver.



Lot\$les Kayanl^sla Khale> Nya>teka>sl#htake

Lonatl\$hute> Kayanl^sla

**AMENDMENTS TO
 VEHICLE DRIVER CERTIFICATION AND FLEET MANAGEMENT
 LEGISLATIVE ANALYSIS**

SECTION 1. EXECUTIVE SUMMARY

REQUESTER: Legislative Reference Office	SPONSOR: Jennifer Webster	DRAFTER: Clorissa N. Santiago	ANALYST: Brandon Wisneski
Intent of the Amendments	<ul style="list-style-type: none"> ▪ To revise the qualifications to become a certified driver, including: <ul style="list-style-type: none"> ▪ Reduce the restriction on drug and alcohol convictions from three (3) years without an OWI to twelve (12) months without an OWI; ▪ No more than three (3) moving violations or at-fault crashes within a two (2) year period; ▪ Allow individuals with probationary licenses to become certified drivers if age 18 or older; ▪ To revise and simplify the process for suspending driver certification: <ul style="list-style-type: none"> ▪ An individual’s driver certification is only suspended if his or her driver’s license has been suspended or revoked by the state of Wisconsin; ▪ To clarify that all other violations of this law that do not result in the suspension or revocation of driver’s license will be handled by disciplinary action; ▪ To revise the restriction on driving while using prescription or over the counter medications to increase clarity; ▪ To require all certified drivers to complete driver safety training every three (3) years, regardless of whether they drive fleet or personal vehicles, with certain exceptions; ▪ To require mileage reimbursement requests to be submitted within thirty (30) days of driving the miles or by the end of the fiscal year, whichever is sooner; ▪ To ban weapons in fleet vehicles and personal vehicles while in use for official business, with certain exceptions; ▪ To ban the use of e-cigarettes in tribal fleet vehicles; ▪ Additional changes to revise and reorganize the law to increase clarity. 		
Purpose	To establish standards that certify employees, elected and appointed officials, and volunteers to drive a fleet vehicle or personal vehicle on official business and regulate the use of all vehicles owned and leased by the Nation. [2 O.C. 210.1-1].		
Affected Entities	Human Resources Department (HRD), Risk Management, Fleet Management, Automotive Department, Employee Assistance Program (EAP), All employees, officials, and volunteers of the Nation who drive fleet vehicles or personal vehicles on official business. All supervisors of employees who drive fleet vehicles or personal vehicles on official business.		
Related Legislation	Personnel Policies and Procedures, Travel and Expense Policy, Drug and Alcohol Free Workplace law, Clean Air Policy.		
Public Meeting	A public meeting has not yet been held.		
Fiscal Impact	A fiscal impact statement has not yet been requested.		

SECTION 2. LEGISLATIVE DEVELOPMENT

- 0 A. The Nation’s Vehicle Driver Certification and Fleet Management law is an employment law that
1 governs how employees, elected and appointed officials and volunteers may drive personal or tribally-
2 owned (“fleet”) vehicles on official business. The law does not govern how employees, elected and
3 appointed officials, or volunteers drive personal vehicles outside of work or when not conducting
4 official business.
- 5 B. The Nation’s Vehicle Driver Certification and Fleet Management law was most recently amended on
6 June 28, 2017. However, since the adoption of those amendments, the Human Resources Department
7 and other departments of the Nation encountered challenges implementing the law due to lack of clarity.
8 In addition, members of the Legislative Operating Committee (LOC) expressed concerns regarding the
9 impact of driving certification requirements on the Nation’s ability to recruit and hire for positions.
- 10 C. This law was added to the LOC’s Active file List on February 7, 2018, by the Legislative Reference
11 Office after consultation with the Human Resources Department and Oneida Law Office. Beginning in
12 July 2019, a work group of representatives from relevant entities and departments have met to review
13 the law. Several of the proposed amendments reflect the feedback and suggestions of this work group.
14

SECTION 3. CONSULTATION AND OUTREACH

- 15
- 16 A. Representatives from the following departments or entities of the Nation participated in the
17 development of this law and legislative analysis: Human Resources Department (Equal Employment
18 Opportunity, Employment and Recruitment, Training and Development, Personnel Services), Risk
19 Management, and Fleet Management.
- 20 B. The following laws of the Nation were reviewed in drafting this analysis: Personnel Policies and
21 Procedures, Travel and Expense Policy, Drug and Alcohol Free Workplace law, Clean Air Policy.
- 22 C. In addition, the following laws or policies of other governments, tribes and organizations were
23 reviewed:
- 24 ▪ Ho Chunk Nation Fleet Ordinance; and
 - 25 ▪ State of WI Fleet Driver and Management Policies and Procedures
- 26

SECTION 4. PROCESS

- 27
- 28 A. Thus far, this law has followed the process set forth in the Legislative Procedures Act (LPA).
- 29 B. The law was added to the Active Files List on February 7, 2018.
- 30 C. At the time this legislative analysis was developed, the following work meetings had been held
31 regarding developments of these amendments and legislative analysis:
- 32 ▪ July 15, 2019: Work meeting with HRD and Risk Management.
 - 33 ▪ July 29, 2019: Work meeting with HRD and Risk Management.
 - 34 ▪ August 13, 2019: Work meeting with HRD and Risk Management.
 - 35 ▪ September 4, 2019: Work meeting with LOC.
 - 36 ▪ October 2, 2019: Work meeting with HRD, Risk Management and Fleet Management.
 - 37 ▪ October 16, 2019: Work meeting with LOC.
 - 38 ▪ October 24, 2019: Work meeting with LOC
 - 39 ▪ November 5, 2019: Work meeting with LOC, HRD and Risk Management.
 - 40 ▪ December 4, 2019: Work meeting with LOC.
- 41

42 **SECTION 5. CONTENTS OF THE LEGISLATION**

43 A. *Qualifications for Driver Certification.* In order to drive a tribally-owned fleet vehicle or a personal
 44 vehicle for official business, an employee, official or volunteer must obtain driver certification from
 45 the Oneida Human Resources Department. Many of the Nation’s job descriptions require employees to
 46 be certified drivers as a requirement of their job. The law contains a list of requirements that an
 47 individual must meet in order to be certified. Proposed changes to these requirements include:
 48
 49

Chart 1. Qualifications for Driver Certification – Comparison

	Current Law	Proposed Law
<i>Age</i>	18 years or older	18 years or older
<i>License Status</i>	Possess valid, <u>non-probationary</u> Wisconsin Driver’s License.	Possess valid Wisconsin Driver’s License. * <i>Probationary license acceptable.</i>
<i>Driving Record Check: Drugs and Alcohol</i>	Disqualified if driving citation involving drugs or alcohol <u>within three (3) years.</u>	Disqualified if OWI, DUI or PAC citation <u>within the past twelve (12) months.</u>
<i>Driving Record Check: Other Driving Convictions</i>	No citation or conviction “related to a traffic incident.” * <i>HRD interprets this to mean no “traffic incident that results in the loss of a valid WI driver’s license.”</i>	Disqualified if three (3) or more moving violations and/or at-fault motor vehicle crashes in the past two (2) years. * <i>Moving violation is defined as “any violation of motor vehicle or traffic law that is committed by the driver of a vehicle while the vehicle is moving. A moving violation does not include parking violations, equipment violations, or paperwork violations relating to insurance, registration or inspection.”</i>
<i>Additional Requirements</i>	Complete all training requirements; Maintain minimum insurance requirements for personal vehicle.	Complete all training requirements; Maintain minimum insurance requirements for personal vehicle.

- 50
- 51 ■ **Change to Drug and Alcohol (OWI) Restrictions.** Currently, if an individual has had a drug or
 52 alcohol conviction within the past three (3) years, such as an OWI, that individual cannot drive for
 53 the Nation. These amendments reduce this timeframe to twelve (12) months.
- 54 ○ *Current.* An individual cannot become a certified driver if they have had a driving citation
 55 related to drugs and alcohol within the past three (3) years. This includes OWI (Operating
 56 While Intoxicated), DUI (Driving Under the Influence), or PAC (Prohibited Alcohol
 57 Concentration) citations.

- 58 ○ *Proposed.* These amendments reduce this timeframe from three (3) years to twelve (12)
59 months. This matches the timeframe that the WI State Government and University of
60 Wisconsin System use for their employees, volunteers and students who drive state-owned
61 vehicles.
- 62 ○ *Effect.* Individuals who have an OWI, DUI or PAC citation more than twelve (12) months
63 ago may now become certified drivers for the Nation, provided they meet all other
64 requirements of this law. The intent is to increase employment opportunities for individuals
65 who may have had an OWI more than twelve (12) months ago and have complied with
66 their sentencing and had their driver’s license reinstated by the State of Wisconsin.
- 67 ■ ***Change to Driving Record Restriction:*** Currently, if an individual has had “a citation or conviction
68 related to a traffic incident,” the law states that they cannot become a certified driver. However, the
69 law provides no definition for what a “traffic incident” means. Therefore, based on the lack of
70 clarity, HRD issued an interpretation in 2017 defining traffic incident as “any traffic incident that
71 results in the loss of an applicant’s and/or employee’s valid Wisconsin driver’s license.”
- 72 ○ *Current.* Under HRD’s interpretation of the current law, HRD only checks driving records
73 to verify valid driver’s license and to check for drug and alcohol convictions.
- 74 ○ *Proposed.* These amendments now state that an individual cannot have “three or more
75 moving violations and/or at-fault motor vehicle crashes in the past two (2) years.” The
76 amendments define a “moving violation” as “any violation of motor vehicle or traffic law
77 that is committed by the driver of a vehicle while the vehicle is moving. A moving violation
78 does not include parking violations, equipment violations, or paperwork violations relating
79 to insurance, registration or inspection.”
- 80

Moving Violations

Examples of Wisconsin motor vehicle/traffic citations that would count as “moving violations” under this law:

- Speeding (1 to 10 mph over limit)
- Speeding (11 to 19 mph over limit)
- Speeding (20 mph over limit)
- Failure to obey traffic sign or signal
- Illegal turn
- Obstructing traffic
- Failure to give proper signal
- Driving wrong way on one way street
- Inattentive driving
- Failure to yield right of way
- Driving on wrong side of highway
- Driving too fast for conditions
- Failure to stop for school bus with lights flashing
- Attempt to elude an officer
- Reckless driving
- Following Too Closely
- Texting while driving

- 81 ○ *Effect.* Due to the lack of clarity in the current law, HRD does not currently check for any
82 traffic violations other than drug and alcohol related offenses. Upon adoption of this law,
83 HRD will now check driving records and will not certify any individuals with three (3) or
84 more moving violations in the past two (2) years.
- 85 ■ ***Change to Probationary License.*** Under the current law, probationary licenses are not acceptable
86 as valid driver’s licenses. Under the proposed amendments, probationary licenses will now be
87 accepted as valid driver’s licenses so long as the individual is eighteen (18) years or older.
- 88 ○ ***What is a Probationary License?*** In Wisconsin, a probationary license is a driver’s license
89 issued to a new driver, regardless of age. According to WI DMV, “the main difference
90 between a probationary license and regular license consists of the restrictions listed on the
91 back of the license. A probationary license is not an instruction permit or learner’s permit.
92 It is a valid driver’s license for operation within and outside of Wisconsin.” New drivers
93 hold a probationary license for at least two (2) years after passing their driving test,
94 regardless of age.
- 95 ○ *Effect.* Individuals age eighteen (18) or older who hold a probationary license may now
96 become certified drivers so long as they meet all other requirements of this law.
- 97 ■ ***Change to Occupational License.*** Previously, the law stated that an occupational license “is a valid,
98 non-probationary license if the driver’s abstract which accompanies the occupational license allows
99 the driver to operate vehicles for his or her job with the Nation.” These amendments delete this
100 provision and state only that an individual must hold a “valid Wisconsin driver’s license” [2 O.C.
101 210.4-2(b)]. The term “valid Wisconsin driver’s license” is not defined.
- 102 ○ ***What is an Occupational License?*** An occupational license is a restricted driver’s license.
103 According to WI DMV, “unlike a regular license, the driver is limited in where and when
104 they can drive. Individuals may only drive to and from work or other places indicated on
105 the license and only during specific times of the day.” An example is an individual who
106 has their license suspended due to an OWI conviction. Such individuals may be eligible to
107 apply for an occupational license to drive to and from work to maintain their employment.
- 108 ○ ***Required Waiting Periods for Occupational License.*** The required waiting period for an
109 individual to apply for an occupational license after their driver’s license has been
110 suspended varies depending on previous driving history and the reason for the current
111 revocation suspension. A loss of license for demerit points (for example, speeding tickets)
112 or first OWI has no waiting period. A second or subsequent OWI requires a 45-day waiting
113 period or longer depending on the circumstances of the OWI.
- 114 ○ *Effect.* The current law clearly states that an occupational license qualifies as a “valid
115 license” under this law, and that individuals with occupational licenses may be certified as
116 drivers so long as the occupational license allows them to operate vehicles for his or her
117 job with the Nation. The proposed amendments lack clarity on this subject and may require
118 interpretation by HRD as to whether an occupational license can be considered a valid
119 license. Other provisions of this law, such as the 12-month restriction on OWIs, will also
120 impact when an individual can be recertified.
- 121 ■ ***Stricter Certification Procedures for Certain Entities.*** Previously, entities had the option to
122 develop stricter driver certification standards and submit to Fleet Management, Risk Management
123 and HRD for review and approval. This included specialized requirements regarding age,
124 experience, training and licensing. This process has been eliminated. However, employees will be

125 required to satisfy “any other requirements specific to the job description and/or vehicle that may
126 be used by or assigned to the person” as well as “all driver training requirements imposed by the
127 Nation or any federal or state agency regulations” [2 O.C. 210.4-2(d) and (e)].

- 128 ○ **Effect.** Entities may include stricter driving requirements in job descriptions, department
129 standard operating procedures (SOPs), and require employees to follow all tribal, state and
130 federal requirements regarding specific vehicles (such as CDL certifications and required
131 training for certain vehicles like buses.) However, entities will no longer submit stricter
132 standards for approval by Fleet Management, Risk Management, and HRD.

133 **B. Employee Vehicle Insurance Requirement.** The Nation requires employees to maintain minimum
134 insurance on their personal vehicle in order to use their vehicle to conduct official business [2 O.C.
135 210.4-2(f)].

- 136 ■ **Current Requirement.** The current vehicle insurance requirement is one hundred thousand dollars
137 (\$100,000) per person, three hundred thousand dollars (\$300,000) per motor vehicle crash for
138 bodily injury, and (\$25,000) for property damage. These amounts remain unchanged in the
139 amendments.
- 140 ■ **New Option for Combined Single Limit:** As an alternative, employees of the Nation may instead
141 opt to carry a “combined single limit” of two hundred and fifty thousand dollars (\$250,000). A
142 combined single limit is a type of insurance policy with a maximum dollar amount that covers any
143 combination of injuries or property damage, rather than split limits for each type of coverage as in
144 a typical policy. This option was added at the recommendation of Risk Management.
- 145 ■ **Effect.** Employees are still required to carry minimum vehicle insurance but may now opt to carry
146 either split coverage (\$100k/\$300k/\$25k) or a combined single limit coverage (\$250k).

147 **C. Access to List of Certified Drivers.** The Human Resources Department (HRD) is required to maintain
148 a list of certified drivers. This list is currently provided by HRD to both Fleet Management and
149 Accounting. Now, HRD will also be required to provide this list to the Risk Management Department
150 [2 O.C. 210.4-3(c)].

151 **D. Driving While on Prescription Drugs or Medication.** The current law states that while operating a
152 vehicle on official business, drivers of the Nation shall not drive “while under the influence of
153 controlled substances, intoxicating beverages, prescription drugs or other medications that caution
154 against operating a motor vehicle when taken.”

- 155 ■ **Problem with Wording of Medication Restriction.** The wording of the prescription drug and
156 medication restriction is unclear and has created challenges for HRD to implement. As HRD
157 explains, many common medications may instruct individuals to “use caution” if driving, such as
158 medication for seasonal allergies. “Alternatively, some medications have no driving warning yet
159 create impairment in some people.” This has led to confusion as to whether employees can drive
160 while using their medications. HRD issued an interpretation in 2017 to clarify this restriction and
161 presented this concern to the LOC.
- 162 ■ **Proposed Change.** The amendments now state that an individual may not drive while “while under
163 the influence of prohibited drugs or alcohol.” In addition, drivers may not drive if “impaired by a
164 medical or physical condition or other factor that affects a driver’s motor skills, reaction time or
165 concentration” [2 O.C. 210.5-1(d)].

- 166 ○ **Definition or Prohibited Drug.** The amendments define prohibited drug as “marijuana,
167 cocaine, opiates, amphetamines, phencyclidine (PCP), hallucinogens, methaqualone,
168 barbiturates, narcotics, and any other substances included in Schedules I through V, as

169 defined by Section 812 of Title 21 of the United States Code. Prohibited drugs also
170 includes prescription medication or over-the-counter medicine when used in an
171 unauthorized or unlawful manner” [2 O.C. 210.3-1(i)].
172 ○ *Effect.* The amendments clarify that employees may drive while using their prescription
173 or over-the-counter medications as long as they are using the medication in a lawful
174 manner and are not impaired while using the medication. Rather than restricting driving
175 based on the “use caution” label that appears on many medications, the restriction is now
176 based on the actual effects of that medication on the driver’s motor skills, reaction time or
177 concentration.

178 **E. *Ban on Weapons in Vehicles While on Official Business.*** A new restriction has been added to the
179 law stating that an individual cannot carry a weapon while operating a fleet or personal vehicle while
180 on official business, regardless of whether the weapon is in the open or concealed [2 O.C. 210.5-
181 1(e)].

- 182 ■ *Exception.* An individual who is carrying a weapon in the course of their official duties (such as a
183 police officer) or participating in cultural activities or ceremonies (such as Oneida Rites of
184 Passage) are exempt from this restriction.
- 185 ■ *Definition of Weapon:* A weapon is defined as “a firearm, knife, electric weapon, club, or any
186 other object intended to cause harm to oneself or others” [2 O.C. 210.3-1(k)].
- 187 ■ *Current Policies and Laws Governing Weapons.*
 - 188 ○ The Nation’s current prohibited weapons policy, adopted by the BC resolution in 2011
189 (BC-10-26-11-C), states that other than those required to carry weapons for their job, “no
190 person shall carry a weapon, whether in the open or concealed, on Tribal public property,
191 including any tribal building, gaming or retail business, facility, construction site, vehicle
192 or at any Tribally sponsored event.”
 - 193 ○ In addition, the Workplace Violence Policy states that the possession or use of weapons
194 on any kind of property of the Nation, including parking lots, other exterior premises or
195 while engaged in activities for the Nation,” is a “prohibited behavior” [2 O.C. 223.5(g)].
 - 196 ○ Finally, the Nation’s Hunting, Fishing and Trapping law prohibits individuals from
197 transporting a loaded firearm, air rifle or cocked bow or crossbow in a vehicle [4 O.C.
198 409.9-1(c)].
 - 199 ○ *Conclusion:* Taken together, the Nation’s current laws and policies already restrict
200 drivers from carrying weapons in their personal vehicles while on tribal property or in
201 tribal parking lots or from carrying weapons in fleet vehicles under any circumstance.
- 202 ■ *Effect.* These amendments clarify that drivers may not carry weapons in either personal or fleet
203 vehicles while on official business of the Nation unless required to do so for their job or cultural
204 activities.

205 **F. *E-Cigarettes in Fleet Vehicles.*** The current law already states that individuals may not smoke or permit
206 others to smoke in the Nation’s fleet vehicles. Under these amendments, the use of electronic smoking
207 devices, or “e-cigarettes,” will also be prohibited in the Nation’s fleet vehicles [210.5-3(f)].

208 **G. *Driver Safety Training.*** The current law requires all drivers certified to drive a fleet vehicle to complete
209 driver safety training every three (3) years. These amendments will now require all certified drivers to
210 complete this safety training, regardless of whether they drive a fleet vehicle or a personal vehicle on
211 official business.

- 212 ▪ *Training Responsibility Moved to HRD.* In addition, rather than Environmental Health and Safety
 213 Division, it will now be HRD’s responsibility to provide and monitor this training [2 O.C. 210.5-
 214 2]. During an LOC meeting, HRD Training and Development noted that there may be an expense
 215 related to purchasing or developing a driver safety training program.
- 216 ▪ *Training Exemptions.* Finally, individuals who are already required to comply with state or federal
 217 driver safety requirements (such as police officers) are exempt from the safety training offered by
 218 Oneida HRD.

219
 220 **Chart 2. Driver Safety Training Requirements**

	Current Law	Proposed Law
<i>Who is required to attend Driver Safety Training?</i>	Drivers certified to drive a <u>tribal</u> vehicle.	All individuals with driver certification, whether they drive personal or fleet vehicles.
<i>How often attend Driver Safety Training?</i>	Every three (3) years	Every three (3) years.
<i>Who is required to provide the training?</i>	Environmental Health and Safety Division.	Human Resources Department.
<i>Exemption if employee already completed specialized driver training?</i>	Yes.	Yes.

- 221
- 222 **H. New 30-Day Deadline to Submit Mileage.** Employees and officials of the Nation seeking mileage
 223 reimbursement for miles driven while conducting official business will now be required to submit their
 224 mileage forms within thirty (30) days of driving the miles or by the end of the fiscal year, whichever is
 225 sooner [2 O.C. 210.5-4(b)].
- 226 **I. Approval of Passengers in Fleet Vehicles.** Previously, the Oneida Business Committee was
 227 responsible for authorizing passengers in a fleet vehicle who were not employees, officials, volunteers,
 228 or individuals being transported as part of a program, service or to conduct business. In order to increase
 229 efficiency, the Fleet Management department will now be responsible for authorizing these types
 230 passengers [2 O.C. 210.6-7(c)].
- 231 **J. Drug Testing Requirement for Motor Vehicle Crashes.** When a certified driver is involved in a motor
 232 vehicle crash or damage involving a fleet vehicle or personal vehicle driven on official business, the
 233 driver must immediately report the crash and complete an incident report. The current law also states
 234 that the driver must comply with “any applicable alcohol and drug testing requirements established in
 235 other laws of the Nation.” This reference to drug testing requirements in other laws has been deleted.
- 236 ▪ *Drug and Alcohol Free Workplace law.* Although this reference has been deleted, employees of the
 237 Nation are still required to follow the Drug and Alcohol Free Workplace law. This policy states
 238 that if an employee is involved in a work-related accident, he or she must immediately inform their
 239 supervisor and, as a condition of employment, participate in pre-employment, reasonable suspicion,
 240 and follow-up testing upon the request of an appropriate authority [2 O.C. 202.8-3 and 8-4].
 - 241 ▪ *Effect.* Although the reference to alcohol and drug testing is deleted in this particular law,
 242 employees of the Nation may still be required to participate in alcohol and drug testing in
 243 accordance with the Drug and Alcohol Free Workplace law as a condition of their employment.
- 244 **K. Copy of Internal Reviews.** When there is a motor vehicle crash or damage involving a fleet vehicle or
 245 personal vehicle on official business, the Fleet Management Department and Risk Management

246 Department coordinate and conduct an internal review of the incident. These departments may
 247 recommend that an individual receive disciplinary action based on the incident. For example, discipline
 248 can be recommended if an employee recklessly damages a fleet vehicle.

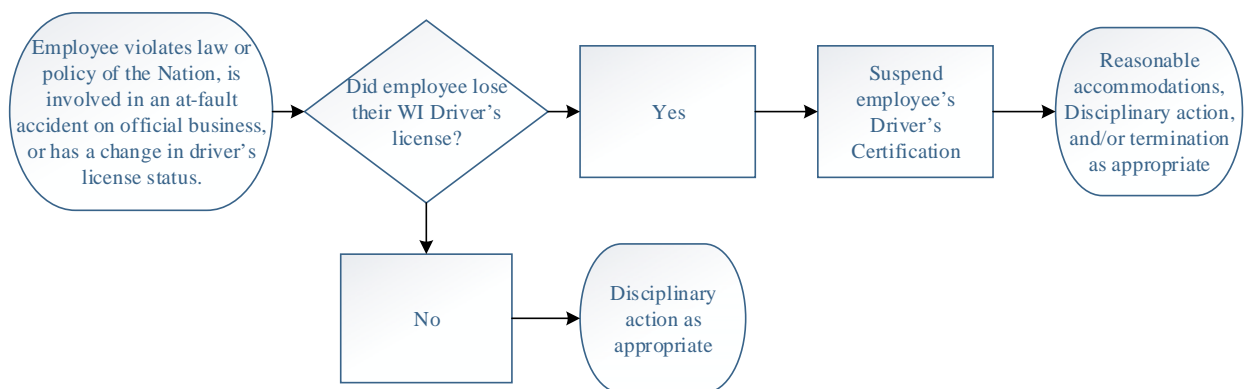
- 249 ■ *Reports Required for Both Fleet Vehicles and Personal Vehicle Crashes.* The current law states
 250 that internal reviews are to be conducted “whenever necessary” for motor vehicle crashes involving
 251 fleet vehicles, specifically. Now, internal reviews will be required for both fleet vehicles and
 252 personal vehicles driven on official business in the event of a motor vehicle crash or damage [2
 253 *O.C. 210.7-1*].
- 254 ■ *Copies of Reports to Area Managers.* Previously, these reports were provided to the driver and
 255 driver’s supervisor. Now these reports will also be provided to the driver’s area manager. The intent
 256 is to ensure that the driver’s area manager is kept informed of incidents and can ensure that issues
 257 are addressed with employees [2 *O.C. 210.7-2*].

258 **L. *Driving Privileges.*** The current law allows for supervisors to “temporarily suspend” an individual’s
 259 driving privileges without actually suspending their driver certification. In the other words, the
 260 individual is still certified as a driver by HRD, but his or her supervisor temporarily does not give them
 261 permission to drive on official business. This section has been deleted from the law. However, the
 262 amendments state that employees cannot drive fleet vehicles or their personal vehicles on official
 263 business “without obtaining permission from their supervisor” [2 *O.C. 210.5-4(a) and 6-6(b)*].
 264 Therefore, supervisors will still have the authority to deny permission for an employee to drive on
 265 official business on an individual basis without suspending their driver certification.

266 **M. *Suspension of Driver Certification.*** The process for a supervisor to officially suspend an employee’s
 267 driver certification has been substantially changed and simplified.

- 268 ■ *Proposed.* Under the proposed amendments, an individual’s driver certification is suspended only
 269 when the individual’s valid drivers license has been suspended or revoked by the state of Wisconsin
 270 or has otherwise become invalid. The length of the suspension lasts until the individual’s driver’s
 271 license is reinstated. In other words, if a person holds a valid Wisconsin driver’s license, that person
 272 can drive for the Oneida Nation assuming he or she meets all other requirements of this law. All
 273 other violations of this law, such as failure to submit insurance or inappropriate use of a fleet
 274 vehicle, will now be handled by disciplinary action in accordance with the Nation’s Personnel
 275 Policies and Procedures.

277 ***Chart 3. Proposed Driver Certification Suspension Process.***



279

Chart 4. Suspension of Driver Certification – Comparison.

	Current Law	Proposed Law
<i>Reason(s) to Suspend Driver Certification</i>	Various violations of the law, including: <ul style="list-style-type: none"> ▪ having WI driver’s license suspended or revoked, ▪ being arrested or charged or convicted of motor vehicle operation violation involving drugs or alcohol; ▪ Not reporting motor vehicle crash while on official business, ▪ Not maintaining minimum insurance on personal vehicle 	Suspend driver certification only if Wisconsin Driver’s License has been suspended, revoked or otherwise invalid.
<i>Length of Driver Certification Suspension</i>	<ul style="list-style-type: none"> ▪ Minimum length of suspension between five (5) and fifteen (15) days for the first three (3) suspensions. ▪ More than three (3) suspensions in a three (3) year period results in a three (3) year suspension. ▪ Citation for motor vehicle violation involving drugs or alcohol results in automatic three (3) year suspension. 	Suspended until the individual’s WI Driver’s license is reinstated by the WI Department of Motor Vehicles and the individual meets qualifications for reinstatement under this law.
<i>Supervisor Discretion to Suspend or Extend Driver Certification for any other reason not listed in this law?</i>	Yes, “based on the best interests of the Nation...if the supervisor determines it is appropriate to do so”	No.
<i>Is Driver Certification Suspension Appealable?</i>	No.	No.
<i>Can the supervisor offer reasonable accommodations if driver certification suspension affects an employee’s ability to perform their job?</i>	Yes, the supervisor may: Provide non-driving accommodation within the home department; Reassign to a position that does not involve driving Leave of absence without pay.	Yes, the supervisor may: Reassign the individual to a position that does not require driving; Provide non-driving accommodation within the position; Remove the driving requirement from the job description Place the individual on unpaid leave until the individual obtains his or her driving certification.
<i>Can the Supervisor terminate employment individual’s driver certification is suspended?</i>	Yes.	Yes, if a valid driver’s license “is an essential requirement of the position.”

281 **Chart 5. Reinstating Driver Certification – Comparison.**

	Current Law	Proposed Law
<i>Reinstatement of Driver Certification</i>	<ul style="list-style-type: none"> ▪ Automatically reinstated if the suspension was thirty (30) days or less; ▪ If the suspension was thirty-one (31) days or more; HRD shall verify insurance and check the driving record to ensure that driver meets eligibility requirements, including no drug or alcohol convictions within three (3) years. 	Upon review of HRD that individual’s Driver’s license has been reinstated and that the driver meets original qualifications for certification, including: <ul style="list-style-type: none"> ▪ No OWI, DUI or PAC violation within past 12 months; ▪ Less than three (3) moving violations or at fault accidents within the past two (2) years ▪ All other training and insurance requirements.
<i>Failure to Reinstate Driver Certification Appealable?</i>	Yes, any official, volunteer or employee may seek review of a decision not to reinstate certification by filing an appeal with the Judiciary.	No, failure to reinstate driver certification is not appealable.

282

283 **N. Minor Drafting Changes.** Additional minor drafting changes have been made throughout the law for
 284 clarity.

285

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

287 **A. References to the Other Laws of the Nation:** The following laws of the Nation are referenced in this
 288 law.

289

- *Personnel Policies and Procedures.* “In addition to the suspension of driver certification, a
 290 supervisor may take disciplinary action against an individual in accordance with the Nation’s laws
 291 and policies governing employment if an employee...” [2 O.C. 210.8-7].

292

- *Travel and Expense Policy.* “A vehicle shall be rented in accordance with the Nation’s laws and
 293 policies governing travel. Every vehicle rented shall include the purchase of the maximum
 294 collision damage waiver offered by the rental company” [2 O.C 210.6-9(a)].

295

- o *Conflict.* The Travel and Expense Policy states that “insurance on all car rentals is
 296 covered by the Oneida Tribe’s insurance policy.” However, this does not reflect current
 297 practice. In addition, the Travel and Expense Policy conflicts with both the current
 298 Vehicle Driver Certification law and the proposed amendments, which both require the
 299 purchase of maximum collision damage waiver from the rental company, as this is more
 300 cost effective for the Nation.

301

- o *Recommendation:* The LOC and LRO should note the discrepancy in the Travel and
 302 Expense Policy and identify that section of the Travel and Expense Policy as an area for
 303 future amendments.

304 **B. *Other Laws that Reference Vehicle Driver Certification:*** The following laws of the Nation reference
305 Vehicle Driver Certification and Fleet Management. These amendments do not conflict with any of the
306 referenced laws.

- 307 ▪ *Drug and Alcohol Free Workplace.* This law applies to all applicants for employment, whether
308 external or internal, and all employees during working hours, when on-call, and when operating a
309 vehicle owned by the Nation or a vehicle rented by the Nation. An employee is prohibited from
310 the use of prohibited drugs and alcohol during working hours, when on-call, and when operating
311 a vehicle owned by the Nation or a vehicle rented by the Nation [2 O.C. 202.4-1 and 4-2].
- 312 ▪ *Clean Air Policy.* “Except as provided in 411.4-1(b)(1) and 411.4-2, no person may smoke... in
313 any vehicle owned or operated by the Tribe” [4 O.C. 411.4-1(c)].

314

315 **SECTION 7. ENFORCEMENT AND ACCOUNTABILITY**

316 **A. *Enforcement.*** This law is enforced in the following ways:

- 317 ▪ *Suspension of Driver Certification.* A supervisor shall suspend an individual’s driver certification
318 if the individual’s driver’s license is suspended or revoked by the State or becomes invalid for any
319 other reason [2 O.C. 210.8-2].
- 320 ▪ *Disciplinary Action.* In addition to the suspension of a driver certification, a supervisor may take
321 disciplinary action against an individual in accordance with the Personnel Policies and Procedures
322 [2 O.C. 210.8-7].

323

324 **SECTION 8. OTHER CONSIDERATIONS**

325 **A. *Vehicle Driver & Fleet Management Data.*** The following data is provided for information:

- 326 ▪ ***Number of Driver Certification Suspensions:***
 - 327 ○ 2017: 3
 - 328 ○ 2018: 13
 - 329 ○ 2019: 6
- 330 ▪ ***Number of Employees Separated from Employment Due to Loss of Driver Certification:***
 - 331 ○ 2019: 2
- 332 ▪ ***Number of Job Applicants Screened Out Due to OWI or Driving Convictions:***
 - 333 ○ HRD does not currently track this information. However, between July and November of
334 2019, at least five (5) applicants were screened out for not meeting driver certification
335 requirements.
336 *Source: Email communications with HRD, 11/5/19.*
- 337 ▪ ***Number of Fleet Vehicles***
 - 338 ○ The Nation currently owns 209 fleet vehicles. 200 of these vehicles are permanently
339 assigned to a department of the Nation.
340 *Source: Email communication with Fleet Management, 10/29/19.*

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Chart 6. Vehicle Incidents Involving Nation-owned Vehicles

Fiscal Year	# of Incidents	# of Incidents At Fault
2009	11	8
2010	21	13
2011	25	16
2012	7	5
2013	19	13
2014	19	12
2015	12	10
2016	16	15
2017	10	8
2018	20	15

348

Source: Email communication w/Risk Management, 10/29/19.

349

B. Grandfather Clause for Drivers with Three or More Moving Violations or At-Fault Accidents within

Past Two Years. Under the current law and HRD’s present interpretation, HRD only checks vehicle driver records for drug and alcohol related citations and to ensure valid driver’s license. Once these amendments are passed, HRD will now check whether drivers had three (3) or more moving violations or at-fault accidents within the past two (2) years.

- *Need for Grandfather Clause.* Because HRD has not previously checked for moving violations, there may employees who are currently certified with three (3) or more accidents on their record in the past two (2) years. Since these employees were certified under the previous law, the LOC should consider adding a grandfather clause in the adopting resolution to ensure that these employees do not lose their driver certification upon adoption of this law.

- *Conclusion.* The LOC intends to add a grandfather clause for current certified drivers that have had three (3) or more moving violations or at-fault accidents within the past two (2) years. It is expected that this grandfather clause will state that new restrictions on moving violations shall apply only to new applicants, new hires, or job transfers that occur after the adoption date of this law.

C. Certification of Drivers Previously Disqualified for OWI in the Last Three (3) Years.

Under the current law, applicants or employees who have had a drug or alcohol citation within the past three (3) years, such as an OWI, cannot become certified drivers for the Nation. Upon passage of this law, this restriction will be lowered to twelve (12) months. Therefore, there may be current employees of the Nation who will become eligible for driver certification upon adoption of this law. For example, an employee who had an OWI two years ago who is now working under a reasonable accommodation that doesn’t involve driving.

- *Recommendation.* Upon adoption of this law, HRD may want to communicate this information to supervisors and/or impacted employees so that they are aware that they may now be eligible for driver certification.

D. Training Upon Adoption of Amendments. Upon the adoption of these amendments, HRD should offer updated training to supervisors and employees of the Nation on the new provisions of this law.

- *Conclusion.* The LOC intends to direct HRD to offer an updated training to employees of the Nation on the new provisions of this law. This directive will be included in the adopting resolution of these amendments. The LOC will consult with HRD to determine a reasonable timeframe for HRD to develop and offer this training. During the LOC meeting on December

380

381 4, 2019, a representative of HRD Training and Development recommended allowing at least
 382 180 days for HRD to develop the training on the new amendments.

383
 384 **E. Impact of Driving Record Check on Currently Certified Drivers.** In order to become a newly certified
 385 driver, a driver must not have had an OWI within the past twelve (12) months and not had three (3) or
 386 more moving violations or at-fault accidents within the past two (2) years. However, an individual who
 387 has become certified can only have their driver certification suspended if they lose their valid Wisconsin
 388 driver’s license.

- 389 ■ *Example Scenario.* In other words, an individual can be hired with a clean driving record,
 390 receive driver certification from the Nation, then have three (3) or more moving violations
 391 within a 2-year period during their employment, but still keep their driver certification because
 392 they never lost their valid driver’s license as a result of the moving violations. However, if that
 393 same individual were to leave their employment with the Nation and later apply for another
 394 position in the organization, that individual could not become a certified driver, because they
 395 are now applying as a new driver and must pass the driving record check.

396
 397 **Chart 7. Driving Record Requirement Comparison**

Scenario	Driving Record Requirements	Outcome
<i>New employee or transfer (New Certification)</i>	Valid Driver’s license; No OWIs in the past 12 months, Not have three or more moving violations within the past 2 years	Three moving violations in 2 year period or an OWI in the past 12 months results in denial of driver certification.
<i>Current employee who is already a certified driver for the Nation (Maintain Certification)</i>	Valid Driver’s license. <i>*Only lose certification if driver’s license suspended or revoked by state of WI.</i>	Three moving violations in a 2 year period <u>does not</u> result in loss of driver certification unless the employee’s driver’s license was revoked or suspended.
<i>Employee who lost certification due to suspended driver’s license and applies to be recertified after getting their license back (Re-Certification)</i>	Valid Driver’s license; No OWIs in the past 12 months; Not have 3 or more moving violations in the past 2 years	Three moving violations in 2 year period or an OWI in the past 12 months results in denial of driver certification.

- 398
 399 ■ *Recommendation.* While this discrepancy is not necessarily problematic, it may cause
 400 confusion for current employees and supervisors who receive three (3) or more traffic citations
 401 after they have become a certified driver for the nation. HRD and supervisors should be aware
 402 that a current employee can only lose their driver certification if they lose their WI driver’s
 403 license – regardless of the number of moving violations on their record since becoming
 404 certified.

405
 406

407 **F. Number of Job Descriptions Requiring Drivers License.** During the development of these
408 amendments, the LOC expressed interest in learning how many of the Nation’s job descriptions require
409 employees to hold a valid driver’s license as a condition of their employment. The LOC was interested
410 to know if there may be positions where an employee rarely drives on official business, but their job
411 description still requires a valid driver’s license to maintain employment.

- 412 ▪ *Data:* HRD estimated that roughly 700 out of 950 program/non-divisional positions require a
413 driver’s license. Data for gaming positions was not available at the time this analysis was
414 drafted.
- 415 ▪ *Recommendation:* During a work meeting, the LOC encouraged HRD to review job
416 descriptions and determine whether it is necessary for certain jobs to require a driver’s license.
417 If the LOC wishes to formalize this request to HRD, the LOC could send a memo or include in
418 the adopting resolution for this law a timeline or forum for where this information should be
419 brought back (such as HRD’s quarterly report).

420 **G. Fiscal Impact.** A fiscal impact statement has not yet been requested.

- 421 ▪ Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except
422 emergency legislation [*1 O.C. 109.6-1*].
- 423 ▪ A fiscal impact statement shall be submitted by agencies as directed by the Legislative Operating
424 Committee and may be prepared by any agency who may receive funding if the legislation is
425 enacted; who may administer a program if the legislation is enacted; who may have financial
426 information concerning the subject matter of the legislation; or by the Finance Office, upon request
427 of the Legislative Operating Committee [*1 O.C. 109.6-1(a and b)*].

428

Title 2. Employment - Chapter 210

Lotí'sles Kayanl'sla Khale? Nya?teka?sléhtake Lonatlíhute? Kayanl'sla
they're driving law and a variety of vehicles the responsibility is attached to them

VEHICLE DRIVER CERTIFICATION AND FLEET MANAGEMENT

~~210.1. Purpose and Policy~~
~~210.2. Adoption, Amendment, Repeal~~
~~210.3. Definitions~~
~~210.4. Tribal Department Responsibilities~~
~~210.5. Driver Responsibilities~~
~~210.6. Tribal Vehicle Usage~~
~~210.7. Rental Vehicles~~
~~210.8. Driver Certification~~
~~210.9. Motor Vehicle Crashes, Damage Involving Tribal Vehicles~~

~~210.10. Suspension and Revocation of Certification; Disciplinary Action~~
~~210.11. Reinstatement of Certification~~
~~210.1. Purpose and Policy~~
~~210.2. Adoption, Amendment, Repeal~~
~~210.3. Definitions~~
~~210.4. Driver Certification~~
~~210.5. Responsibilities of a Certified Driver~~
~~210.6. Fleet Vehicles~~
~~210.7. Motor Vehicle Crashes or Damage to Vehicles~~
~~210.8. Suspension of Driver Certification and Other Enforcement~~

210.1. Purpose and Policy

210.1-1. *Purpose.* The ~~purposes~~purpose of this law ~~are~~is to:

~~(a)~~ establish standards that certify employees, elected and appointed officials, and volunteers to drive a Tribal fleet vehicle or ~~drive a~~ personal vehicle on Tribal official business; and

~~(b)~~ regulate the use of all vehicles owned and leased by the Nation.

210.1-2. *Policy.* It is the policy of the Nation to:

~~(a)~~ ensure the safety of the community and employees of the ~~Oneida~~ Nation;

~~(b)~~ minimize the Nation's liability when physical damage to vehicles and/or property damage occurs as a result of a motor vehicle crash; and

~~(c)~~ improve the efficiency and effectiveness of the use of vehicles owned by the Nation.

210.2. Adoption, Amendment, Repeal

210.2-1. This law was adopted by the Oneida Business Committee by resolution BC-06-28-17-C~~2~~, and amended by resolution BC- - - -.

210.2-2. This law may be amended or repealed by the Oneida Business Committee and/or Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

210.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

210.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control. ~~Provided that, this law repeals the following:~~

~~(a) BC-09-09-98-A (Amended Vehicle Driver Certification Policy)~~

~~(b) BC-09-24-97-E (Oneida Vehicle Fleet Management Policy)~~

210.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

210.3. Definitions

210.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

~~(a)~~(a) "Area manager" means an employee's supervisor's supervisor; or, an individual designated to be the area manager by a General Manager position.

33 (b) “Business day” means Monday through Friday, from 8:00 a.m. to 4:30 p.m.; excluding
34 the Nation’s holidays.

35 ~~(b) “Business miles” means miles driven in a vehicle by an individual in order to conduct~~
36 ~~Tribal business.~~

37 ~~(c) “Certification” or “certified” means that a driver meets the requirements established by~~
38 ~~this law and is authorized to operate a Tribal vehicle and/or a personal vehicle on Tribal~~
39 ~~business.~~

40 ~~(d) “Driver” means any employee, official and/or volunteer who is certified to operate a~~
41 ~~Tribal vehicle, or to drive a personal vehicle on Tribal business.~~

42 ~~(e) “Driver’s abstract” means a driver’s official driving record, which includes, but is not~~
43 ~~limited to, any restrictions or limitations that may be imposed on the driver’s driving~~
44 ~~privileges.~~

45 ~~(f) “Employee” means an individual who is employed by the Nation and is subject to the~~
46 ~~direction and control, but does not include elected or appointed officials, or employees of~~
47 ~~a chartered corporation of the Nation with respect to the material details of the work~~
48 ~~performed, or who has the status of an employee under the usual common law rules~~
49 ~~applicable to determining the employer-employee relationship. “Employee” includes, but~~
50 ~~is not limited to, an individual employed by any program or enterprise of the Nation, and~~
51 ~~political appointees.~~

52 ~~(g)~~(d) “Entity” means a department, enterprise, program, board, committee or commission
53 of the Nation.

54 (e) “Employee Assistance Program” means a professional counseling program staffed by
55 clinical social workers licensed by the State of Wisconsin which offers services to the
56 Nation’s employees and family members.

57 (f) “Fleet vehicle” means a vehicle owned or leased by the Nation.

58 (g) “Moving violation” means any violation of motor vehicle or traffic law that is
59 committed by the driver of a vehicle while the vehicle is moving. A moving violation does
60 not include parking violations, equipment violations, or paperwork violations relating to
61 insurance, registration or inspection.

62 (h) “Nation” means the Oneida Nation.

63 ~~(i) “Non-business miles” means miles driven in a Tribal vehicle that are not business-~~
64 ~~related, including commuting.~~

65 ~~(j) “Official” means anyone who is serving on the Oneida Business Committee or the~~
66 ~~Oneida Judiciary, and any other person who is elected or appointed to a board, committee~~
67 ~~or commission created by the Oneida Business Committee or Oneida General Tribal~~
68 ~~Council.~~

69 ~~(k)~~(i) “Prohibited drug” means marijuana, cocaine, opiates, amphetamines, phencyclidine
70 (PCP), hallucinogens, methaqualone, barbiturates, narcotics, and any other substances
71 included in Schedules I through V, as defined by Section 812 of Title 21 of the United
72 States Code. Prohibited drugs also includes prescription medication or over-the-counter
73 medicine when used in an unauthorized or unlawful manner.

74 (j) “Supervisor” means the direct supervisor of an employee. ~~Provided that, for~~For
75 volunteers, ~~elected or appointed~~ officials ~~and, or~~ employees without a direct supervisor, it
76 means the Human Resources Department or any party who has been designated by the
77 Human Resources Department as responsible for performing a supervisor’s responsibilities
78 under this law.

79 ~~(l) “Tribal” or “Tribe” means the Oneida Nation.~~

80 ~~(m)~~(k) “Weapon” means a firearm, knife, electric weapon, club, or any other object
81 intended to cause harm to oneself or others.

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210.4. Driver Certification

210.4-1. An individual shall obtain driver certification from the Human Resources Department before operating a fleet vehicle” means a or personal vehicle owned or leased on official business.

210.4-2. Qualifications for Certification. In order to receive driver certification a person shall:

- (a) Be eighteen (18) years of age or older;
- (b) Hold a valid Wisconsin driver’s license:
 - (1) A person who holds a valid driver’s license from a state other than Wisconsin shall have thirty (30) days after his or her first day of employment or service to obtain a Wisconsin driver’s license.
- (c) Have a driving record that does not reflect any of the following conditions:
 - (1) Three (3) or more moving violations and/or at-fault motor vehicle crashes in the past two (2) years; and/or
 - (2) An operating while intoxicated (OWI), driving under the influence (DUI), or prohibited alcohol concentration (PAC) citation within the last twelve (12) months.
- (d) Complete all driver training requirements imposed by the Nation; or any federal or state agency regulations;
- ~~(n) “Volunteer” means a person who provides a service to the Nation without receiving pay.~~
- ~~(o) “Workday” means a regularly scheduled workday or service day for a driver, regardless of whether the day falls on a weekday or weekend.~~
- (e) Satisfy any other requirements specific to the job description and/or vehicle that may be used by or assigned to the person; and
- (f) Maintain one (1) of the following minimum insurance requirements for a personal vehicle if the individual may use his or her personal vehicle to conduct official business:
 - (1) the individual’s insurance covers:
 - (A) one hundred thousand dollars (\$100,000) per person;
 - (B) three hundred thousand dollars (\$300,000) per motor vehicle crash for bodily injury; and
 - (C) twenty-five thousand dollars (\$25,000) property damage; or
 - (2) the individual’s insurance covers two hundred and fifty thousand dollars (\$250,000) combined single limit.

210.4-3. The Nation’s Human Resources

210.4. Tribal Department Responsibilities

~~210.4-1. Department of Public Works. The shall be responsible for determining whether an individual meets all the qualifications before approving or denying a driver certification.~~

- ~~(a) An individual shall provide his or her appropriate license, training certification, and insurance information to the Human Resources Department of Public Works.~~
- ~~(b) The Human Resources Department shall have the authority to check the driving record of an individual at any time.~~
- ~~(c) The Human Resources Department shall maintain a current list of all certified drivers and provide the list to Fleet Management, Risk Management, and Automotive Departments Central Accounting on a regular basis.~~

210.4-4. A supervisor shall ensure that an individual has received his or her driver certification from the Human Resources Department before allowing the individual to drive a fleet vehicle or a personal vehicle on official business.

129 **210.assist5. Responsibilities of a Certified Driver**

130 210.5-1. General Responsibilities. While operating a fleet vehicle or a personal vehicle on official
131 business, an individual shall:

- 132 (a) Abide by all traffic laws;
133 (b) Wear a seat belt and require any passengers to wear a seat belt at all times;
134 (c) Not drive while under the influence of prohibited drugs and/or alcohol;
135 (d) Not drive if impaired by a medical or physical condition or other factor that affects a
136 driver's motor skills, reaction time, or concentration;
137 (e) Not carry a weapon, whether in the open or concealed;
138 (1) Exemption. An individual who is carrying a weapon in the course of performing
139 his or her official duties, or is participating in cultural activities or ceremonies is
140 exempt from this requirement.
141 (f) Not transport prohibited drugs and/or alcohol;
142 (1) Exemption. An employee of the Nation who is transporting prohibited drugs
143 and/or alcohol in the course of performing his or her job duties is exempt from this
144 requirement.
145 (g) Not deliver goods or services for personal gain, or operate private pools where the
146 riders pay the driver; and
147 (h) Not use electronic devices in an unlawful manner.

148 210.5-2. Training Responsibilities. An individual with ~~the implementation~~ driver certification
149 shall complete the driver safety training provided and monitored by the Human Resources
150 Department every three (3) years.

- 151 (a) Exemption. An individual who is required to maintain compliance with any specialized
152 driver safety training requirements imposed by state or federal regulatory agencies shall be
153 exempt from the requirement to complete the driver safety training provided by the Human
154 Resources Department.

155 210.5-3. Fleet Vehicle Responsibilities. When operating a fleet vehicle, an individual shall:

- 156 (a) Complete a vehicle mileage log;
157 (b) Not transport unauthorized passengers;
158 (c) Notify the Fleet Management Department immediately of any problems with a fleet
159 vehicle that may be a safety or mechanical hazard, or of any incidents that result in the
160 inability of a fleet vehicle to complete a trip;
161 (d) Be personally responsible for all traffic citation costs, parking ticket costs, or any
162 similar expense related to vehicle use;
163 (e) Use Oneida Retail locations for fueling fleet vehicles, unless the fleet vehicle needs
164 fuel before it can be taken to an Oneida Retail location;
165 (f) Not smoke or use electronic smoking devices or permit others to smoke or use
166 electronic smoking devices in the fleet vehicle; and
167 (g) Ensure the interior of the vehicle is kept in good condition, clean, and free of debris.

168 210.5-4. Personal Vehicle Responsibilities. When operating a personal vehicle on official
169 business, an individual shall:

- 170 (a) Obtain permission from his or her supervisor to operate a personal vehicle on official
171 business; and
172 (b) Submit all required documents for mileage reimbursement, if seeking reimbursement
173 for miles driven while conducting official business, within thirty (30) days of driving the
174 miles or by the end of the current fiscal year, whichever is sooner.
175 (1) Not seeking mileage reimbursement does not exempt an individual from the
176 provisions of this law.

177 210.5-5. Notification Requirements. An individual shall notify his or her supervisor if he or she:

- 178 (a) Has his or her driver’s license suspended or revoked by the State, or has his or her
179 driver’s license become invalid for any other reason;
180 (b) Meets any of the conditions for disciplinary action as provided in section 210.8-7;
181 and/or
182 (c) Has any impairment by a medical or physical condition or other factor that affects his
183 or her motor skills, reaction time, or concentration.
184

185 **210.64-2. Fleet Vehicles**

186 210.6-1. Fleet Management- Department. The Nation’s Fleet Management Department shall:
187 (a) Purchase purchase, manage, and monitor the use of Tribal vehicles; the Nation’s fleet vehicles.
188 The Fleet Management Department’s responsibilities shall include, but are not limited to:
189 (a) Maintain a list of all fleet vehicles that are available for use, including the removal of
190 vehicles permanently assigned to specific entities of the Nation;
191 (b) Remove unsafe vehicles from the fleet;
192 (b)c) Obtain estimates of and schedule Tribal fleet vehicle repairs when necessary;
193 (c) Participate in motor vehicle crash investigations;
194 (d) Participate in situations requiring approval of driver certifications;
195 (e) (d) Install or remove global positioning system monitors on Tribal equipment on fleet
196 vehicles;
197 (e) Ensure the Nation’s logo is on all fleet vehicles; and
198 (f) Ensure that all Tribal fleet vehicles are equipped with a mileage log and an auto incident
199 kit which contains forms and instructions for reporting any incident; and.
200 (g) Maintain a list of all fleet vehicles that are available for use by drivers; including
201 vehicles permanently assigned to specific departments.

202 210.4-3-6-2. Automotive Department. The Automotive Department shall service and maintain
203 Tribal fleet vehicles according to factory recommendations, or the maintenance schedule
204 established by the Automotive Department, whichever is stricter. Any vehicle deemed unsafe by
205 the Automotive Department shall be reported to the Fleet Management Department.

206 210.4-46-3. Risk Management- Department. The Risk Management shall:
207 (a) Secure Department shall be responsible for securing and maintain maintaining insurance
208 coverage for all Tribal fleet vehicles; or may designate another party to do so; Additional
209 responsibilities of the Risk Management Department shall include, but is not limited to:
210 (b) Provide (a) Providing auto insurance identification cards in every Tribal fleet vehicle;
211 (c) Process (b) Processing all submitted vehicle claims and related information; and
212 (d) Submit (c) Submitting claims to the insurance company;
213 (e) Participate in motor vehicle crash investigations; and

214 (f) Participate in situations requiring approval of certifications. 210.6-4. Use of a Fleet Vehicle. A
215 fleet vehicle may be permanently assigned to an entity for use or requested for use on a temporary
216 basis. A fleet vehicle shall be used for conducting official business of the Nation. When used for
217 travel purposes, a fleet vehicle may also be used for incidental purposes such as travel to and from
218 lodging and/or meal sites.

- 219 (a) Prohibited Use of a Fleet Vehicles. A fleet vehicle shall not be used for any of the
220 following purposes:
221 (1) Personal use for non-business purposes;
222 (2) Towing cargo for personal reasons;
223 (3) Hauling loads that could structurally damage the vehicle; and/or
224 (4) Jump starting vehicles, other than fleet vehicles.

225 210.6-5. Permanently Assigned Fleet Vehicles. The Fleet Management Department may
226 permanently assign a fleet vehicle to an entity if the entity meets the minimum mileage criteria as
227 established by the Fleet Management Department.

228 (a) Exception to Minimum Mileage Criteria. The Fleet Management Department may
229 grant an entity an exception to the minimum mileage criteria.

230 (b) An entity who is permanently assigned a fleet vehicle shall regularly schedule
231 maintenance work and safety checks with the Automotive Department.

232 (c) An entity that is permanently assigned a fleet vehicle is responsible for ensuring that
233 any individual who drives the vehicle has his or her driver certification.

234 210.6-6. Temporary Use

235 ~~210.4 5. Human Resources Department.~~ The Human Resources Department shall:

236 (a) ~~Maintain a current list of drivers and provide the list to Fleet Management and the~~
237 ~~Central Accounting Department on a regular basis;~~

238 (b) ~~Perform driving record checks and approve or deny certification based on the review~~
239 ~~of an individual's driving record; and notify the appropriate parties immediately of~~
240 ~~ineligibility in writing;~~

241 (c) ~~Notify supervisors immediately of~~

242 (1) ~~the certification status of his or her employees or volunteers; and~~

243 (2) ~~of any cancelation or lapse in a personal vehicle driver's insurance coverage.~~

244 (d) ~~Assist supervisors with the administration of suspensions and/or revocations of~~
245 ~~certification;~~

246 (e) ~~Request and maintain records of proof of insurance on personal vehicles driven on~~
247 ~~Tribal business;~~

248 (f) ~~Participate in motor vehicle crash investigations;~~

249 (g) ~~Maintain documentation of all required driver training and regulatory compliance;~~

250 (h) ~~Perform, or delegate to another person to perform, the supervisory responsibilities~~
251 ~~identified in this law, for drivers who do not have a supervisor.~~

252 ~~210.4 6. Environmental Health & Safety Division.~~ The Environmental Health & Safety Division
253 shall ~~provide driver safety training as included herein, and provide the Human Resources~~
254 ~~Department with the names of drivers who have completed training after each training session.~~

255 ~~210.4 7. Supervisors.~~ For drivers who do not have a supervisor, the Human Resources Department
256 shall ~~either assume the supervisor's responsibilities, or shall delegate those responsibilities to~~
257 ~~another person.~~ Fleet Vehicle. An individual in an entity. Supervisors of drivers shall:

258 (a) ~~Ensure those drivers who report to them are certified before allowing those employees~~
259 ~~to drive a Tribal vehicle or a personal vehicle on Tribal business.~~

260 (b) ~~Ensure drivers have the appropriate license, training certification(s), and insurance~~
261 ~~information on file with the Human Resources Department.~~

262 (c) ~~Ensure all motor vehicle crashes and damages are reported in accordance with this law.~~

263 (d) ~~Ensure that all Tribal vehicle mileage is recorded and submitted to Fleet Management~~
264 ~~in accordance with requirements established by Fleet Management.~~

265 (e) ~~Approve expense reports submitted for personal vehicle mileage reimbursement.~~

266 (f) ~~Promptly take appropriate action to investigate:~~

267 (1) ~~all infractions of this law of which they become aware, including but not limited~~
268 ~~to, allegations of alcohol or drug use while using a Tribal vehicle or personal~~ not
269 permanently assigned a fleet vehicle for Tribal business.

270 (2) ~~allegations of a history of unsafe driving, regardless of whether or not the~~
271 ~~employee has ever been charged with an offense.~~

272 (g) ~~Ensure that all employees who directly report to them abide by this law.~~

273 ~~(h) Implement disciplinary action against employee drivers who violate this law, in~~
274 ~~accordance with the Nation's laws governing employment.~~

275 ~~(i) When necessary, refer drivers to:~~

276 ~~(1) the Environmental Health & Safety Division or an appropriate agency or~~
277 ~~training source for additional driver training; and/or~~

278 ~~(2) the Employee Assistance Program, in accordance with applicable policies and~~
279 ~~procedures of the Nation.~~

281 **210.5. Driver Responsibilities**

282 ~~210.5 1. While operating a Tribal vehicle or a personal vehicle on Tribal business, drivers shall:~~

283 ~~(a) Abide by all provisions of this law.~~

284 ~~(b) Follow all traffic laws, respect property, be courteous and use good judgment.~~

285 ~~(c) Wear seat belts and require passengers to wear seat belts at all times.~~

286 ~~(d) Not drive while:~~

287 ~~(1) under the influence of controlled substances, intoxicating beverages,~~
288 ~~prescription drugs or other medications that caution against operating a motor~~
289 ~~vehicle when taken, or~~

290 ~~(2) impaired by a medical or physical condition or other factor that affects a driver's~~
291 ~~motor skills, reaction time or concentration.~~

292 ~~(e) Not transport controlled substances, intoxicating beverages, or any passenger that is in~~
293 ~~possession of controlled substance or intoxicating beverages; without prior written~~
294 ~~approval from his or her supervisor to do so.~~

295 ~~(1) Exemptions. Employees of the Nation who are transporting such substances,~~
296 ~~beverages or passengers in the course of performing their job duties are exempt~~
297 ~~from this requirement.~~

298 ~~(f) Not transport unauthorized passengers.~~

299 ~~(g) Not use devices such as cell phones, whether for talking or texting; notebook or laptop~~
300 ~~computers; books or book applications; newspapers or magazines; and two way radios~~
301 ~~unless the vehicle is safely stopped.~~

302 ~~(1) Exemptions. The following are exempt from this requirement:~~

303 ~~(A) Authorized emergency vehicle communication equipment~~

304 ~~(B) Navigation devices~~

305 ~~(C) Communication equipment used while performing services for the~~
306 ~~Nation.~~

308 **210.6. Tribal Vehicle Usage**

309 ~~210.6 1. Drivers who do not have access to a permanently assigned Tribal vehicle and who are~~
310 ~~unable to use a vehicle assigned to another department, may request to use a Tribal fleet vehicle to~~
311 ~~conduct Tribal for the purpose of conducting official business by submitting a request to the Fleet~~
312 ~~Management. Whenever possible, such requests shall be made at least one (1) week in advance.~~
313 ~~Department.~~

314 ~~(a) Requests for the use of a fleet vehicle shall be made at least one (1) week in advance,~~
315 ~~unless urgent circumstances arise.~~

316 ~~(b) Before determining whether a fleet vehicle is available, or approving the use of a fleet~~
317 ~~vehicle, the Fleet Management Department shall confirm that:~~

318 ~~(1) The individual requesting the fleet vehicle has his or her driver certification;~~

319 ~~(2) The individual has authorization to use the fleet vehicle from his or her~~
320 ~~supervisor, if an employee, or by the individual's entity, if the individual is an~~
321 ~~elected or appointed official of the Nation or volunteer; and~~

322 (3) Any passengers are authorized to travel in a fleet vehicle.

323 (c) The Fleet Management Department may combine vehicle use for travel to the same
324 destination.

325 (d) The Fleet Management Department may cancel reservations that are not fulfilled in a
326 timely manner ~~and may combine vehicle use for travel to the same destination.~~

327 ~~(b) Before determining whether a Tribal vehicle is available or approving the use of a~~
328 ~~Tribal vehicle, Fleet Management shall confirm that:~~

329 ~~(1) the driver is certified.~~

330 ~~(2) the driver has written consent to use a Tribal vehicle; provided by the driver's~~
331 ~~supervisor, if the driver is an employee; or by the driver's entity, if the driver is an~~
332 ~~official or volunteer.~~

333 ~~(3) any passengers are authorized to travel in a Tribal vehicle, in accordance with~~
334 ~~210.6-3.~~

335 ~~(c) Before approving the use of a permanently assigned Tribal vehicle by any driver; the~~
336 ~~department shall be responsible for confirming that the requirements of (b) are met.~~

337 210.6-2.7. Authorized Passengers. In order to have a Tribal vehicle permanently assigned to an
338 entity, the entity shall drive a minimum number of miles annually, as determined by Fleet
339 Management. Exceptions to the mileage criteria may be granted upon request by an entity and
340 with written approval from Fleet Management.

341 ~~(a) Entities who have a permanently assigned vehicle shall regularly schedule service~~
342 ~~work, maintenance work and safety checks with the Automotive Department.~~

343 210.6-3. The following individuals may travel in a Tribal vehicle:

344 ~~(a) Employees;~~ addition to the employees, elected or appointed officials, or volunteers who are ~~on~~
345 ~~Tribal business;~~ authorized to use a fleet vehicle, the following individuals shall be authorized to
346 be a passenger in a fleet vehicle:

347 ~~(b)a~~ Individuals being transported as part of a program or service of the Nation; ~~;~~

348 ~~(e)b~~ Individuals being transported during the normal and ordinary course of representing
349 and/or conducting business on behalf of the Nation; and /or

350 ~~(d) Individuals~~ (c) Any other individual who ~~are~~ is authorized, ~~by Oneida Business~~
351 ~~Committee motion, to travel in a Tribal vehicle. The Oneida Business Committee may~~
352 ~~request input from~~ be a passenger by the Fleet Management ~~before making a determination~~
353 ~~on these requests~~ Department.

354 210.6-4. When a driver uses a Tribal vehicle, he or she shall:

355 ~~(a) Complete a vehicle mileage log. Vehicle mileage logs shall be provided in each Tribal~~
356 ~~vehicle.~~

357 ~~(b) Notify Fleet Management immediately of any problem(s) with a Tribal vehicle that may~~
358 ~~be a safety or mechanical hazard, or of any incidents that result in the inability of a Tribal~~
359 ~~vehicle to complete a trip.~~

360 ~~(c) Be personally responsible for all traffic citation costs, parking ticket costs or any similar~~
361 ~~expense related to vehicle use.~~

362 ~~(d) Use Oneida One Stops for fueling Tribal vehicles, unless the Tribal vehicle needs fuel~~
363 ~~before it can be taken to an Oneida One Stop.~~

364 ~~(e) Not smoke, and not permit others to smoke, in the Tribal vehicle.~~

365 ~~(f) Ensure the interior of the vehicle is kept in good condition, clean and free of debris.~~

366 210.6-5. Tribal vehicles shall be used for business miles. When away from the work site, a Tribal
367 vehicle may also be used for incidental purposes, such as travel to and from lodging and meal sites.
368 Tribal vehicles shall not be used for any of the following:

369 ~~(a) Personal use or non-business miles, except as authorized under the Business Committee~~
370 ~~Vehicle Policy.~~

- ~~(b) Vacation.~~
- ~~(c) Towing cargo for personal reasons.~~
- ~~(d) Hauling loads that could structurally damage the vehicle.~~
- ~~(e) Delivering goods or services for personal gain, or operating private pools where the riders pay the driver.~~
- ~~(f) Transporting hitchhikers.~~
- ~~(g) Jump starting vehicles, other than Tribal vehicles.~~

~~210.6-6. Tribal logos shall be placed on all Tribal vehicles.~~

~~210.6-7. Additional Equipment, 210.6-8. Modifications.~~

~~(a) to Fleet Vehicles.~~ Modifications to ~~Tribal~~fleet vehicles for personal reasons are not permitted. Modifications to ~~Tribal~~fleet vehicles for operating purposes may be allowed only with the approval of ~~the~~ Fleet Management- ~~Department~~.

~~(1) Provided that, this shall not be construed to prohibit drivers from making temporary, non permanent modifications, such as adjusting the positions of vehicle seats or mirrors.~~

~~(b) Fleet Management may equip Tribal vehicles with Global Positioning Systems (GPS) to monitor vehicle usage.~~

~~(c)~~(a) Radar detection devices shall not be installed or used in ~~Tribal~~fleet vehicles.

~~210.7. Rental Vehicles~~

~~210.7-1. Rental vehicles are considered Tribal vehicles for the purpose of this law. All provisions of this law apply to rental vehicle usage. Vehicles~~210.6-9. Rental Vehicles. An individual shall have his or her driver certification before using a rental vehicle to conduct official business. An individual shall operate the rental vehicle with the same responsibilities and restrictions as a fleet vehicle.

~~(a) A vehicle shall be rented in accordance with the Oneida Travel and Expense Policy~~Nation's laws and drivers of rental vehicles shall be certified in accordance with this law.

~~210.7-2. policies governing travel.~~ Every vehicle ~~rental~~rented shall include the purchase of the maximum collision damage waiver offered by ~~the~~ rental ~~companies~~company.

~~210.8. Driver Certification~~

~~210.8-1. Certification.~~ All persons shall be certified before operating a Tribal vehicle or personal vehicle on Tribal business. In order to be certified, an individual shall:

~~(a) Be eighteen (18) years of age or older.~~

~~(b) Satisfy any additional experience requirements established by law or by rules promulgated by the Human Resources Department, that apply for the vehicle being assigned or used.~~

~~(c) Hold a valid, non probationary Wisconsin driver's license and provide proof of such license, including any commercial endorsement(s), to the Human Resources Department within thirty (30) days after his or her start of employment or time of election, appointment or volunteer service.~~

~~(1) Drivers with commercial driver's licenses may be restricted to only operating Tribal vehicles within the state of Wisconsin.~~

~~(2) An occupational license is a valid, non probationary driver's license if the driver's abstract which accompanies the occupational license allows the driver to operate vehicles for his or her job with the Nation.~~

~~(3) Individuals with a driver's license from a state other than Wisconsin shall obtain a Wisconsin driver's license within thirty (30) days after their first day of actual employment or service and provide a copy to the Human Resources Department.~~

420 ~~(d) Pass a driving record check by the Human Resources Department to verify the driver~~
421 ~~has a valid, non-probationary driver's license as identified in (c); and to verify the driver~~
422 ~~has no citation or conviction related to a traffic incident, and no driving citation or~~
423 ~~conviction involving drugs or alcohol, within the time period(s) that would make the driver~~
424 ~~ineligible for certification under this law.~~

425 ~~(1) The individual shall have his or her driving record checked by the Human~~
426 ~~Resources Department prior to his or her hire date or start date.~~

427 ~~(A) State Department of Motor Vehicle reports shall be used to determine~~
428 ~~whether an individual passes the driving record check.~~

429 ~~(B) An individual with a driver's license from a state other than Wisconsin~~
430 ~~shall have his or her driving record checked based on that state's license.~~

431 ~~(2) The Nation reserves the right to check driving records of a driver at any time.~~
432 ~~All drivers shall authorize the Human Resources Department to check his or her~~
433 ~~driving record.~~

434 ~~(3) The Nation reserves the right to allow insurance carriers or agents to check~~
435 ~~driving records at any time. This review shall be deemed to be a review by the~~
436 ~~Nation.~~

437 ~~(e) Complete all driver training requirements imposed by the Nation, an individual entity,~~
438 ~~or by any federal or state agency regulations.~~

439 ~~(1) Except as provided in (e)(2), drivers who are certified to operate a Tribal vehicle~~
440 ~~shall complete driver safety training every three (3) years.~~

441 ~~(A) The training program shall be administered, scheduled, and documented~~
442 ~~by the Environmental Health & Safety Division.~~

443 ~~(B) A break in employment or service of one hundred eighty (180) days or~~
444 ~~greater requires retraining.~~

445 ~~(C) Drivers shall be paid their regular wage for all required training.~~

446 ~~(2) Tribal vehicle drivers who are subject to specialized driver safety training requirements~~
447 ~~imposed by state or federal regulatory agencies are exempt from the driver safety training~~
448 ~~required in (e)(1), provided that, such drivers shall complete all required driver safety training~~
449 ~~according to the applicable regulations before operating a Tribal vehicle to which the regulations~~
450 ~~apply.~~

451 ~~210.8 2. Additional Requirements for Personal Vehicle Drivers. In addition to the requirements~~
452 ~~listed in 210.8 1, the following also apply for drivers of personal vehicles on Tribal business.~~

453 ~~(a) Insurance. Each driver shall provide the Human Resources Department with written~~
454 ~~proof that he or she carries at least the minimum insurance coverage required by this law.~~
455 ~~Drivers shall maintain updated proof of vehicle insurance and provide copies to the Human~~
456 ~~Resources Department. The Human Resources Department may request written proof of~~
457 ~~insurance from drivers at any time.~~

458 ~~(1) The minimum insurance requirements on a personal vehicle are:~~

459 ~~—— (A) one hundred thousand dollars (\$100,000) per person;~~

460 ~~(B) three hundred thousand dollars (\$300,000) per accident for bodily~~
461 ~~injury; and~~

462 ~~—— (C) twenty five thousand dollars (\$25,000) property damage.~~

463 ~~(2). A driver shall immediately notify the Human Resources Department of any~~
464 ~~cancellation or lapse in his or her insurance coverage. No driver may drive a~~
465 ~~personal vehicle on Tribal business during the time he or she does not have the~~
466 ~~required minimum personal auto insurance coverage.~~

467 ~~(3) If a personal vehicle driver's required insurance lapses, the Human Resources~~
468 ~~Department shall immediately remove the driver from the list of certified drivers,~~
469 ~~and notify the driver's supervisor once this action has been taken.~~

470 ~~(b) Mileage Reimbursement.~~

471 ~~(1) A driver who operates a personal vehicle on Tribal business shall be reimbursed~~
472 ~~for any business miles driven if he or she:~~

473 ~~(A) was certified at the time and had written proof of required insurance on~~
474 ~~file with the Human Resources Department.~~

475 ~~(B) had prior consent from his or her supervisor to travel those miles on~~
476 ~~Tribal business.~~

477 ~~(2) While driving on Tribal business, drivers of personal vehicles shall not use their~~
478 ~~vehicle for personal gain of any kind.~~

479 ~~(3) All provisions of this law apply to drivers of personal vehicles on Tribal~~
480 ~~business regardless of whether or not vehicle mileage reimbursement is submitted.~~

481 ~~210.8 3. Additional Requirements~~

482 ~~(a) Individual entities may require stricter certification procedures and standards that do~~
483 ~~not conflict with these standards; including but not limited to, specialized requirements~~
484 ~~regarding age, experience, training, and licensing. Such procedures and standards shall be~~
485 ~~submitted to Fleet Management, Risk Management and the Human Resources Department~~
486 ~~for review and approval.~~

487 ~~(b) Drivers are subject to all specialized requirements imposed by state or federal~~
488 ~~regulatory agencies; including but not limited to, regulatory requirements pertaining to the~~
489 ~~use of drugs and alcohol.~~

490 ~~210.8 4. Drivers shall immediately notify their supervisor; and the supervisor shall immediately~~
491 ~~notify the Human Resources Department in writing, of any of the following:~~

492 ~~(a) An arrest, charge or conviction for any:~~

493 ~~(1) motor vehicle operation violation involving drugs or alcohol; or~~

494 ~~(2) criminal offense related to a traffic incident.~~

495 ~~(b) Any restriction, suspension, revocation, cancellation or, if applicable, reinstatement of~~
496 ~~driving privileges related to his or her driver's license.~~

497 ~~210.8 5. Drivers shall immediately notify their supervisor of any impairment by a medical or~~
498 ~~physical condition or other factor that affects his or her motor skills, reaction time or concentration.~~
499 ~~Supervisors shall notify the Human Resources Department, in writing, of such information when~~
500 ~~appropriate.~~

501 **210.9. Motor Vehicle Crashes; or Damage Involving Tribal to Vehicles**

502 ~~210.9 1. This section shall apply in the event a driver is involved in a motor vehicle crash while~~
503 ~~driving a Tribal vehicle or a personal vehicle on Tribal business; and/or in the event that a Tribal~~
504 ~~vehicle is damaged during use. Provided that, if the Travel and Expense Policy has more restrictive~~
505 ~~requirements regarding accident reporting, the provisions of that policy shall apply.~~

506 ~~210.9 2. In the event of a motor vehicle crash or damage involving the vehicle, drivers fleet vehicle~~
507 ~~or personal vehicle driven on official business, an individual shall be subject to the following~~
508 ~~reporting requirements; provided that, if a driver an individual sustains injuries that make it~~
509 ~~impossible to meet the reporting deadlines identified herein; the driver shall instead make the~~
510 ~~required reports as soon as he or she is able to do so:~~

511 ~~(a) immediately report the crash or damage to local law enforcement if it results in any of~~
512 ~~the following:~~

513 ~~(1) death of a person;~~

515 ~~(2) an injury to the driver or another person that requires medical intervention by~~
516 ~~law enforcement or emergency personnel, or treatment at a medical facility;~~
517 ~~or attention;~~

518 ~~(2) death of a person; or~~

519 (3) damage to property that does not belong to the driver or the Nation; or

520 (4) a Tribal vehicle being disabled and/or needing to be towed.

521 (b) immediately report the motor vehicle crash or damage to his or her supervisor; and

522 (c) provide the Fleet Management Department and Risk Management Department with a
523 completed auto incident report by the end of the next business day immediately following
524 the motor vehicle crash or damage.

525 ~~(d) comply with any applicable alcohol and drug testing requirements established in other~~
526 ~~laws of the Nation.~~

527 ~~210.9-3. Drivers shall follow any additional, applicable motor vehicle crash reporting requirements~~
528 ~~for vehicles regulated by a state or federal agency.~~

529 ~~210.9-4.7-2. Internal Review. Whenever necessary, The~~ Fleet Management Department and Risk
530 Management Department shall coordinate and conduct an internal review of the auto
531 incident report for a motor vehicle crash and/or damage to a vehicle ~~crashes involving Tribal~~
532 ~~vehicles. Internal reviews may include other personnel as deemed appropriate by.~~

533 (a) Fleet Management and Risk Management:

534 ~~(a) Fleet Management and Risk Management shall have investigative authority to:~~

535 ~~(1) determine fault, if not determined by law enforcement; and/or~~

536 ~~(2) may recommend whether a driver's certification an individual should be~~
537 ~~suspended subject to disciplinary action based on the motor vehicle crash or incident~~
538 ~~resulting in damage to a vehicle.~~

539 ~~(b) Internal reviews The internal review shall be completed as soon as practicable possible~~
540 ~~after a motor vehicle crash has been reported; and shall be conducted in accordance with~~
541 ~~industry standards of practice.~~

542 (c) Following an internal review, Fleet Management and Risk Management shall issue an
543 investigation report. Copies of the investigation report shall be:

544 (1) provided to the driver, the driver's supervisor, and the driver's supervisor area
545 manager; and

546 (2) ~~retained by~~ provided to the Human Resources Department if the Fleet
547 Management Department and Risk Management Department recommend
548 disciplinary action.

550 **210.8 for a minimum. Suspension of Driver Certification and Other Enforcement**

551 ~~210.8-1. three~~ ~~(Suspension of driver certification is the suspension of an individual's ability to~~
552 ~~drive a fleet vehicle or personal vehicle on official business and is not a leave from work.~~
553 ~~Suspension of driver certification is non-appealable.~~

554 ~~210.8-2. Qualifications for Suspension. A supervisor shall suspend an individual's driver~~
555 ~~certification if the individual's driver's license is suspended or revoked by the State or becomes~~
556 ~~invalid for any other reason.~~

557 ~~(a) A supervisor shall, when necessary, refer drivers to the Employee Assistance Program~~
558 ~~in accordance with applicable laws and policies of the Nation.~~

559 ~~210.8-3) years. Length of Suspension. The individual's driver certification shall be suspended~~
560 ~~until a time in which the individual has obtained a valid driver's license and meets the~~
561 ~~qualifications for reinstatement of driver certification.~~

562 ~~210.9-5. If, while driving a Tribal vehicle, a driver is determined to be, or admitted~~ 210.8-4.
563 ~~Notification of Suspension. The supervisor shall notify the Human Resources Department in~~

564 writing if he or she suspends the driver certification of an individual and shall provide the basis
565 for the suspension. Once notified of a suspension of driver certification the Human Resources
566 Department shall remove the individual from the list of current certified drivers.

567 210.8-5. Reasonable Accommodations to Suspension. If the suspension of an individual’s driver
568 certification affects the individual’s ability to perform his or her job duties, a supervisor may take
569 one of the following actions:

570 (a) Reassign the individual to a position which does not require driving;

571 (b) Provide non-driving accommodation within the position;

572 (c) Remove the driving requirement from the job description;

573 (d) Place the individual on unpaid leave until the individual obtains his or her driver
574 certification; or

575 (e) Terminate the individual because a valid driver’s license is an essential requirement of
576 the position.

577 210.8-6. Reinstatement of Driver Certification. An individual may have his or her driver
578 certification reinstated upon a review by the Human Resources Department that the individual
579 again meets all the qualifications for driver certification provided for in section 210.4-2.

580 210.8-7. Other Enforcement Actions. A supervisor may take disciplinary action against an
581 individual in accordance with the Nation’s laws and policies governing employment if the
582 individual is an employee, or in accordance with the laws and policies of the Nation governing
583 sanctions and penalties if the individual is an elected or appointed official of the Nation, for any
584 of the following actions:

585 (a) Failing to comply with any provision of this law;

586 (b) Failing to complete any applicable driver training requirements;

587 (c) Driving a fleet vehicle without being certified under the provisions of this law;

588 (d) Admitting to, or being determined to be, partially or entirely at fault in a motor vehicle
589 crash involving vehicle damage, property damage, or personal injury, ~~the driver may have~~
590 ~~his or her certification suspended;~~ and

591 **210.10. Suspension and Revocation of Certification; Disciplinary Action**

592 ~~210.10-1. Any driver who violates this law may be subject to suspension of his or her vehicle~~
593 ~~driver certification, and/or driving privileges.~~

594 ~~(a) *Driving Privilege Suspensions.*~~

595 ~~(1) In certain situations, a supervisor may temporarily suspend a driver’s driving~~
596 ~~privileges without suspending the driver’s certification. When a driver’s driving~~
597 ~~privileges are suspended, the driver shall not be permitted to drive a Tribal vehicle~~
598 ~~or to drive a personal vehicle on Tribal business.~~

599 ~~(A) A supervisor shall temporarily suspend a driver’s driving privileges:~~

600 ~~(1) When the driver is unable to provide proof that the driver carries~~
601 ~~any insurance required by this law, or~~

602 ~~(2) When the driver has not satisfied any driver training~~
603 ~~requirements as required by this law; but has made arrangements to~~
604 ~~complete the required driver training within a reasonable period of~~
605 ~~time.~~

606 ~~(3) Upon request from the Human Resources Department, in~~
607 ~~conjunction with the Risk Management Department, pending an~~
608 ~~investigation that appears likely to lead to a suspension of~~
609 ~~certification.~~

611 ~~(4) In any other situation where the supervisor is unable to determine~~
612 ~~whether the driver has valid certification and is eligible to drive a~~
613 ~~Tribal vehicle or a personal vehicle on Tribal business.~~

614 ~~(B) When a supervisor suspends a driver's driving privileges; the supervisor~~
615 ~~shall promptly notify both the driver and the Human Resources Department,~~
616 ~~in writing, of the suspension, including the effective date; as well as the~~
617 ~~conditions that the employee is required to meet before the suspension may~~
618 ~~be lifted. The supervisor shall also notify both the driver and the Human~~
619 ~~Resource Department, in writing, once the driver's driving privileges are~~
620 ~~reinstated.~~

621 ~~(C) A driver's driving privileges shall automatically be reinstated after the~~
622 ~~driver satisfactorily fulfills the conditions identified by the supervisor when~~
623 ~~the driving privileges are suspended.~~

624 ~~(b) Certification Suspensions. A driver shall have his or her certification suspended for any~~
625 ~~of the following:~~

626 ~~(1) Refusing to allow the Nation or an insurance carrier check his or her driving~~
627 ~~record.~~

628 ~~(2) Failing to immediately notify his or her supervisor of any information as~~
629 ~~required in 210.8-4 or elsewhere in this law.~~

630 ~~(3) Noncompliance with motor vehicle crash reporting requirements established by~~
631 ~~this law.~~

632 ~~(4) Failing to complete any applicable driver training requirements.~~

633 ~~(5) Being arrested, charged or convicted of a motor vehicle operation violation~~
634 ~~involving drugs, alcohol or criminal offense related to a traffic incident.~~

635 ~~(6) Having his or her driver's license restricted, suspended, revoked or cancelled~~
636 ~~by the state.~~

637 ~~(7) Knowingly driving a Tribal vehicle without being certified under the provisions~~
638 ~~of this law.~~

639 ~~(8) For a personal vehicle certification, not~~ **(e) Not** ~~maintaining the minimum insurance~~
640 ~~requirements for a personal vehicle.~~

641 ~~(e) Supervisors who fail to uphold this law may face disciplinary action, in accordance with~~
642 ~~the laws of the Nation governing employment.~~

643 ~~(d) Regardless of whether a violation results in suspension of certification,~~

644 ~~(1) employees who violate this law may also be subject to disciplinary action, in~~
645 ~~accordance with laws of the Nation governing employment;~~

646 ~~(2) officials who violate this law may also be subject to sanctions and penalties in~~
647 ~~accordance with applicable laws of the Nation; including but not limited to, removal~~
648 ~~from office for elected officials and termination of appointment for appointed~~
649 ~~officials.~~

650 ~~210.10-2. Except as provided in 210.11-2(d) and 210.10-7(b), suspension of a vehicle driver~~
651 ~~certification or of driving privileges, is not appealable.~~

652 ~~210.10-3. Suspensions Affecting Employment Status. Suspension of certification is a suspension~~
653 ~~of driving privileges and is not leave from work. Individuals who have their driving privileges~~
654 ~~suspended in accordance with 210.10-1(a), or who have their certification suspended and their~~
655 ~~ability to perform their duties as an employee affected by that suspension may request, in writing,~~
656 ~~that their supervisor and a Human Resources Department representative determine what, if any,~~
657 ~~options may be available to them. Options may include, but are not limited to: non-driving~~
658 ~~accommodation within the home department; reassignment to a position which does not require~~
659 ~~driving; a leave of absence without pay; or termination of employment.~~

660 210.10 4. The minimum length of a suspension shall be based on the number of prior suspensions
661 that have occurred within the past three (3) years from the date of the incident that resulted in the
662 most recent suspension:

663 (a) ~~The first time a driver has his or her vehicle driver certification suspended, the~~
664 ~~suspension shall last no less than five (5) full time workdays.~~

665 (b) ~~The second time a driver has his or her vehicle driver certification suspended, the~~
666 ~~suspension shall last no less than ten (10) full time workdays.~~

667 (c) ~~The third time a driver has his or her vehicle driver certification suspended, the~~
668 ~~suspension shall last no less than fifteen (15) full time workdays.~~

669 (d) ~~Drivers who incur more than three (3) vehicle driver certification suspensions under~~
670 ~~this law within a three (3) year period shall lose their vehicle driver certification for three~~
671 ~~(3) years, beginning with the date of the incident that resulted in the most recent suspension.~~

672 210.10 5. ~~Due to the seriousness of a citation for the operation of motor vehicles involving drugs~~
673 ~~or alcohol, vehicle driver certification shall be suspended upon the issuance of a driving citation~~
674 ~~involving drugs or alcohol. Certification may only be reinstated upon the dismissal of the citation~~
675 ~~or upon three (3) years passing from the date of citation.~~

676 210.10 6. ~~A break in employment or service of one hundred eighty (180) days or greater shall clear~~
677 ~~the driver's record of any vehicle driver certification suspensions, except for three (3) year~~
678 ~~suspensions resulting from a violation that involved drugs or alcohol. However, all prior~~
679 ~~suspensions may be used in re-employment consideration.~~

680 210.10 7. ~~Notwithstanding any other provision of this law, the Nation reserves the right to suspend~~
681 ~~an individual's certification or extend a certification suspension. Certification may be suspended;~~
682 ~~or an existing suspension may be extended, based on the best interests of the Nation and in~~
683 ~~accordance with the following:~~

684 (a) ~~For officials and volunteers: upon unanimous agreement between the Human Resources~~
685 ~~Department, Fleet Management and Risk Management.~~

686 (b) ~~For employees: A supervisor may suspend an employee's certification or extend an~~
687 ~~existing suspension, when the supervisor determines it is appropriate to do so. The~~
688 ~~employee may appeal this adverse employment action in accordance with the employment~~
689 ~~laws of the Nation.~~

691 **210.11. Reinstatement of Certification**

692 210.11 1. ~~Vehicle driver certifications that are suspended for thirty (30) days or less shall be~~
693 ~~automatically reinstated upon expiration of the suspension.~~

694 210.11 2. ~~A driver whose certification is suspended for thirty one (31) days or more, may have his~~
695 ~~or her certification reinstated in accordance with the following:~~

696 (a) ~~The driver may request reinstatement of his or her certification after:~~

697 (1) ~~A certification suspension has concluded or any citation(s) are dismissed or the~~
698 ~~individual is cleared of any charges alleged in a citation that resulted in a driving~~
699 ~~certification suspension; and~~

700 (2) ~~Three (3) years have passed since the individual was convicted of a motor~~
701 ~~vehicle operation citation involving drugs or alcohol; and~~

702 (3) ~~The state removes a driver's license suspension; and~~

703 (4) ~~Written proof has been submitted to the Human Resources Department that the~~
704 ~~individual has any required insurance coverage.~~

705 (b) ~~Upon receiving a request to reinstate an individual's certification, the Human Resources~~
706 ~~Department shall:~~

707 (1) ~~check the individual's driving record to ensure the individual has no violations~~
708 ~~on his or her driving record preventing reinstatement; and~~

709 ~~(2) verify the written proof of insurance submitted by the individual, provided it~~
710 ~~meets the requirements of this law.~~

711 ~~(e) If the individual passes the driving record check and his or her proof of insurance is~~
712 ~~verified, the individual's certification shall be reinstated upon approval of the Human~~
713 ~~Resources Department.~~

714 ~~(1) Exception. For an individual's fourth (4th) suspension or a suspension due to a~~
715 ~~conviction of motor vehicle operation citation involving drugs or alcohol the~~
716 ~~individual's certification may only be reinstated if the following requirements are~~
717 ~~met:~~

718 ~~(A) For officials and volunteers: certification may only be reinstated upon~~
719 ~~unanimous approval of the Human Resources Department, Fleet~~
720 ~~Management and Risk Management.~~

721 ~~(B) For employees: The supervisor shall notify the Human Resources~~
722 ~~Department, Area Manager, and Risk Management of the request; and may~~
723 ~~reinstated the employee's certification if none of those entities object.~~

724 ~~(d) Any official, volunteer or employee may seek review of a decision not to reinstate~~
725 ~~certification, by filing an appeal with the Judiciary.~~

726
727 *End.*

728 Adopted BC-06-28-17-C.

729 Amended BC- - - - .

Title 2. Employment - Chapter 210

Lotí'sles Kayanl'ásla Khale? Nya?teka?sléhtake Lonatlíhute? Kayanl'ásla
they're driving law and a variety of vehicles the responsibility is attached to them
VEHICLE DRIVER CERTIFICATION AND FLEET MANAGEMENT

210.1. Purpose and Policy
210.2. Adoption, Amendment, Repeal
210.3. Definitions
210.4. Driver Certification

210.5. Responsibilities of a Certified Driver
210.6. Fleet Vehicles
210.7. Motor Vehicle Crashes or Damage to Vehicles
210.8. Suspension of Driver Certification and Other Enforcement

-
- 1
2 **210.1. Purpose and Policy**
3 210.1-1. *Purpose.* The purpose of this law is to establish standards that certify employees, elected
4 and appointed officials, and volunteers to drive a fleet vehicle or personal vehicle on official
5 business and regulate the use of all vehicles owned and leased by the Nation.
6 210.1-2. *Policy.* It is the policy of the Nation to ensure the safety of the community and employees
7 of the Nation; minimize the Nation's liability when physical damage to vehicles and/or property
8 damage occurs as a result of a motor vehicle crash; and improve the efficiency and effectiveness
9 of the use of vehicles owned by the Nation.
10
11 **210.2. Adoption, Amendment, Repeal**
12 210.2-1. This law was adopted by the Oneida Business Committee by resolution BC-06-28-17-C,
13 and amended by resolution BC-__-__-__-__.
14 210.2-2. This law may be amended or repealed by the Oneida Business Committee and/or Oneida
15 General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.
16 210.2-3. 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.
19 210.2-4. 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.
21 210.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.
22
23 **210.3. Definitions**
24 210.3-1. 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) "Area manager" means an employee's supervisor's supervisor; or, an individual
27 designated to be the area manager by a General Manager position.
28 (b) "Business day" means Monday through Friday, from 8:00 a.m. to 4:30 p.m.; excluding
29 the Nation's holidays.
30 (c) "Employee" means an individual employed by the Nation, but does not include elected
31 or appointed officials, or employees of a chartered corporation of the Nation.
32 (d) "Entity" means a department, enterprise, program, board, committee or commission of
33 the Nation.
34 (e) "Employee Assistance Program" means a professional counseling program staffed by
35 clinical social workers licensed by the State of Wisconsin which offers services to the
36 Nation's employees and family members.
37 (f) "Fleet vehicle" means a vehicle owned or leased by the Nation.
38 (g) "Moving violation" means any violation of motor vehicle or traffic law that is
39 committed by the driver of a vehicle while the vehicle is moving. A moving violation does

40 not include parking violations, equipment violations, or paperwork violations relating to
41 insurance, registration or inspection.

42 (h) “Nation” means the Oneida Nation.

43 (i) “Prohibited drug” means marijuana, cocaine, opiates, amphetamines, phencyclidine
44 (PCP), hallucinogens, methaqualone, barbiturates, narcotics, and any other substances
45 included in Schedules I through V, as defined by Section 812 of Title 21 of the United
46 States Code. Prohibited drugs also includes prescription medication or over-the-counter
47 medicine when used in an unauthorized or unlawful manner.

48 (j) “Supervisor” means the direct supervisor of an employee. For volunteers, elected or
49 appointed officials, or employees without a direct supervisor, it means the Human
50 Resources Department or any party who has been designated by the Human Resources
51 Department as responsible for performing a supervisor’s responsibilities under this law.

52 (k) “Weapon” means a firearm, knife, electric weapon, club, or any other object intended
53 to cause harm to oneself or others.

54

55 **210.4. Driver Certification**

56 210.4-1. An individual shall obtain driver certification from the Human Resources Department
57 before operating a fleet vehicle or personal vehicle on official business.

58 210.4-2. *Qualifications for Certification.* In order to receive driver certification a person shall:

59 (a) Be eighteen (18) years of age or older;

60 (b) Hold a valid Wisconsin driver’s license;

61 (1) A person who holds a valid driver’s license from a state other than Wisconsin
62 shall have thirty (30) days after his or her first day of employment or service to
63 obtain a Wisconsin driver’s license.

64 (c) Have a driving record that does not reflect any of the following conditions:

65 (1) Three (3) or more moving violations and/or at-fault motor vehicle crashes in
66 the past two (2) years; and/or

67 (2) An operating while intoxicated (OWI), driving under the influence (DUI), or
68 prohibited alcohol concentration (PAC) citation within the last twelve (12) months.

69 (d) Complete all driver training requirements imposed by the Nation or any federal or state
70 agency regulations;

71 (e) Satisfy any other requirements specific to the job description and/or vehicle that may
72 be used by or assigned to the person; and

73 (f) Maintain one (1) of the following minimum insurance requirements for a personal
74 vehicle if the individual may use his or her personal vehicle to conduct official business:

75 (1) the individual’s insurance covers:

76 (A) one hundred thousand dollars (\$100,000) per person;

77 (B) three hundred thousand dollars (\$300,000) per motor vehicle crash for
78 bodily injury; and

79 (C) twenty-five thousand dollars (\$25,000) property damage; or

80 (2) the individual’s insurance covers two hundred and fifty thousand dollars
81 (\$250,000) combined single limit.

82 210.4-3. The Nation’s Human Resources Department shall be responsible for determining whether
83 an individual meets all the qualifications before approving or denying a driver certification.

84 (a) An individual shall provide his or her appropriate license, training certification, and
85 insurance information to the Human Resources Department.

86 (b) The Human Resources Department shall have the authority to check the driving record
87 of an individual at any time.

88 (c) The Human Resources Department shall maintain a current list of all certified drivers
89 and provide the list to Fleet Management, Risk Management, and Central Accounting on a
90 regular basis.

91 210.4-4. A supervisor shall ensure that an individual has received his or her driver certification
92 from the Human Resources Department before allowing the individual to drive a fleet vehicle or a
93 personal vehicle on official business.

94

95 **210.5. Responsibilities of a Certified Driver**

96 210.5-1. *General Responsibilities.* While operating a fleet vehicle or a personal vehicle on official
97 business, an individual shall:

98 (a) Abide by all traffic laws;

99 (b) Wear a seat belt and require any passengers to wear a seat belt at all times;

100 (c) Not drive while under the influence of prohibited drugs and/or alcohol;

101 (d) Not drive if impaired by a medical or physical condition or other factor that affects a
102 driver's motor skills, reaction time, or concentration;

103 (e) Not carry a weapon, whether in the open or concealed;

104 (1) *Exemption.* An individual who is carrying a weapon in the course of performing
105 his or her official duties, or is participating in cultural activities or ceremonies is
106 exempt from this requirement.

107 (f) Not transport prohibited drugs and/or alcohol;

108 (1) *Exemption.* An employee of the Nation who is transporting prohibited drugs
109 and/or alcohol in the course of performing his or her job duties is exempt from this
110 requirement.

111 (g) Not deliver goods or services for personal gain, or operate private pools where the
112 riders pay the driver; and

113 (h) Not use electronic devices in an unlawful manner.

114 210.5-2. *Training Responsibilities.* An individual with driver certification shall complete the
115 driver safety training provided and monitored by the Human Resources Department every three
116 (3) years.

117 (a) *Exemption.* An individual who is required to maintain compliance with any specialized
118 driver safety training requirements imposed by state or federal regulatory agencies shall be
119 exempt from the requirement to complete the driver safety training provided by the Human
120 Resources Department.

121 210.5-3. *Fleet Vehicle Responsibilities.* When operating a fleet vehicle, an individual shall:

122 (a) Complete a vehicle mileage log;

123 (b) Not transport unauthorized passengers;

124 (c) Notify the Fleet Management Department immediately of any problems with a fleet
125 vehicle that may be a safety or mechanical hazard, or of any incidents that result in the
126 inability of a fleet vehicle to complete a trip;

127 (d) Be personally responsible for all traffic citation costs, parking ticket costs, or any
128 similar expense related to vehicle use;

129 (e) Use Oneida Retail locations for fueling fleet vehicles, unless the fleet vehicle needs
130 fuel before it can be taken to an Oneida Retail location;

131 (f) Not smoke or use electronic smoking devices or permit others to smoke or use
132 electronic smoking devices in the fleet vehicle; and

133 (g) Ensure the interior of the vehicle is kept in good condition, clean, and free of debris.

134 210.5-4. *Personal Vehicle Responsibilities.* When operating a personal vehicle on official
135 business, an individual shall:

136 (a) Obtain permission from his or her supervisor to operate a personal vehicle on official
137 business; and

138 (b) Submit all required documents for mileage reimbursement, if seeking reimbursement
139 for miles driven while conducting official business, within thirty (30) days of driving the
140 miles or by the end of the current fiscal year, whichever is sooner.

141 (1) Not seeking mileage reimbursement does not exempt an individual from the
142 provisions of this law.

143 210.5-5. *Notification Requirements.* An individual shall notify his or her supervisor if he or she:

144 (a) Has his or her driver's license suspended or revoked by the State, or has his or her
145 driver's license become invalid for any other reason;

146 (b) Meets any of the conditions for disciplinary action as provided in section 210.8-7;
147 and/or

148 (c) Has any impairment by a medical or physical condition or other factor that affects his
149 or her motor skills, reaction time, or concentration.

150

151 **210.6. Fleet Vehicles**

152 210.6-1. *Fleet Management Department.* The Nation's Fleet Management Department shall
153 purchase, manage, and monitor the use of the Nation's fleet vehicles. The Fleet Management
154 Department's responsibilities shall include, but are not limited to:

155 (a) Maintain a list of all fleet vehicles that are available for use, including vehicles
156 permanently assigned to specific entities of the Nation;

157 (b) Remove unsafe vehicles from the fleet;

158 (c) Obtain estimates of and schedule fleet vehicle repairs when necessary;

159 (d) Install or remove equipment on fleet vehicles;

160 (e) Ensure the Nation's logo is on all fleet vehicles; and

161 (f) Ensure that all fleet vehicles are equipped with a mileage log and an auto incident kit
162 which contains forms and instructions for reporting any incident.

163 210.6-2. *Automotive Department.* The Automotive Department shall service and maintain fleet
164 vehicles according to factory recommendations, or the maintenance schedule established by the
165 Automotive Department, whichever is stricter. Any vehicle deemed unsafe by the Automotive
166 Department shall be reported to the Fleet Management Department.

167 210.6-3. *Risk Management Department.* The Risk Management Department shall be responsible
168 for securing and maintaining insurance coverage for all fleet vehicles. Additional responsibilities
169 of the Risk Management Department shall include, but is not limited to:

170 (a) Providing auto insurance identification cards in every fleet vehicle;

171 (b) Processing all submitted vehicle claims and related information; and

172 (c) Submitting claims to the insurance company.

173 210.6-4. *Use of a Fleet Vehicle.* A fleet vehicle may be permanently assigned to an entity for use
174 or requested for use on a temporary basis. A fleet vehicle shall be used for conducting official
175 business of the Nation. When used for travel purposes, a fleet vehicle may also be used for
176 incidental purposes such as travel to and from lodging and/or meal sites.

177 (a) *Prohibited Use of a Fleet Vehicles.* A fleet vehicle shall not be used for any of the
178 following purposes:

179 (1) Personal use for non-business purposes;

180 (2) Towing cargo for personal reasons;

181 (3) Hauling loads that could structurally damage the vehicle; and/or

182 (4) Jump starting vehicles, other than fleet vehicles.

183 210.6-5. *Permanently Assigned Fleet Vehicles.* The Fleet Management Department may
184 permanently assign a fleet vehicle to an entity if the entity meets the minimum mileage criteria as
185 established by the Fleet Management Department.

186 (a) *Exception to Minimum Mileage Criteria.* The Fleet Management Department may
187 grant an entity an exception to the minimum mileage criteria.

188 (b) An entity who is permanently assigned a fleet vehicle shall regularly schedule
189 maintenance work and safety checks with the Automotive Department.

190 (c) An entity that is permanently assigned a fleet vehicle is responsible for ensuring that
191 any individual who drives the vehicle has his or her driver certification.

192 210.6-6. *Temporary Use of a Fleet Vehicle.* An individual in an entity that is not permanently
193 assigned a fleet vehicle may request to use a fleet vehicle for the purpose of conducting official
194 business by submitting a request to the Fleet Management Department.

195 (a) Requests for the use of a fleet vehicle shall be made at least one (1) week in advance,
196 unless urgent circumstances arise.

197 (b) Before determining whether a fleet vehicle is available, or approving the use of a fleet
198 vehicle, the Fleet Management Department shall confirm that:

199 (1) The individual requesting the fleet vehicle has his or her driver certification;

200 (2) The individual has authorization to use the fleet vehicle from his or her
201 supervisor, if an employee, or by the individual's entity, if the individual is an
202 elected or appointed official of the Nation or volunteer; and

203 (3) Any passengers are authorized to travel in a fleet vehicle.

204 (c) The Fleet Management Department may combine vehicle use for travel to the same
205 destination.

206 (d) The Fleet Management Department may cancel reservations that are not fulfilled in a
207 timely manner.

208 210.6-7. *Authorized Passengers.* In addition to the employees, elected or appointed officials, or
209 volunteers who are authorized to use a fleet vehicle, the following individuals shall be authorized
210 to be a passenger in a fleet vehicle:

211 (a) Individuals being transported as part of a program or service of the Nation;

212 (b) Individuals being transported during the normal and ordinary course of representing
213 and/or conducting business on behalf of the Nation; and/or

214 (c) Any other individual who is authorized to be a passenger by the Fleet Management
215 Department.

216 210.6-8. *Modifications to Fleet Vehicles.* Modifications to fleet vehicles for personal reasons are
217 not permitted. Modifications to fleet vehicles for operating purposes may be allowed only with the
218 approval of the Fleet Management Department.

219 (a) Radar detection devices shall not be installed or used in fleet vehicles.

220 210.6-9. *Rental Vehicles.* An individual shall have his or her driver certification before using a
221 rental vehicle to conduct official business. An individual shall operate the rental vehicle with the
222 same responsibilities and restrictions as a fleet vehicle.

223 (a) A vehicle shall be rented in accordance with the Nation's laws and policies governing
224 travel. Every vehicle rented shall include the purchase of the maximum collision damage
225 waiver offered by the rental company.

226

227 **210.7. Motor Vehicle Crashes or Damage to Vehicles**

228 210.7-1. In the event of a motor vehicle crash or damage involving the fleet vehicle or personal
229 vehicle driven on official business, an individual shall be subject to the following reporting
230 requirements; provided that, if an individual sustains injuries that make it impossible to meet the

231 reporting deadlines identified herein; the driver shall instead make the required reports as soon as
232 he or she is able to do so:

233 (a) immediately report the crash or damage to local law enforcement if it results in any of
234 the following:

- 235 (1) death of a person;
- 236 (2) an injury to the driver or another person that requires medical attention;
- 237 (3) damage to property that does not belong to the driver or the Nation; or
- 238 (4) a vehicle being disabled and/or needing to be towed.

239 (b) immediately report the motor vehicle crash or damage to his or her supervisor; and

240 (c) provide the Fleet Management Department and Risk Management Department with a
241 completed auto incident report by the end of the next business day immediately following
242 the motor vehicle crash or damage.

243 210.7-2. *Internal Review.* The Fleet Management Department and Risk Management Department
244 shall coordinate and conduct an internal review of the auto incident report for a motor vehicle crash
245 and/or damage to a vehicle.

246 (a) Fleet Management and Risk Management may recommend whether an individual
247 should be subject to disciplinary action based on the motor vehicle crash or incident
248 resulting in damage to a vehicle.

249 (b) The internal review shall be completed as soon as possible after a motor vehicle crash
250 has been reported.

251 (c) Following an internal review, Fleet Management and Risk Management shall issue a
252 report. Copies of the report shall be:

253 (1) provided to the driver, the driver's supervisor, and the driver's area manager;
254 and

255 (2) provided to the Human Resources Department if the Fleet Management
256 Department and Risk Management Department recommend disciplinary action.

257

258 **210.8. Suspension of Driver Certification and Other Enforcement**

259 210.8-1. Suspension of driver certification is the suspension of an individual's ability to drive a
260 fleet vehicle or personal vehicle on official business and is not a leave from work. Suspension of
261 driver certification is non-appealable.

262 210.8-2. *Qualifications for Suspension.* A supervisor shall suspend an individual's driver
263 certification if the individual's driver's license is suspended or revoked by the State or becomes
264 invalid for any other reason.

265 (a) A supervisor shall, when necessary, refer drivers to the Employee Assistance Program
266 in accordance with applicable laws and policies of the Nation.

267 210.8-3. *Length of Suspension.* The individual's driver certification shall be suspended until a
268 time in which the individual has obtained a valid driver's license and meets the qualifications for
269 reinstatement of driver certification.

270 210.8-4. *Notification of Suspension.* The supervisor shall notify the Human Resources
271 Department in writing if he or she suspends the driver certification of an individual and shall
272 provide the basis for the suspension. Once notified of a suspension of driver certification the
273 Human Resources Department shall remove the individual from the list of current certified drivers.

274 210.8-5. *Reasonable Accommodations to Suspension.* If the suspension of an individual's driver
275 certification affects the individual's ability to perform his or her job duties, a supervisor may take
276 one of the following actions:

277 (a) Reassign the individual to a position which does not require driving;

278 (b) Provide non-driving accommodation within the position;

279 (c) Remove the driving requirement from the job description;

280 (d) Place the individual on unpaid leave until the individual obtains his or her driver
281 certification; or

282 (e) Terminate the individual because a valid driver’s license is an essential requirement of
283 the position.

284 210.8-6. *Reinstatement of Driver Certification.* An individual may have his or her driver
285 certification reinstated upon a review by the Human Resources Department that the individual
286 again meets all the qualifications for driver certification provided for in section 210.4-2.

287 210.8-7. *Other Enforcement Actions.* A supervisor may take disciplinary action against an
288 individual in accordance with the Nation’s laws and policies governing employment if the
289 individual is an employee, or in accordance with the laws and policies of the Nation governing
290 sanctions and penalties if the individual is an elected or appointed official of the Nation, for any
291 of the following actions:

- 292 (a) Failing to comply with any provision of this law;
- 293 (b) Failing to complete any applicable driver training requirements;
- 294 (c) Driving a fleet vehicle without being certified under the provisions of this law;
- 295 (d) Admitting to, or being determined to be, partially or entirely at fault in a motor vehicle
296 crash involving vehicle damage, property damage, or personal injury; and
- 297 (e) Not maintaining the minimum insurance requirements for a personal vehicle.

298
299 *End.*

300 Adopted BC-06-28-17-C.

301 Amended BC-__-__-__-__.



Legislative Operating Committee
December 18, 2019

Children's Burial Fund Policy Amendments

Submission Date: 8/7/19	Public Meeting: n/a
LOC Sponsor: Kirby Metoxen	Emergency Enacted: n/a

Summary: *This item was submitted on behalf of the Oneida Trust Enrollment Committee for the purpose of making general updates to the Law which would remove outdated restrictions for membership using benefit.*

8/7/19 LOC: 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.

11/14/19: *Work Meeting.* Present: Jennifer Falck, Clorissa N. Santiago, Maureen Perkins. The purpose of this work meeting was the development of a legislative plan. LRO will schedule work meeting with representatives of OTEC and Trust Enrollment Department to discuss first draft of proposed amendments.

12/2/19: *Work Meeting.* Present: Clorissa N. Santiago, Jennifer Falck, Maureen Perkins, Bonnie Pigman. The purpose of this work meeting was to review the proposed amendments and discuss if there are any other revisions needed before the draft is presented to the LOC.

12/4/19: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Ernest Stevens III, Clorissa N. Santiago, Jennifer Falck, Maureen Perkins. The purpose of this work meeting was for the LOC to review the proposed amendments and discuss if there are any other revisions needed before the draft is presented to the LOC. The LOC discussed a couple minor revisions. The LRO will update the draft and develop a legislative analysis and bring those items to an upcoming LOC meeting.

Next Steps:

- Accept the draft of the Children's Burial Fund amendments and direct that a legislative analysis be completed and brought back to the January 15, 2020, Legislative Operating Committee meeting.

Title 1. Government and Finances – Chapter 129
Kaya?takenhásla ashakotiya?tátane? latiksa?shúha
It is helpful for them to bury them the children
CHILDREN’S BURIAL FUND

129.1. Purpose and Policy

129.2. Adoption, Amendment, Repeal

129.3. Definitions

129.4. Qualifications for Financial Assistance

129.5. Requesting Financial Assistance

129.6. Use of Funds

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129.1. Purpose and Policy

129.1-1. *Purpose.* It is the purpose of this law to provide financial assistance towards the funeral costs of children of a certain age who are not enrolled, but are eligible for enrollment, in the Nation.

129.1-2. *Policy.* It is the policy of the Nation to provide services to the membership from birth to death. As a part of this commitment, we wish to assure a dignified approach to the final needs of our members and their families.

129.2. Adoption, Amendment, Repeal

129.2-1. This law was adopted by the Oneida Business Committee by resolution BC-02-10-10-B and amended by BC-__-__-__-__.

129.2-2. This law may be amended or repealed by the Oneida Business Committee and/or General Tribal Council pursuant to the procedures set out in the Legislatives Procedures Act.

129.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

129.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

129.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

129.3. Definitions

129.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) “Fetal death report” means the form prescribed and supplied by a State used to report non-abortion related fetal deaths, which may also be referred to as stillbirths.

(b) “Nation” means the Oneida Nation.

(c) “Stillbirth” means a fetus born dead, irrespective of the duration of pregnancy, with death indicated by the fact that after expulsion or extraction from the woman, the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord or definite movement of the voluntary muscles.

(d) “Voluntary paternity and/or maternity statement” means the document created by the Oneida Trust Enrollment Department which requires the notarized signature(s) of Oneida parent(s) acknowledging paternity and/or maternity of a fetus, which is used to determine eligibility for enrollment.

129.4. Qualifications for Financial Assistance

129.4-1. In order to be eligible for financial assistance from the Children’s Burial Fund the deceased child shall be:

(a) six (6) years of age or younger;

- 41 (b) not enrolled with the Nation; and
42 (c) eligible for enrollment with the Nation.

43

44 **129.5. Requesting Financial Assistance**

45 129.5-1. The Oneida Trust Enrollment Department shall process all requests for financial
46 assistance from the Children’s Burial Fund.

47 129.5-2. Requests for financial assistance from the Children’s Burial Fund shall be made to the
48 Oneida Trust Enrollment Department within three hundred and sixty-five (365) days from the
49 date of death.

50 129.5-3. Upon making a request for financial assistance from the Children’s Burial Fund the
51 following documentation shall be provided to the Oneida Trust Enrollment Department:

- 52 (a) all original invoices;
53 (b) birth certificate, death certificate, or fetal death report; and
54 (c) voluntary paternity and/or maternity statement in situations where paternity and/or
55 maternity needs to be determined.

56 129.5-4. Upon receipt and verification of invoices and other relevant documentation, the Oneida
57 Trust Enrollment Department shall be responsible for processing the appropriate paper work for
58 the payment to be made to the funeral home, monument company, casket or coffin company,
59 cemetery, crematorium, churches, and/or catering or food vendors.

60

61 **129.6. Use of Funds**

62 129.6-1. Financial assistance from the Children’s Burial Fund for funeral costs of a deceased
63 child shall not exceed three thousand five hundred dollars (\$3,500).

64 129.6-2. The following funeral related expenses are payable if identified on an invoice:

- 65 (a) monument and/or headstone costs;
66 (b) casket or coffin costs;
67 (c) cemetery costs;
68 (d) church costs; and/or
69 (e) food costs.

70 129.6-3. Under no circumstances shall there be any payments from the Children’s Burial Fund
71 for reimbursements of:

- 72 (a) funeral costs to individuals; and/or
73 (b) travel and/or lodging for attending a funeral.

74 129.6-4. Any unexpended monies after payment(s) have been made shall remain in the
75 Children’s Burial Fund for other burials.

76 129.6-5. Any expenses over three thousand five hundred dollars (\$3,500) shall be the
77 responsibility of the family or responsible party.

78

79 *End.*

80

Adopted – BC-02-10-10-B

81 Amended – BC-__-__-__-__

Title 1. Government and Finances – Chapter 129
CHILDREN’S BURIAL FUND POLICY
Kayaʔtakenhásla ashakotiyaʔtátaneʔ latiksaʔshúha
It is helpful for them to bury them the children
CHILDREN’S BURIAL FUND

129.1. Purpose and Policy
129.2. Adoption, Amendment, ~~Conflicts~~ Repeal
129.3. Definitions

129.4. Qualifications for Financial Assistance
129.5. ~~Procedures~~ Requesting Financial Assistance
129.6. Use of Funds

129.1. Purpose and Policy

129.1-1. *Purpose.* It is the purpose of this ~~policy~~ law to provide financial assistance towards the funeral costs of children of a certain age who are not enrolled, but are eligible for enrollment, in the ~~Oneida Tribe of Indians of Wisconsin~~ Nation.

129.1-2. *Policy.* ~~The Oneida Tribe~~ It is committed the policy of the Nation to ~~providing~~ provide services to the membership from birth to death. As a part of this commitment, we wish to assure a dignified approach to the final needs of our ~~Tribal~~ members and their families.

~~129.1-3. This fund is established to provide an individual allotment, not to exceed \$3,500 per qualified individual, to defray the cost of funeral expenses.~~

129.2. Adoption, Amendment, ~~Conflicts~~ Repeal

129.2-1. This ~~policy~~ law was adopted by the Oneida Business Committee by resolution BC-02-10-10-B; and amended by BC- - - -.

129.2-2. This ~~policy~~ law may be amended or repealed by the Oneida Business Committee and/or General Tribal Council pursuant to the procedures set out in ~~Tribal law~~ the Legislatives Procedures Act.

129.2-3. Should a provision of this ~~policy~~ law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this ~~policy~~ law which are considered to have legal force without the invalid portions.

129.2-4. In the event of a conflict between a provision of this ~~policy~~ law and a provision of another law, ~~ordinance, policy, regulation, rule, resolution, or motion~~, the provisions of this ~~policy~~ law shall control. ~~Provided that, nothing in this policy is intended to repeal or modify any existing law, ordinance, policy, regulation, rule, resolution or motion.~~

129.2-5. This ~~policy~~ law is adopted under authority of the Constitution of the Oneida ~~Tribe of Indians of Wisconsin~~ Nation.

129.3. Definitions

129.3-1. This section shall govern the definitions of words and phrases used within this ~~policy~~ law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) “Fetal death report” means the form prescribed and supplied by a State used to report non-abortion related fetal deaths, which may also be referred to as stillbirths.

~~(b)~~ (b) “Nation” means the Oneida Nation.

(c) “Stillbirth” means a fetus born dead, irrespective of the duration of pregnancy, with death indicated by the fact that after expulsion or extraction from the woman, the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord or definite movement of the voluntary muscles.

38 (ed) “Voluntary paternity/ and/or maternity statement” means the document created by the
39 Oneida Trust Enrollment Department which requires the notarized signature(s) of Oneida
40 parent(s) acknowledging paternity and/or maternity of a fetus, which is used to determine
41 eligibility for enrollment.
42

43 **129.4. Qualifications for Financial Assistance**

44 129.4-1. ~~Except as provided in 129.4-2, In order~~ to be eligible for financial assistance from the
45 Children’s Burial Fund the deceased child shall be ~~five (5);~~

46 (a) six (6) years of age or younger;

47 (b) not enrolled, but eligible for enrollment, with the Nation; and

48 ~~129.4-2. In the event the deceased is six (6) years of age, not enrolled, but eligible for enrollment,~~
49 ~~the deceased shall be eligible for assistance if the Oneida Trust/Enrollment Committee had~~
50 ~~approved the enrollment of the deceased prior to his or her death.~~

51 (c) eligible for enrollment with the Nation.
52

53 **129.5. Procedures Requesting Financial Assistance**

54 129.5-1. ~~The Oneida Trust Enrollment Department is designated to~~ shall process all requests for
55 financial assistance from the Children’s Burial Fund.

56 129.5-2. Requests for ~~payment~~ financial assistance from the Children’s Burial Fund shall be made
57 to the Oneida Trust Enrollment Department within three hundred and sixty-five (365) days from
58 the date of death.

59 129.5-3. ~~Original invoices~~ Upon making a request for financial assistance from the Children’s
60 Burial Fund the following documentation shall be provided to the Oneida Trust Enrollment
61 Department ~~for payment.:~~

62 (a) all original invoices;

63 (b) birth certificate, death certificate, or fetal death report; and

64 (c) voluntary paternity and/or maternity statement in situations where paternity and/or
65 maternity needs to be determined.

66 129.5-4. Upon receipt and verification of invoices and ~~the other~~ relevant ~~document(s) as required~~
67 ~~under 129.5-5~~ documentation, the Oneida Trust Enrollment Department shall be responsible for
68 processing the appropriate paper work for the payment to be made to the funeral home, monument
69 company, casket or coffin company, cemetery, crematorium, churches, and/or catering/ or food
70 vendors.

71 ~~129.5-5. A birth certificate, death certificate, or fetal death report shall be submitted to the~~
72 ~~Enrollment Department prior to payment. A voluntary paternity/maternity statement shall also be~~
73 ~~submitted to the Enrollment Department prior to payment where paternity and/or maternity needs~~
74 ~~to be determined.~~

75 ~~129.5-6. Food expenses are payable through a food voucher, added to the funeral home invoice,~~
76 ~~or paid directly to the caterer/food vendor/restaurant, amount not to exceed \$200.00, which is~~
77 ~~included under the \$3,500.00.~~

78 ~~129.5-7. Monument/headstone costs are payable directly to the vendor or may be added to the~~
79 ~~funeral home invoice, amount not to exceed \$1,000.00, which is included under the \$3,500.00.~~

80 ~~129.5-8. Cemetery costs are payable directly to the vendor or may be added to the funeral home~~
81 ~~invoice, amount to be included under the \$3,500.00.~~

82 ~~129.5-9. Church costs are payable directly to the vendor or may be added to the funeral home~~
83 ~~invoice, amount to be included under the \$3,500.00.~~

84 ~~129.5-10.~~

85 **129.6. Use of Funds**

86 129.6-1. Financial assistance from the Children’s Burial Fund for funeral costs of a deceased
87 child shall not exceed three thousand five hundred dollars (\$3,500).

88 129.6-2. The following funeral related expenses are payable if identified on an invoice:

89 (a) monument and/or headstone costs;

90 (b) casket or coffin costs;

91 (c) cemetery costs;

92 (d) church costs; and/or

93 (e) food costs.

94 129.6-3. Under no circumstances ~~will~~shall there be any payments from the Children’s Burial Fund
95 for reimbursements ~~for~~of:

96 (a) funeral costs to individuals~~;~~ and/or

97 (b) travel and/or lodging for attending a funeral.

98 ~~129.5-11~~6-4. Any unexpended monies after payment(s) have been made ~~will~~shall remain in the
99 ~~fund~~Children’s Burial Fund for other burials.

100 ~~129.5-12. Under no circumstances will funding exceed \$3,500.00.~~

101 ~~129.5-13. Total~~129.6-5. Any expenses over \$3,500.00 or expenses over the designated amounts
102 payable ~~are~~three thousand five hundred dollars (\$3,500) shall be the responsibility of the family
103 or responsible party.

104
105 *End.*

106 Adopted – BC-02-10-10-B

107 Amended – BC- - - -



Legislative Operating Committee
December 18, 2019

Oneida Food Service Code

Submission Date: 9/19/18	Public Meeting: n/a
LOC Sponsor: Ernest Stevens III	Emergency Enacted: n/a Expires: n/a

Summary: *This is a request from the Environmental, Health, Safety & Land Division and Licensing Department to make certain amendments and updates to the Oneida Food Service Code that include fee schedule updates, cottage food sales from home amendments, and requirements for credentialed Food Safety Manager.*

9/19/18 LOC: Motion by Jennifer Webster to add the Oneida Food Service Code to the active files list and assign Earnest Stevens III as the sponsor; Seconded by Daniel Guzman King. Motion carried unanimously.

10/4/18: *Work Group Meeting.* Present: Kristen M. Hooker, Maureen Perkins, Michelle Myers, Vanessa Miller, Jeff Mears, Jamie Betters. The purpose of this work group meeting was to discuss potential amendments to the Oneida Food Service Code (“Law”) with representatives from the following departments and divisions: Environmental, Health, Safety & Land Division; Community Health Nursing; and Internal Services. The next steps are: (1) for the legislative analyst to conduct additional research to be presented back to the work group for consideration and further discussion; (2) for the drafting attorney to provide general updates to the Law based on the LPA and the Federal Food Code; and (3) for the work group to provide any follow up recommendations and/or suggestions to the LRO for amendments to the Law.

11/29/18: *Work Group Meeting.* Present: Vanessa Miller, Tonya Webster, Jennifer Falck, Maureen Perkins, Kristen M. Hooker. The purpose of this work group meeting was to go through the revisions and proposed amendments to the Oneida Food Service Code. The next steps are: (1) for EHSLD and/or Licensing Department to contact Risk Management regarding the current insurance requirements for independent food vendors; (2) for EHSLD to share and get input on the proposed cottage food exemption with representatives of the Nation that may be interested in its development/application; and (3) to reconvene at another work group meeting to finish going through the amendments and discuss the input received from the above groups.

1/25/19: *Work Group Meeting.* Present: Jeff Mears, Kristen Hooker, Maureen Perkins, Vanessa Miller. The purpose of this meeting was: (1) to discuss Risk Management’s stance on the Law’s current insurance provisions and consider possible amendments relating

thereto; and (2) to continue reviewing the Law to gather suggestion from the work group for amendments that include, but are not limited to, updating the fee schedule and adding an exemption for cottage food sales.

2/28/19: *Work Group Meeting.* Present: Jeff Mears, Kristen Hooker, Maureen Perkins, Vanessa Miller, Jennifer Falck. The purpose of this meeting was to discuss the addition of a cottage food sales exemption to the Law. The next step is for the drafting attorney to update the Law to include all amendments proposed during the last two meetings and to bring a draft back to a work group meeting for a final review and comment.

6/6/19: *Work Group Meeting.* Present: Jeff Mears, Kristen Hooker, Maureen Perkins, Vanessa Miller. The purpose of this meeting was to go through the rough draft of the proposed amendments to the Law with the work group for final comments before bringing the draft to a LOC work meeting for review and policy consideration.

11/6/19: *LOC Work Meeting.* Present: David P. Jordan, Daniel Guzman-King, Kirby Metoxen, Kristen M. Hooker, Maureen Perkins, Ernest Stevens III, Jennifer Webster (left early), Jameson Wilson. The purpose of this meeting was to review the current draft of the Oneida Food Service Code, go through the proposed amendments suggested by the work group and discuss any further amendments by the LOC. The LOC reviewed the first half of the draft. The next step is for: (1) the LRO to follow up on the questions/concerns raised by the LOC during its review; (2) the LRO to bring responses back to a LOC work meeting; and (3) for LRO to go through the second half of the draft with the LOC during that meeting.

11/15/19: *LOC Work Meeting.* Present: Kristen Hooker, Maureen Perkins, David Jordan, Jennifer Webster, Ernest Stevens III, Jennifer Falck, Daniel Guzman King. The purpose of this meeting was to provide the LOC with responses to the questions/issues it raised during the previous LOC work meeting and to finish going through the draft of the amendments to the Oneida Food Service Code.

12/4/19 LOC: Motion by Jennifer Webster to approve the draft of the amendments to the Oneida Food Service Code with one change and direct a legislative analysis to be completed; Seconded by Kirby Metoxen. Motion carried.

Next Steps:

- Approve the draft amendments to the Oneida Food Service Code and the legislative analysis and defer to a work meeting.

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2
3 **Title 3. Health and Public Safety – Chapter 305**
4 **Kahkwa’ó·ku**
5 *about the food*
6 **ONEIDA FOOD SERVICE**

7 305.1. Purpose and Policy
8 305.2. Adoption, Amendment, Repeal
9 305.3. Definitions
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16 305.10. Violations, Enforcement
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18 **305.1. Purpose and Policy**

19 305.1-1. *Purpose.* The purpose of this law is to ensure the safety of food that is provided to
20 consumers at retail or through an Oneida Nation Food Service Program by establishing a system
21 of overlapping safeguards designed to minimize foodborne illness; ensure employee health,
22 industry manager knowledge, safe food handling, nontoxic/cleanable equipment and acceptable
23 levels of sanitation on the premises of food service businesses; and promote fair dealings with
24 members of the community through adoption of licensing requirements, exemptions, regulation,
25 control, supervision and enforcement procedures that govern food service businesses within the
26 jurisdiction of the Nation.

27 305.1-2. *Policy.* It is the policy of the Nation to protect the health, welfare and safety of the
28 community and to strengthen the Nation’s self-governance by ensuring, through the exercise of its
29 inherent sovereignty over the Nation’s resources and membership, that food provided at retail or
30 through an Oneida Nation Food Service Program is unadulterated, prepared in a clean environment
31 and honestly presented.

32 **305.2. Adoption, Amendment, Repeal**

33 305.2-1. This law was adopted by the Oneida Business Committee by resolution BC-06-13-01-B
34 and amended by resolutions BC-02-25-15-C and BC-__-__-__-__.

35 305.2-2. This law may be amended or repealed by the Oneida Business Committee and/or Oneida
36 General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

37 305.2-3. Should a provision of this law or the application thereof to any person or circumstances
38 be held as invalid, such invalidity shall not affect other provisions of this law which are considered
39 to have legal force without the invalid portions.

40 305.2-4. In the event of a conflict between a provision of this law and a provision of another law,
41 the provisions of this law shall control.

42 305.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

43 **305.3. Definitions**

44 305.3-1. This section shall govern the definitions of words and phrases used within this law. All
45 words not defined herein shall be used in their ordinary and everyday sense.

46 (a) “Close down” means an order issued by the Department to discontinue operation of a
47 food service business or exempt operation under section 305.8 of this law in order to protect
48 the health, safety and/or welfare of the community.

- 49 (b) “Consumer” means an individual who is a member of the public; takes possession of
50 food; is not functioning in the capacity of a food service business, a cottage food operator,
51 a prepackaged restaurant, or a food processing plant; and does not offer the food for resale.
52 (c) “Cottage food operator” means an individual who, exclusively within the home kitchen
53 of his or her domestic residence, produces cottage food products for direct sale only.
54 (d) “Cottage food products” mean foods, produced within the home kitchen of a domestic
55 residence, that are non-potentially hazardous, including non-perishable baked goods such
56 as cakes, most fruit pies, breads, brownies, cookies and muffins; dry mixes; dried fruit;
57 jams, jellies and preserves; home-canned foods such as apples, peaches and lemons or
58 salsa, pickled vegetables and hot sauces; and other non-potentially hazardous foods that
59 the Department characterizes as cottage food products for purposes of this law.
60 (e) ~~“Department” means the Environmental, Health and Safety Department within the~~
61 ~~Nation’s ———Environmental, Health, Safety and Land Division.~~
62 (f) “Direct sale” means a consumer’s face-to-face purchase of a cottage food product from
63 a cottage food operator that does not include purchases through consignment, mail order,
64 or the internet, though nothing herein shall be interpreted to prohibit a cottage food operator
65 from using the internet for the sole purpose of advertising his or her cottage food products.
66 (g) “Domestic residence” means the single-family house or unit in a multiunit residential
67 structure located at the address that the applicant lists as being his or her primary residence
68 when applying to the Department for a cottage food exemption under this law.
69 (h) “Emergency” means the occurrence or discovery of an unforeseen event that requires
70 immediate attention, the absence of which could endanger the health or safety of others.
71 (i) “Federal Food Code” means the most current edition of the United States Public Health
72 Service, Food and Drug Administration Food Code.
73 (j) “Fine” means a monetary punishment issued to a person for violation of this law.
74 (k) “Food” means a raw, cooked or processed edible substance; ice; beverage; or ingredient
75 used or intended for use or for sale in whole or in part for human consumption or chewing
76 gum.
77 (l) “Food service business” means, whether individually or collectively, a permanent food
78 service establishment; a temporary food service establishment; and/or an independent food
79 service operator. The following shall not qualify as a food service business under this law:
80 (1) Private rummage sales;
81 (2) Community sponsored non-profit ~~fund-raising~~fundraising and/or charity
82 events;
83 (3) Cottage food operators who satisfy the requirements of this law; and/or
84 (4) Prepackaged ~~Restaurants~~restaurants that satisfy the requirements of this law.
85 (m) “Home-canned foods” means home-canned fruits and vegetables that are
86 naturally acidic or have been acidified by pickling or fermenting and have an equilibrium pH
87 of 4.6 or lower.
88 (n) “Independent food service operator” means a person, other than one who qualifies as a
89 cottage food operator, who sells, for profit, food that is prepared off-site, independent of a
90 permanent establishment, at or within a location approved by the Department.
91 (o) “Judiciary” means the Oneida Nation Judiciary, which is the judicial system that was
92 established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer
93 the judicial authorities and responsibilities of the Nation.

94 (p) “License” means the tangible proof of authorization from the Department to operate a
95 permanent food service establishment, operate a temporary food service establishment and/
96 or function as an independent food service operator. _

97 (q) “Nation” means the Oneida Nation.

98 (r) “Penalty” means a punishment, other than a fine, imposed on a person for violation of
99 this law.

100 (s) “Permanent food service establishment” means a permanent unit and/or location where
101 food is processed on ~~site~~the premises, usually for retail sale, and intended for individual
102 consumption, ~~whether on or off the premises~~, including, but not limited to, the following:

103 (1) A restaurant or other eating/drinking establishment ~~other than~~that does not
104 qualify as a _____ prepackaged _____

105 _____restaurant;

106 (2) A market or grocery store;

107 (3) A catering business;

108 (4) A bakery or confectionary;

109 (5) A convenience store or gas station store; ~~and/or~~

110 (6) An Oneida Nation Food Service Program; and/or

111 (7) A mobile food truck that requires a Department approved service base to
112 operate.

113 (t) “Person” means a natural person(s), sole proprietorship, partnership, corporation,
114 limited liability company or any other form of a legal entity.

115 (u) “Potentially hazardous food” means food that requires time and temperature control
116 for safety to limit toxin formation or the growth of pathogenic microorganisms.

117 (v) “Prepackaged restaurant” means an establishment that serves or sells only packaged
118 foods that are prepared and packaged off-premise by a licensed processor with preparation
119 on the premise limited to heating and serving.

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

123 (x) “Temporary food service establishment” means a non-permanent food service
124 establishment that operates at a fixed location for a limited number of consecutive days in
125 conjunction with a single event.

127 **305.4. Jurisdiction**

128 305.4-1. *Personal Jurisdiction.* This law applies to:

129 (a) All members of the Nation; the Nation’s entities and corporations; and members of
130 other federally-recognized tribes;

131 (b) Individuals and businesses leasing, occupying, or otherwise using fee land owned by
132 the Nation or by individual members of the Nation; and/or lands held in trust on behalf of
133 the Nation or individual members of the Nation; and

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

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

140 (2) By other facts which manifest an intent to consent to the authority of the Nation,
141 including, but not limited to, the failure to raise an objection to the exercise of
142 personal jurisdiction in a timely manner.

143 305.4-2. *Territorial Jurisdiction.* This law extends within the Reservation to all land owned by
144 the Nation and individual trust or fee land of a member of the Nation.

145 305.4-3. *Liberal Construction.* The provisions of this law shall apply to the fullest extent of the
146 sovereign jurisdiction of the Nation and shall be liberally construed to give full effect to the
147 objectives and purposes for which it was enacted.

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149 **305.5. Compliance**

150 305.5-1. No person shall operate a food service business without a valid, unexpired license from
151 the Department.

152 (a) Licenses to operate a food service business are non-transferable.

153 (b) Unless otherwise provided herein, strict compliance with this law is required before a
154 license may be issued or renewed.

155 305.5-2. *Federal Food Code.* The Nation finds that the Federal Food Code establishes a high level
156 of stringent food and beverage handling safety standards that should apply to all food service
157 businesses within its jurisdiction.

158 (a) Unless otherwise provided herein, the Nation hereby adopts the entire Federal Food
159 Code through incorporation by reference into this law.

160 (1) Any additions to or deviations from the Federal Food Code that are included
161 within this law are designed to be specific to the Nation.

162 (2) Should a provision of this law conflict with a provision of the Federal Food
163 Code, the provision of this law shall have priority over the Federal Food Code and
164 govern.

165 (b) The Department shall maintain either an electronic or print copy of the most current
166 edition of the Federal Food Code at its office location and shall make it available or
167 accessible for inspection during regular business hours.

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169 **305.6. Authority**

170 305.6-1. *Authority of the Department.* Subject to all applicable provisions and/or restrictions
171 contained in this or any other governing law of the Nation, the Department shall be responsible for
172 the administration and enforcement of this law, including, but not limited to, that the Department
173 shall have the power to:

174 (a) Grant, deny, renew, suspend, reinstate and/or revoke licenses to operate food service
175 businesses and make all other determinations regarding suitability for licensure and
176 exemption from licensure;

177 (b) Establish licensing fee, fine and penalty schedules;

178 (c) Establish standard operating procedures to govern how it administers and enforces the
179 provisions of this law;

180 (d) Perform all requisite inspections and conduct investigations when necessary; and/or

181 (e) Issue citations and orders for violations of this law and/or when necessary to protect
182 the ~~the~~ welfare of the community.

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186 **305.7. Licensing**

187 305.7-1. *Licenses.* The following shall govern the process for obtaining and renewing a license to
188 operate a food service business within the jurisdiction of the Nation:

189 (a) *License Application.* Persons shall be required to apply to the Department to receive or
190 renew a license to operate a food service business pursuant to the application process
191 established by the Department through adoption of a standard operating procedure that
192 conforms to this law and includes, at a minimum, the following:

193 (1) That, the applicable licensing fee must accompany the application for licensure
194 or license renewal; and

195 (2) That, the Department shall be required to issue or deny a license within thirty
196 (30) days after receiving a complete application for licensure or license renewal, all
197 applicable fees, and any other information required under the governing standard
198 operating procedure.

199 (A) The issuance or renewal of a license may be conditioned on the
200 applicant correcting a violation of this law within a set period of time, which
201 if not corrected within the set time or after an extension of time approved
202 by the Department, would render the license null and void.

203 (B) If the Department denies an application for licensure or license renewal,
204 it shall provide the applicant, in writing, with its reason or reasons for the
205 denial and information on how to appeal its decision.

206 (b) *License Period.*

207 (1) Licenses for permanent food service establishments and independent food
208 service operators shall be issued and renewed by the Department for terms of one
209 (1) year, commencing October 1st and ending September 30th of every year.

210 (2) Licenses for temporary food service establishments shall be ~~granted~~issued by
211 the Department to cover one (1) single event for a period of not
212 more than fourteen (14) consecutive days.

213 (c) *License Fee.* ~~On an annual basis, the Department shall be required to set a licensing~~
214 fee schedule, subject to approval by the Oneida Business Committee through adoption of
215 a resolution, that is applicable to all food service businesses.

216 (1) The fee amount ~~shall cover the initial license term for permanent food service~~
217 establishments and independent food service operators and shall cover a single
218 event of not more than fourteen (14) consecutive days for temporary food service
219 establishments.

220 (A) ~~A separate licensing fee shall be required when applying to renew a~~
221 license for a permanent food service establishment or independent food
222 service operator.

223 (B) The licensing fee for a permanent food service establishment license or
224 independent food service operator license that was issued after October 1st
225 shall be prorated for that term pursuant to a standard operating procedure
226 established by the Department.

227 (C) ~~Unless otherwise provided herein, if an application for licensure is~~
228 denied by the Department, the licensing fee submitted with the application
229 shall be returned to the applicant in full.

230 (2) The Department shall post the licensing fee schedule in a prominent area within
231 its offices and elsewhere as it deems appropriate.

232 (3) *Exemptions.* ~~Non~~The Oneida Nation Food Service Programs and other non-
233 profit _____ service programs of the Nation shall not be required
234 to _____ pay a licensing fee to obtain _____ a license under
235 this law.

236 (A) The Department; may, within its discretion, waive the licensing fee for
237 ~~obtaining other food service businesses to obtain~~ or ~~renewing~~renew a license
238 when justifiable _____ circumstances exist.
239

240 305.7-2. *License Eligibility.*

241 (a) *Permanent Food Service Establishments.* To be eligible to receive a license to operate
242 a permanent food service establishment, applicants must:

243 (1) Submit the appropriate licensing fee with their application;

244 (2) Pass an inspection by the Department of the proposed premises for the
245 permanent food service establishment; and

246 (3) Satisfy any other provision within or arising out of this law that is a prerequisite
247 for licensure to operate a permanent food service establishment.

248 (b) *Temporary Food Service Establishments.* To be eligible to receive a license to operate
249 a temporary food service establishment, applicants must:

250 (1) Submit the appropriate licensing fee with their application;

251 (2) Submit proof of having undergone either:

252 (A) Certification under the applicable food safety training offered through
253 the Department; or

254 (B) Certification or training that the Department, in its discretion, deems
255 equivalent to the corresponding food safety training offered through the
256 Department;.

257 (3) Pass an inspection by the Department of the proposed premises for the
258 temporary food service establishment; and

259 (4) Satisfy any other provision within or arising out of this law that is a prerequisite
260 for licensure to operate a temporary food service establishment.

261 (c) *Independent Food Service Operators.* To be eligible to receive a license to function as
262 an independent food service operator, applicants must:

263 (1) Submit the appropriate licensing fee with their application;

264 (2) Submit proof of having undergone either:

265 (A) Certification under the applicable food safety training offered through
266 the Department; or

267 (B) Certification or training that the Department, in its discretion, deems
268 equivalent to the corresponding food safety training offered through the
269 Department.

270 (3) Pass an inspection by the Department of the proposed premises designated in
271 writing by the applicant as the food preparation site; and

272 (4) Satisfy any other provision within or arising out of this law that is a prerequisite
273 for licensure to function as an independent food service operator.

274 (d) *Training.* The Department shall provide reasonable opportunities for persons to
275 undergo the food safety training that is referenced in section 305.7-2(b)(2)(A) and (c)(2)(A)
276 of this law.
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305.7-3. *License Placement.*

- (a) *Permanent and Temporary Food Service Establishments.* A valid license shall, at all times, be posted in a conspicuous area within the premises of every permanent food service establishment and every temporary food service establishment.
- (b) *Independent Food Service Operators.* A valid license shall, at all times, be prominently displayed on the body of the license holder whenever functioning as an independent food service operator.

305.8. Exemptions

305.8-1. *Cottage Food Sales.* Cottage food operators are exempt from the requirements of this law, except as follows:

- (a) *Registration.* Before selling any cottage food products, individuals must register with the Department as a cottage food operator by providing, at a minimum, their:
 - (1) Full name;
 - (2) Address of domestic residence; and
 - (3) Any additional information required by a standard operating procedure that the Department may establish, consistent with this law, to govern cottage food sales.
 - (A) By registering as a cottage food operator, the individual is confirming that the information he or she provided is correct and agreeing to operate within the confines of the exemption.

- (b) *Labeling.* Cottage food products must be labeled with the following information:
 - (1) The name and address of the cottage food operator;
 - (2) The name of the cottage food product and the date on which it was prepared, processed or canned; and
 - (3) A clearly legible sign or placard that states: “this product is homemade and not subject to inspection by the Nation.”

(c) *Home-canned foods.* Individuals who intend to sell home-canned foods under the cottage food ~~operator~~sales exemption must first complete the food safety training approved by ~~the~~ the Department.

305.8-2. *Prepackaged Restaurants.* Prepackaged restaurants are exempt from the requirements of this law, except as follows:

- (a) *Authorization.* Before selling or serving any prepackaged foods, persons must apply to the Department for permission to operate as a prepackaged restaurant pursuant to the application process established by the Department through adoption of a standard operating procedure ~~that~~ conforms to this law and includes, at a minimum, the following:
 - (1) That, the fee established by the Department to operate a prepackaged restaurant, as set forth in the licensing fee schedule referenced in section 305.7-1 of this law, must accompany the application;
 - (2) That, the applicant passes an inspection by the Department of the proposed premises for the prepackaged restaurant; and
 - (3) That, by applying to operate as a prepackaged restaurant, the applicant is agreeing to serve and/or sell only the prepackaged foods that are approved by the

323 Department and to not engage in any food processing or preparation on the premises
324 of the prepackaged restaurant other than the heating and serving of the food.

325 (A) The Department shall provide written notice, accessible to the public,
326 of the prepackaged foods approved hereunder.

327 (b) Permission to operate as a prepackaged restaurant shall not be conditioned on any prior
328 training or certification in food safety.

329 (1) Paragraph (b) shall not prohibit the Department from issuing a corrective order
330 under section 305.10 of this law that requires food safety training or certification.

331 (c) The Department shall be authorized to conduct a reinspection during reasonable hours
332 of the prepackaged restaurant premises as often as it deems necessary so long as it does not
333 exceed more than one (1) time per year, absent cause.

334 305.8-3. *-Enforcement.* Violations of this section shall be enforced in accordance with section
335 305.10 of this law.

336 (a) Upon receipt of a complaint or its own reasonable suspicion of noncompliance with
337 this section, the Department, in its discretion, may conduct an inspection of a prepackaged
338 restaurant or a cottage food operator's domestic residence; provided, the inspection of the
339 cottage food operator's domestic residence is limited to the subject matter of the complaint
340 or event giving rise to the Department's reasonable suspicion.

341 (b) This section does not preempt the application of any other law of the Nation or other
342 local governing ordinance to which individuals must comply.

343 (c) This section does not limit the liability of the owner of a prepackaged restaurant or a
344 cottage food operator for damages that arise out of their sale or service of food hereunder.
345

346 **305.9 Inspections**

347 305.9-1. In addition to the inspections required under section 305.7 of this law, no more than two
348 (2) times per license term, the Department may, for any reason, enter a food service business to
349 conduct an inspection, so long as at a reasonable hour.

350 305.9-2. The Department may, at any time during the term of a license, enter a food service
351 business to conduct an unscheduled inspection based on the following:

352 (a) Receipt of a complaint;

353 (b) Outbreak of a food borne illness; and/or

354 (c) Reasonable suspicion of a violation of this law or an emergency.

355 305.9-3. Any reinspection that must be conducted by the Department as a result of a violation of
356 this law, will result in an additional fee as set forth in the license fee schedule.
357

358 **305.10. Violations, Enforcement**

359 305.10-1. *Non-compliance.* Violations of this law may result in any one or more of the following
360 as determined by the Department:

361 (a) The suspension or revocation of a license or license exemption status;

362 (b) The issuance of an order to close down; and/or

363 (c) The issuance of a citation that may include one or more of the fines, penalties and/or
364 other corrective orders set forth in the fine and penalty schedule established by the
365 Department, subject to approval of the Oneida Business Committee through adoption by
366 resolution.

367 (1) Failure to pass an inspection conducted pursuant to this law may be cause for
368 the issuance of a citation hereunder.

369 (2) Citations shall be processed in accordance with the procedure contained in the
370 Nation's laws and policies governing citations.

371 305.10-2. In addition to satisfying any other corrective order issued by the Department under
372 section 305.10-1 of this law, a food service business, cottage food operator or prepackaged
373 restaurant that has been closed down due to a violation of this law must pass a reinspection by the
374 Department before being re-eligible for operation.

375 (a) A food service business that has been closed down may only receive a probationary
376 license for six (6) months upon evidence of satisfactory compliance with this law.

377 (1) After six (6) months of satisfactory compliance with this law, as determined by
378 the Department upon a follow-up inspection, the license holder may apply for an
379 annual license.

380 (b) A food service business or prepackaged restaurant that has had its license or license
381 exemption status suspended or has become subject to a close down order shall not be
382 entitled to a reimbursement of all or any portion of the licensing —fee or fees.

383 305.10-3. *Emergency*. The Department may order a close down of a food service business,
384 cottage food operation and/or prepackaged restaurant immediately on an emergency basis upon
385 evidence of a serious health and/or safety threat to the community.

386 (a) Persons issued a closed down order by the Department as an emergency measure
387 hereunder must provide evidence of compliance to the Department and pass an inspection
388 by the Department prior to being allowed to re-open and/or continue operations.

389
390 **305.11. Appeal Rights**

391 305.11-1. Persons who disagree with the decisions of the Department regarding license or license
392 exemption eligibility, inspections, orders to close down and/or license or license exemption
393 suspensions or revocations may appeal to the Trial Court of the Judiciary.

394 (a) Hearings by the Judiciary will be pursuant to the rules established for the Judiciary.

395 305.11-2. Persons who disagree with the issuance of a citation for violations of this law shall
396 contest the citation in accordance with the procedure contained in the Nation's laws and policies
397 governing citations.

398
399 *End.*

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Adopted – BC-06-13-01-B

402 Amended – BC-02-25-15-C

403 Amended – BC-__-__-__-__

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Title 3. Health and Public Safety – Chapter 305

Kahkwaʔó·ku

about the food

ONEIDA FOOD SERVICE

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305.6. Authority	

305.1. Purpose and Policy

305.1-1. *Purpose.* The purpose of this law is to ensure the safety of food that is provided to consumers at retail or through an Oneida Nation Food Service Program by establishing a system of overlapping safeguards designed to minimize foodborne illness; ensure employee health, industry manager knowledge, safe food handling, nontoxic/cleanable equipment and acceptable levels of sanitation on the premises of food service businesses; and promote fair dealings with members of the community through adoption of licensing requirements, exemptions, regulation, control, supervision and enforcement procedures that govern food service businesses within the jurisdiction of the Nation.

305.1-2. *Policy.* It is the policy of the Nation to protect the health, welfare and safety of the community and to strengthen the Nation’s self-governance by ensuring, through the exercise of its inherent sovereignty over the Nation’s resources and membership, that food provided at retail or through an Oneida Nation Food Service Program is unadulterated, prepared in a clean environment and honestly presented.

305.2. Adoption, Amendment, Repeal

305.2-1. This law was adopted by the Oneida Business Committee by resolution BC-06-13-01-B and amended by resolutions BC-02-25-15-C and BC-__-__-__-__.

305.2-2. This law may be amended or repealed by the Oneida Business Committee and/or Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

305.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

305.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

305.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

305.3. Definitions

305.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

- (a) “Close down” means an order issued by the Department to discontinue operation of a food service business or exempt operation under section 305.8 of this law in order to protect the health, safety and/or welfare of the community.

- 48 (b) “Consumer” means an individual who is a member of the public; takes possession of
49 food; is not functioning in the capacity of a food service business, a cottage food operator,
50 a prepackaged restaurant, or a food processing plant; and does not offer the food for resale.
51 (c) “Cottage food operator” means an individual who, exclusively within the home kitchen
52 of his or her domestic residence, produces cottage food products for direct sale only.
53 (d) “Cottage food products” mean foods, produced within the home kitchen of a domestic
54 residence, that are non-potentially hazardous, including non-perishable baked goods such
55 as cakes, most fruit pies, breads, brownies, cookies and muffins; dry mixes; dried fruit;
56 jams, jellies and preserves; home-canned foods such as apples, peaches and lemons or
57 salsa, pickled vegetables and hot sauces; and other non-potentially hazardous foods that
58 the Department characterizes as cottage food products for purposes of this law.
59 (e) “Department” means the Environmental, Health and Safety Department within the
60 Nation’s Environmental, Health, Safety and Land Division.
61 (f) “Direct sale” means a consumer’s face-to-face purchase of a cottage food product from
62 a cottage food operator that does not include purchases through consignment, mail order,
63 or the internet, though nothing herein shall be interpreted to prohibit a cottage food operator
64 from using the internet for the sole purpose of advertising his or her cottage food products.
65 (g) “Domestic residence” means the single-family house or unit in a multiunit residential
66 structure located at the address that the applicant lists as being his or her primary residence
67 when applying to the Department for a cottage food exemption under this law.
68 (h) “Emergency” means the occurrence or discovery of an unforeseen event that requires
69 immediate attention, the absence of which could endanger the health or safety of others.
70 (i) “Federal Food Code” means the most current edition of the United States Public Health
71 Service, Food and Drug Administration Food Code.
72 (j) “Fine” means a monetary punishment issued to a person for violation of this law.
73 (k) “Food” means a raw, cooked or processed edible substance; ice; beverage; or ingredient
74 used or intended for use or for sale in whole or in part for human consumption or chewing
75 gum.
76 (l) “Food service business” means, whether individually or collectively, a permanent food
77 service establishment; a temporary food service establishment; and/or an independent food
78 service operator. The following shall not qualify as a food service business under this law:
79 (1) Private rummage sales;
80 (2) Community sponsored non-profit fundraising and/or charity events;
81 (3) Cottage food operators who satisfy the requirements of this law; and/or
82 (4) Prepackaged restaurants that satisfy the requirements of this law.
83 (m) “Home-canned foods” means home-canned fruits and vegetables that are naturally
84 acidic or have been acidified by pickling or fermenting and have an equilibrium pH of 4.6
85 or lower.
86 (n) “Independent food service operator” means a person, other than one who qualifies as a
87 cottage food operator, who sells, for profit, food that is prepared off-site, independent of a
88 permanent establishment, at or within a location approved by the Department.
89 (o) “Judiciary” means the Oneida Nation Judiciary, which is the judicial system that was
90 established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer
91 the judicial authorities and responsibilities of the Nation.

92 (p) "License" means the tangible proof of authorization from the Department to operate a
93 permanent food service establishment, operate a temporary food service establishment and/
94 or function as an independent food service operator.

95 (q) "Nation" means the Oneida Nation.

96 (r) "Penalty" means a punishment, other than a fine, imposed on a person for violation of
97 this law.

98 (s) "Permanent food service establishment" means a permanent unit and/or location where
99 food is processed on the premises, usually for retail sale, and intended for individual
100 consumption, whether on or off the premises, including, but not limited to, the following:

101 (1) A restaurant or other eating/drinking establishment that does not qualify as a
102 prepackaged restaurant;

103 (2) A market or grocery store;

104 (3) A catering business;

105 (4) A bakery or confectionary;

106 (5) A convenience store or gas station store;

107 (6) An Oneida Nation Food Service Program; and/or

108 (7) A mobile food truck that requires a Department approved service base to
109 operate.

110 (t) "Person" means a natural person(s), sole proprietorship, partnership, corporation,
111 limited liability company or any other form of a legal entity.

112 (u) "Potentially hazardous food" means food that requires time and temperature control
113 for safety to limit toxin formation or the growth of pathogenic microorganisms.

114 (v) "Prepackaged restaurant" means an establishment that serves or sells only packaged
115 foods that are prepared and packaged off-premise by a licensed processor with preparation
116 on the premise limited to heating and serving.

117 (w) "Reservation" means all the property within the exterior boundaries of the Reservation
118 of the Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida 7 Stat. 566,
119 and any lands added thereto pursuant to federal law.

120 (x) "Temporary food service establishment" means a non-permanent food service
121 establishment that operates at a fixed location for a limited number of consecutive days in
122 conjunction with a single event.

124 **305.4. Jurisdiction**

125 305.4-1. *Personal Jurisdiction.* This law applies to:

126 (a) All members of the Nation; the Nation's entities and corporations; and members of
127 other federally-recognized tribes;

128 (b) Individuals and businesses leasing, occupying, or otherwise using fee land owned by
129 the Nation or by individual members of the Nation; and/or lands held in trust on behalf of
130 the Nation or individual members of the Nation; and

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

134 (1) By entering into a consensual relationship with the Nation, or with the Nation's
135 entities, corporations or members, including, but not limited to, contracts or other
136 agreements; or

137 (2) By other facts which manifest an intent to consent to the authority of the Nation,
138 including, but not limited to, the failure to raise an objection to the exercise of
139 personal jurisdiction in a timely manner.

140 305.4-2. *Territorial Jurisdiction.* This law extends within the Reservation to all land owned by
141 the Nation and individual trust or fee land of a member of the Nation.

142 305.4-3. *Liberal Construction.* The provisions of this law shall apply to the fullest extent of the
143 sovereign jurisdiction of the Nation and shall be liberally construed to give full effect to the
144 objectives and purposes for which it was enacted.

145

146 **305.5. Compliance**

147 305.5-1. No person shall operate a food service business without a valid, unexpired license from
148 the Department.

149 (a) Licenses to operate a food service business are non-transferable.

150 (b) Unless otherwise provided herein, strict compliance with this law is required before a
151 license may be issued or renewed.

152 305.5-2. *Federal Food Code.* The Nation finds that the Federal Food Code establishes a high level
153 of stringent food and beverage handling safety standards that should apply to all food service
154 businesses within its jurisdiction.

155 (a) Unless otherwise provided herein, the Nation hereby adopts the entire Federal Food
156 Code through incorporation by reference into this law.

157 (1) Any additions to or deviations from the Federal Food Code that are included
158 within this law are designed to be specific to the Nation.

159 (2) Should a provision of this law conflict with a provision of the Federal Food
160 Code, the provision of this law shall have priority over the Federal Food Code and
161 govern.

162 (b) The Department shall maintain either an electronic or print copy of the most current
163 edition of the Federal Food Code at its office location and shall make it available or
164 accessible for inspection during regular business hours.

165

166 **305.6. Authority**

167 305.6-1. *Authority of the Department.* Subject to all applicable provisions and/or restrictions
168 contained in this or any other governing law of the Nation, the Department shall be responsible for
169 the administration and enforcement of this law, including, but not limited to, that the Department
170 shall have the power to:

171 (a) Grant, deny, renew, suspend, reinstate and/or revoke licenses to operate food service
172 businesses and make all other determinations regarding suitability for licensure and
173 exemption from licensure;

174 (b) Establish licensing fee, fine and penalty schedules;

175 (c) Establish standard operating procedures to govern how it administers and enforces the
176 provisions of this law;

177 (d) Perform all requisite inspections and conduct investigations when necessary; and/or

178 (e) Issue citations and orders for violations of this law and/or when necessary to protect
179 the welfare of the community.

180

181

182

183 **305.7. Licensing**

184 305.7-1. *Licenses.* The following shall govern the process for obtaining and renewing a license to
185 operate a food service business within the jurisdiction of the Nation:

186 (a) *License Application.* Persons shall be required to apply to the Department to receive or
187 renew a license to operate a food service business pursuant to the application process
188 established by the Department through adoption of a standard operating procedure that
189 conforms to this law and includes, at a minimum, the following:

190 (1) That, the applicable licensing fee must accompany the application for licensure
191 or license renewal; and

192 (2) That, the Department shall be required to issue or deny a license within thirty
193 (30) days after receiving a complete application for licensure or license renewal, all
194 applicable fees, and any other information required under the governing standard
195 operating procedure.

196 (A) The issuance or renewal of a license may be conditioned on the
197 applicant correcting a violation of this law within a set period of time, which
198 if not corrected within the set time or after an extension of time approved
199 by the Department, would render the license null and void.

200 (B) If the Department denies an application for licensure or license renewal,
201 it shall provide the applicant, in writing, with its reason or reasons for the
202 denial and information on how to appeal its decision.

203 (b) *License Period.*

204 (1) Licenses for permanent food service establishments and independent food
205 service operators shall be issued and renewed by the Department for terms of one
206 (1) year, commencing October 1st and ending September 30th of every year.

207 (2) Licenses for temporary food service establishments shall be issued by the
208 Department to cover one (1) single event for a period of not more than fourteen
209 (14) consecutive days.

210 (c) *License Fee.* On an annual basis, the Department shall be required to set a licensing
211 fee schedule, subject to approval by the Oneida Business Committee through adoption of
212 a resolution, that is applicable to all food service businesses.

213 (1) The fee amount shall cover the initial license term for permanent food service
214 establishments and independent food service operators and shall cover a single
215 event of not more than fourteen (14) consecutive days for temporary food service
216 establishments.

217 (A) A separate licensing fee shall be required when applying to renew a
218 license for a permanent food service establishment or independent food
219 service operator.

220 (B) The licensing fee for a permanent food service establishment license or
221 independent food service operator license that was issued after October 1st
222 shall be prorated for that term pursuant to a standard operating procedure
223 established by the Department.

224 (C) Unless otherwise provided herein, if an application for licensure is
225 denied by the Department, the licensing fee submitted with the application
226 shall be returned to the applicant in full.

227 (2) The Department shall post the licensing fee schedule in a prominent area within
228 its offices and elsewhere as it deems appropriate.

229 (3) *Exemptions.* The Oneida Nation Food Service Programs and other non-profit
230 service programs of the Nation shall not be required to pay a licensing fee to obtain
231 a license under this law.

232 (A) The Department may, within its discretion, waive the licensing fee for
233 other food service businesses to obtain or renew a license when justifiable
234 circumstances exist.

235 305.7-2. *License Eligibility.*

236 (a) *Permanent Food Service Establishments.* To be eligible to receive a license to operate
237 a permanent food service establishment, applicants must:

238 (1) Submit the appropriate licensing fee with their application;

239 (2) Pass an inspection by the Department of the proposed premises for the
240 permanent food service establishment; and

241 (3) Satisfy any other provision within or arising out of this law that is a prerequisite
242 for licensure to operate a permanent food service establishment.

243 (b) *Temporary Food Service Establishments.* To be eligible to receive a license to operate
244 a temporary food service establishment, applicants must:

245 (1) Submit the appropriate licensing fee with their application;

246 (2) Submit proof of having undergone either:

247 (A) Certification under the applicable food safety training offered through
248 the Department; or

249 (B) Certification or training that the Department, in its discretion, deems
250 equivalent to the corresponding food safety training offered through the
251 Department.

252 (3) Pass an inspection by the Department of the proposed premises for the
253 temporary food service establishment; and

254 (4) Satisfy any other provision within or arising out of this law that is a prerequisite
255 for licensure to operate a temporary food service establishment.

256 (c) *Independent Food Service Operators.* To be eligible to receive a license to function as
257 an independent food service operator, applicants must:

258 (1) Submit the appropriate licensing fee with their application;

259 (2) Submit proof of having undergone either:

260 (A) Certification under the applicable food safety training offered through
261 the Department; or

262 (B) Certification or training that the Department, in its discretion, deems
263 equivalent to the corresponding food safety training offered through the
264 Department.

265 (3) Pass an inspection by the Department of the proposed premises designated in
266 writing by the applicant as the food preparation site; and

267 (4) Satisfy any other provision within or arising out of this law that is a prerequisite
268 for licensure to function as an independent food service operator.

269 (d) *Training.* The Department shall provide reasonable opportunities for persons to
270 undergo the food safety training that is referenced in section 305.7-2(b)(2)(A) and (c)(2)(A)
271 of this law.
272
273
274

275 305.7-3. *License Placement.*

276 (a) *Permanent and Temporary Food Service Establishments.* A valid license shall, at all
277 times, be posted in a conspicuous area within the premises of every permanent food service
278 establishment and every temporary food service establishment.

279 (b) *Independent Food Service Operators.* A valid license shall, at all times, be prominently
280 displayed on the body of the license holder whenever functioning as an independent food
281 service operator.

282

283 **305.8. Exemptions**

284 305.8-1. *Cottage Food Sales.* Cottage food operators are exempt from the requirements of this
285 law, except as follows:

286 (a) *Registration.* Before selling any cottage food products, individuals must register with
287 the Department as a cottage food operator by providing, at a minimum, their:

288 (1) Full name;

289 (2) Address of domestic residence; and

290 (3) Any additional information required by a standard operating procedure that the
291 Department may establish, consistent with this law, to govern cottage food sales.

292 (A) By registering as a cottage food operator, the individual is confirming
293 that the information he or she provided is correct and agreeing to operate
294 within the confines of the exemption.

295 (b) *Labeling.* Cottage food products must be labeled with the following information:

296 (1) The name and address of the cottage food operator;

297 (2) The name of the cottage food product and the date on which it was prepared,
298 processed or canned; and

299 (3) A clearly legible sign or placard that states: “this product is homemade and not
300 subject to inspection by the Nation.”

301 (c) *Home-canned foods.* Individuals who intend to sell home-canned foods under the
302 cottage food sales exemption must first complete the food safety training approved by the
303 Department.

304 305.8-2. *Prepackaged Restaurants.* Prepackaged restaurants are exempt from the requirements of
305 this law, except as follows:

306 (a) *Authorization.* Before selling or serving any prepackaged foods, persons must apply to
307 the Department for permission to operate as a prepackaged restaurant pursuant to the
308 application process established by the Department through adoption of a standard operating
309 procedure that conforms to this law and includes, at a minimum, the following:

310 (1) That, the fee established by the Department to operate a prepackaged restaurant,
311 as set forth in the licensing fee schedule referenced in section 305.7-1 of this law,
312 must accompany the application;

313 (2) That, the applicant passes an inspection by the Department of the proposed
314 premises for the prepackaged restaurant; and

315 (3) That, by applying to operate as a prepackaged restaurant, the applicant is
316 agreeing to serve and/or sell only the prepackaged foods that are approved by the
317 Department and to not engage in any food processing or preparation on the premises
318 of the prepackaged restaurant other than the heating and serving of the food.

319 (A) The Department shall provide written notice, accessible to the public,
320 of the prepackaged foods approved hereunder.

321 (b) Permission to operate as a prepackaged restaurant shall not be conditioned on any prior
322 training or certification in food safety.

323 (1) Paragraph (b) shall not prohibit the Department from issuing a corrective order
324 under section 305.10 of this law that requires food safety training or certification.

325 (c) The Department shall be authorized to conduct a reinspection during reasonable hours
326 of the prepackaged restaurant premises as often as it deems necessary so long as it does not
327 exceed more than one (1) time per year, absent cause.

328 305.8-3. *Enforcement.* Violations of this section shall be enforced in accordance with section
329 305.10 of this law.

330 (a) Upon receipt of a complaint or its own reasonable suspicion of noncompliance with
331 this section, the Department, in its discretion, may conduct an inspection of a prepackaged
332 restaurant or a cottage food operator's domestic residence; provided, the inspection of the
333 cottage food operator's domestic residence is limited to the subject matter of the complaint
334 or event giving rise to the Department's reasonable suspicion.

335 (b) This section does not preempt the application of any other law of the Nation or other
336 local governing ordinance to which individuals must comply.

337 (c) This section does not limit the liability of the owner of a prepackaged restaurant or a
338 cottage food operator for damages that arise out of their sale or service of food hereunder.
339

340 **305.9 Inspections**

341 305.9-1. In addition to the inspections required under section 305.7 of this law, no more than two
342 (2) times per license term, the Department may, for any reason, enter a food service business to
343 conduct an inspection, so long as at a reasonable hour.

344 305.9-2. The Department may, at any time during the term of a license, enter a food service
345 business to conduct an unscheduled inspection based on the following:

346 (a) Receipt of a complaint;

347 (b) Outbreak of a food borne illness; and/or

348 (c) Reasonable suspicion of a violation of this law or an emergency.

349 305.9-3. Any reinspection that must be conducted by the Department as a result of a violation of
350 this law, will result in an additional fee as set forth in the license fee schedule.
351

352 **305.10. Violations, Enforcement**

353 305.10-1. *Non-compliance.* Violations of this law may result in any one or more of the following
354 as determined by the Department:

355 (a) The suspension or revocation of a license or license exemption status;

356 (b) The issuance of an order to close down; and/or

357 (c) The issuance of a citation that may include one or more of the fines, penalties and/or
358 other corrective orders set forth in the fine and penalty schedule established by the
359 Department, subject to approval of the Oneida Business Committee through adoption by
360 resolution.

361 (1) Failure to pass an inspection conducted pursuant to this law may be cause for
362 the issuance of a citation hereunder.

363 (2) Citations shall be processed in accordance with the procedure contained in the
364 Nation's laws and policies governing citations.

365 305.10-2. In addition to satisfying any other corrective order issued by the Department under
366 section 305.10-1 of this law, a food service business, cottage food operator or prepackaged

367 restaurant that has been closed down due to a violation of this law must pass a reinspection by the
368 Department before being re-eligible for operation.

369 (a) A food service business that has been closed down may only receive a probationary
370 license for six (6) months upon evidence of satisfactory compliance with this law.

371 (1) After six (6) months of satisfactory compliance with this law, as determined by
372 the Department upon a follow-up inspection, the license holder may apply for an
373 annual license.

374 (b) A food service business or prepackaged restaurant that has had its license or license
375 exemption status suspended or has become subject to a close down order shall not be
376 entitled to a reimbursement of all or any portion of the licensing fee or fees.

377 305.10-3. *Emergency*. The Department may order a close down of a food service business, cottage
378 food operation and/or prepackaged restaurant immediately on an emergency basis upon evidence
379 of a serious health and/or safety threat to the community.

380 (a) Persons issued a closed down order by the Department as an emergency measure
381 hereunder must provide evidence of compliance to the Department and pass an inspection
382 by the Department prior to being allowed to re-open and/or continue operations.
383

384 **305.11. Appeal Rights**

385 305.11-1. Persons who disagree with the decisions of the Department regarding license or license
386 exemption eligibility, inspections, orders to close down and/or license or license exemption
387 suspensions or revocations may appeal to the Trial Court of the Judiciary.

388 (a) Hearings by the Judiciary will be pursuant to the rules established for the Judiciary.

389 305.11-2. Persons who disagree with the issuance of a citation for violations of this law shall
390 contest the citation in accordance with the procedure contained in the Nation's laws and policies
391 governing citations.
392

393 *End.*
394

395 Adopted – BC-06-13-01-B

396 Amended – BC-02-25-15-C

397 Amended – BC-__-__-__-__

398

Title 3. Health and Public Safety – Chapter 305

~~ONEIDA FOOD SERVICE CODE~~

Kahkwa’ó·ku

about the food

ONEIDA FOOD SERVICE

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305.1. ~~6.~~ Authority

305. ~~Amendment, Repeal~~

~~305.1-1. The Oneida Nation is a federally recognized Indian tribe with the sovereign authority to enact laws as authorized in Article IV, section 1 (f) of the Oneida Constitution.~~

~~305.1-2. The policy of this Code is to ensure the safe food handling and sales by food vendors who sell their products for profit on tribal property within the exterior boundaries of the Oneida Nation in Wisconsin through licensing, regulation, control and supervision of those vendors.~~

~~305.1-3. The purpose of this Code is to protect and preserve the safety of Oneida Nation citizens and others within it’s jurisdiction in conjunction with the most current United States Public Health Service Food Code, hereinafter, the Federal Food Code.~~

~~305.1-4. The Federal Food Code is adopted along with this Code to provide guidelines regulating the retail sale, commercial and institutional service and vending of food; defining permit holder, person in charge, employee, food, potentially hazardous food, food establishment, safe material, sanitation, and other terms; and providing standards for employee food safety knowledge, health and practices, food sources, preparation, holding temperatures, and protection; equipment design, construction, installation, cleaning and sanitation, water and liquid and solid wastes, facilities construction and maintenance, and storage and use of poisonous and toxic materials; requiring a license to operate a food establishment; providing for the restriction or exclusion of employees, the examination and condemnation of food, and the enforcement of this code including the setting of penalties. (Chapter 8 and the Chapter 8 annex, annex 1 of the Federal Food Code.)~~

1. Purpose and Policy

305.1-1. Purpose. The purpose of this law is to ensure the safety of food that is provided to consumers at retail or through an Oneida Nation Food Service Program by establishing a system of overlapping safeguards designed to minimize foodborne illness; ensure employee health, industry manager knowledge, safe food handling, nontoxic/cleanable equipment and acceptable levels of sanitation on the premises of food service businesses; and promote fair dealings with members of the community through adoption of licensing requirements, exemptions, regulation, control, supervision and enforcement procedures that govern food service businesses within the jurisdiction of the Nation.

51 305.1-2. Policy. It is the policy of the Nation to protect the health, welfare and safety of the
52 community and to strengthen the Nation’s self-governance by ensuring, through the exercise of its
53 inherent sovereignty over the Nation’s resources and membership, that food provided at retail or
54 through an Oneida Nation Food Service Program is unadulterated, prepared in a clean environment
55 and honestly presented.

56
57 **305.2. — Adoption, Amendment, Repeal**

58 305.2-1.— ~~This Code law was~~ adopted by the Oneida Business Committee by ~~Resolution#~~
59 ~~€resolution BC-06-13-01-B~~ and amended by ~~resolution~~ resolutions BC-02-25-15-C and ~~is effective~~
60 ~~ten (10) business days after adoption.~~ ~~BC- - - - .~~

61 305.2-2.— ~~This Code law~~ may be amended or repealed by the Oneida Business Committee and/or
62 Oneida General Tribal Council pursuant to the procedures set out in the Oneida
63 Administrative ~~Legislative~~ Procedures Act ~~by the Oneida Business Committee or by the Oneida~~
64 ~~General Tribal Council.~~

65 305.2-3.— ~~Should a provision of this Code law~~ or the application thereof to any person or
66 circumstances be held as invalid, such invalidity shall not affect other provisions of this law which
67 ~~will continue~~ are considered to have legal force without the invalid portions.

68 305.2-4.— ~~All previously enacted or adopted Oneida laws, ordinances, policies or other~~
69 ~~regulations that are inconsistent or conflict with this Code are hereby repealed unless re-enacted~~
70 ~~after adoption of this Code.~~

71
72 305.2-4. In the event of a conflict between a provision of this law and a provision of another law,
73 the provisions of this law shall control.

74 305.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

75
76 **305.3. Definitions**

77 ~~305.3-1. 305.3. — Definitions~~

78 ~~305.3-1.~~ This section shall govern the definitions of words and phrases used within ~~the~~ this law.
79 All words not defined herein shall be used in their ordinary and everyday sense.—

80 ~~(a) “Oneida Nation” means the Oneida Tribe of Indians of Wisconsin.~~

81 ~~(b) “Tribal Property” means property that is owned by the Oneida Nation in fee or held in~~
82 ~~trust for the Oneida Nation by the United States of America.~~

83 ~~(c) “Reservation” means that area in Wisconsin within the exterior boundaries as set out in~~
84 ~~the 1838 Treaty with the United States of America.~~

85 ~~(d) “Federal Food Code” means the most current United States Public Health Service~~
86 ~~Model Food Code.~~

87 ~~(e) “Food Service Establishment” means a permanent unit or location on tribal property~~
88 ~~which food is processed on site and intended for individual consumption usually for retail~~
89 ~~sale. The term includes any such place whether consumption is on or off premises,~~
90 ~~including, but not limited to the following:~~

91 ~~(1) A restaurant or eating/drinking establishment~~

92 ~~(2) A market or grocery~~

93 ~~(3) A catering business~~

94 ~~(4) A bakery or confectionary~~

95 ~~(5) A convenience store or gas station store~~

96 ~~(f) “Independent Food Service Vendors” are those individuals who sell food on tribal~~
97 ~~property for profit that prepare food off site independent of a permanent establishment~~
98 ~~such as _____ (a restaurant, at a source that has been approved by the Environment Health~~
99 ~~and Safety Department.~~

100 ~~(g) “Temporary Food Service” means a food service establishment that operates at a fixed~~
101 ~~location on tribal property for a period of not more than 14 consecutive days in conjunction~~
102 ~~with a single event or celebration.~~

103 ~~(h) “Environmental Department” means the Oneida Environment Health and Safety~~
104 ~~Department, hereinafter, EHS.~~

105 ~~(i) “**Compliance**” means to operate a food service business, i.e. a food service~~
106 ~~establishment, an independent food service or a temporary food service in conformity with~~
107 ~~the requirements of this Code, the Federal Food Code and the EHS standard operating~~
108 ~~procedures.~~

109 ~~(j) The “~~Licensing~~ Department” means that department within the organizational structure of~~
110 ~~the Compliance Division of the Oneida Nation responsible for administering and issuing~~
111 ~~licenses within the tribal jurisdiction in accordance with Oneida Laws, Ordinances and~~
112 ~~Codes.~~

113 ~~(k) “The Business Committee” means the Oneida Business Committee~~

114 ~~(l) “Risk Management” means the Oneida Risk Management Department.~~

115 ~~(m) “Emergency” means that situation an unforeseen occurrence that requires immediate~~
116 ~~attention, the absence of which would endanger the health or safety of others due to the~~
117 ~~imminent nature of the circumstance.~~

118 ~~(n) “Close down” means that the food service vendor, by **an** order of the Compliance~~
119 ~~Division in conjunction with the Business Committee and the Oneida Police Department,~~
120 ~~based upon the recommendation of the EHS, will be prohibited to be open for business to~~
121 ~~the public for the protection of the health, safety or welfare of the community.~~

122 ~~(o) “Judiciary” means the judicial system that was established by Oneida General Tribal~~
123 ~~Council resolution GTC 01 07 13 B to administer the judicial authorities and~~
124 ~~responsibilities of the Tribe.~~

125 ~~(p) Adopt all other definitions as written in the Federal Food Code.~~

127 **305.4. Responsibilities and Duties**

128 **305.4 1.** ~~The EHS Department shall administer and regulate the requirements of this Code and~~
129 ~~the Federal Food Code pursuant to their updated Standard Operating Procedures, hereinafter,~~
130 ~~“SOP’s”, for Food Service Vendors.~~

131 **305.4 2.** ~~The EHS Department shall conduct food handling classes that are required for licensing~~
132 ~~of independent and temporary food vendors. Food service establishment vendors are exempt from~~
133 ~~this requirement but are to uphold other requirements per the Federal Food Code.~~

134 **305.4 3.** ~~The EHS Department shall have a copy of the most current Federal Food Code~~
135 ~~available for inspection at the EHS offices by any and all food service vendors during regular~~
136 ~~business hours.~~

137 **305.4 4.** ~~The EHS Department shall have a copy of their SOP’s for Food Service Vendors~~
138 ~~available for inspection at the EHS offices by any and all food service vendors during regular~~
139 ~~business hours.~~

140 **305.4 5.** ~~Risk Management shall make the determination to ensure that the vendor has adequate~~
141 ~~insurance coverage.~~

142 ~~305.4 6.— The **Licensing** Department shall issue a Food Service License, Temporary Food~~
143 ~~Service License, and a badge for Independent Food Vendors upon successful compliance of the~~
144 ~~requirements of this Code and the Federal Food Code.~~

145 ~~305.4 7.— The Licensing Department, in conjunction with the EHS Department, shall determine~~
146 ~~the fees for the Food Service Licenses annually and post these prominently in the EHS a Licensing~~
147 ~~Department.~~

148 ~~305.4 8.— The Licensing Department shall determine the monetary fines for noncompliance with~~
149 ~~this Code as approved by the Business Committee.~~

150
151 ~~**305.5.— Compliance**~~

152 ~~305.5 1.— Strict compliance with the specific laws found in this Code and the Federal Food~~
153 ~~Code are required.~~

154 ~~305.5 2.— Additions or modifications to the Federal Food Code found in this Code are designed~~
155 ~~to be Oneida specific.~~

156 ~~305.5 3.— Non compliance with this Code or the Federal Food Code will be addressed by the~~
157 ~~License Department of the Compliance Division upon written complaint and or recommendation~~
158 ~~from the EHS or Risk Management Departments.~~

159
160 ~~**305.6.— Requirements for Licensing**~~

161 ~~305.6 1.— No person or person, corporation or firm shall operate a food service establishment~~
162 ~~either permanent or temporary, or sell food as an independent food service vendor on tribal~~
163 ~~property, who does not have a valid, unsuspended, unrevoked Oneida Food Vendors License~~
164 ~~issued by the License Department.—~~

165 ~~305.6 2.— Only a person or persons, corporation or firm that complies with the requirements of~~
166 ~~this Code and the Federal Food Code shall be entitled to receive and retain an Oneida Food~~
167 ~~Vendors License.—~~

168 ~~305.6 3.— A valid license shall be posted in every food service establishment or temporary food~~
169 ~~service premises; and every independent food vendor shall prominently display the valid badge~~
170 ~~issued by the EHS Department.~~

171 ~~305.6 4.— A Food Service License will be issued as follows:~~

172 ~~(a) All Food Service Establishments, Independent Food Service vendors and Temporary~~
173 ~~Food Service vendors must meet the general requirements of the Federal Food Code.~~

174 ~~(b) Independent Food Vendors and Temporary Food Vendors are required to satisfy the~~
175 ~~requirements of the EHS safe food handling instruction and certificate of completion of~~
176 ~~training must be presented to the Licensing Department prior to the issuance of a Food~~
177 ~~Service License.~~

178 ~~Food Service Establishments must satisfy the requirements of the EHS's pre inspection~~
179 ~~report which will be provided to the Licensing Department prior to the issuance of a Food~~
180 ~~Service License.~~

181 ~~(c) The Licensing Department shall issue a Food Service License pursuant to the~~
182 ~~recommendations by EHS regarding assurances that the applicant has met the conditions~~
183 ~~that are required for a satisfactory score pursuant to this Code, the EHS SOP's and the~~
184 ~~Federal Food Code guidelines with the Hazard Analysis and Critical Control Point,~~
185 ~~Techniques of Quality Control.~~

186 ~~(d) Food Service Licenses for permanent Food Service Establishments and Independent~~
187 ~~Food Service vendors shall be issued by the License Department for a 12 month period~~

188 beginning at the fiscal year, October 1 and ending September 30 of the following fiscal
189 year.

190 (e) Those food vendors that initiate their business at a time other than October 1 of any
191 given year shall have their fees prorated for that year.

192 (f) Renewal of a license will be for an additional 12 months per fiscal year by the License
193 Department upon approval of the EHS Department.

194 (g) Temporary Food Service Licenses shall be issued for no more than 14 days at a time.

195 (h) Temporary Food Service Vendors must have at least one food handler that has
196 successfully completed the EHS food handling instruction and have their certificate of
197 completion displayed at all times during hours of discontinue operation.

198 (i) Food Service Licenses for Food Service Establishments and Temporary Food Service
199 vendors shall be displayed in a conspicuous location within the permanent or temporary
200 food service establishments.

201 (j) Independent Food Service Vendors must display their badges. (See 305.10, below.)

202 (k) No food prepared by a Food Service Vendor shall be prepared in any room used as, or
203 adjacent to, living or sleeping quarters.

204 305.6.5. — Oneida Tribal Enterprise Units and Oneida Tribal Business Units shall be required to
205 adhere to the requirements of this code when selling food for profit on tribal property.

206 305.6.6. — Food Service Licenses are non-transferable.

207 208 **305.7. — Insurance**

209 305.7.1. — Food Service Establishments and Independent Vendors are required to have adequate
210 insurance as determined by the Risk Management Department's Standard Operating Procedures.

211 305.7.2. — Upon satisfying the requirements of the EHS Department, Food Service Establishments
212 and Independent Food Service Vendors must provide the necessary documents of insurance to
213 Risk Management Department.

214 305.7.3. — At any time during the term of the food service license, if the vendor loses his or her
215 insurance coverage, this must be reported immediately by the vendor to Risk Management and/or
216 the License Department.

217 305.7.4. — Temporary Food Service vendors are exempt from the requirement for additional
218 insurance under this of a food service business or exempt operation under section 305.8 of
219 this law in order to protect the health, safety and/or welfare of the community.

220 221 222 **305.8. — Inspections**

223 305.8.1. — Food Establishment Vendors and Temporary Food Service Vendors who apply for a
224 license must undergo a pre-inspection of the permanent or temporary establishment by the EHS
225 Department inspector that results in a satisfactory score under the Federal Food Guidelines.

226 ~~305.8.2. — Independent Food Service Vendors who apply for a license must undergo a pre-~~
227 ~~inspection of the kitchen or original food preparation premises by the EHS Department inspector~~
228 ~~that results in a satisfactory score under the Federal Guidelines.~~

229 ~~305.8.3. — Inspections of the food service premises by the EHS~~ (b) "Consumer"
230 means an individual who is a member of the public; takes possession of food; is not
231 functioning in the capacity of a food service business, a cottage food operator, a prepackaged
232 restaurant, or a food processing plant; and does not offer the food for resale.

233 (c) “Cottage food operator” means an individual who, exclusively within the home kitchen
234 of his or her domestic residence, produces cottage food products for direct sale only.

235 (d) “Cottage food products” mean foods, produced within the home kitchen of a domestic
236 residence, that are non-potentially hazardous, including non-perishable baked goods such
237 as cakes, most fruit pies, breads, brownies, cookies and muffins; dry mixes; dried fruit;
238 jams, jellies and preserves; home-canned foods such as apples, peaches and lemons or
239 salsa, pickled vegetables and hot sauces; and other non-potentially hazardous foods that
240 the Department characterizes as cottage food products for purposes of this law.

241 (e) “Department will be scheduled twice a year.
242 305.8-4. — At any time during the term of—” means the license, either upon receipt of a
243 complaint or upon their own volition, the EHS Environmental, Health and Safety Department may
244 conduct an unscheduled inspection of a vendors food preparation site within the Nation’s
245 Environmental, Health, Safety and Land Division.

246 305.8-5. — A reinspection conducted as a result of a prior violation of this code or the Federal Food
247 Code, will be an additional fee to the vendor and must achieve a satisfactory score under the
248 Federal guidelines to cure the violation.

249
250 **305.9. — Fees**

251 305.9-1. — The Food Service license fees shall cover a twelve (12) month period and shall be paid
252 in advance with the application for licensure.

253 305.9-2. — The fee shall be paid annually at the beginning of each fiscal year which is October 1
254 through September 30 of the following year.

255 305.9-3. — The license fees will be prorated for those applicants who start up their business prior
256 to the beginning of the fiscal year.

257 305.9-4. — The fee shall be returned in full if the application is denied.

258 305.9-5. — The licensing agent shall keep fee records.

259 305.9-6. — Food Service vendors that have had their license suspended or their businesses closed
260 will not be entitled to a refund of their fees.

261 305.9-7. — The fee for a food service license shall be pursuant to an equitable fee schedule as
262 established by the EHS and License Department as reviewed and approved by the Business
263 Committee and shall be available in the Licensing and EHS Departments for review.

264 305.9-8. — The fee schedules may be adjusted annually.

265 305.9-9. — Food Service vendor fees shall be used for the operational budget of the EHS (80%)
266 and administrative budget of the License Department (20%).

267 305.9-10. — Oneida Tribal Enterprise Units are required to pay the license fees under this code.

268 305.9-11. — Oneida Tribal Business Units are exempt from the fee requirements.

269
270 **305.10. — Independent Food Service Vendors Badge**

271 305.10-1. — Upon compliance with the requirements of this Code and the Federal Food Code, the
272 Independent Food Service Vendors and their employees, if any, will be issued a badge by EHS
273 with the vendors/employee’s photograph and license number clearly visible.

274 305.10-2. — The badge must be worn by the licensed Independent Food Service Vendor and
275 employees in a manner that is clearly visible to the public at all times while engaging in the sale
276 of their food product.

277 305.10-3. — Independent Food Service vendor badges are non-transferable and must be worn only
278 by the individual to whom it was issued.

279
280
281 **305.11. — Exceptions and Exemptions**

282 ~~305.11-1. The following food service vendors will be exempt from the requirements of this Code:~~

283 ~~(a) (f) “Direct sale” means a consumer’s face-to-face purchase of a cottage food product from~~
284 ~~a cottage food operator that does not include purchases through consignment, mail order,~~
285 ~~or the internet, though nothing herein shall be interpreted to prohibit a cottage food operator~~
286 ~~from using the internet for the sole purpose of advertising his or her cottage food products.~~

287 ~~(g) “Domestic residence” means the single-family house or unit in a multiunit residential~~
288 ~~structure located at the address that the applicant lists as being his or her primary residence~~
289 ~~when applying to the Department for a cottage food exemption under this law.~~

290 ~~(h) “Emergency” means the occurrence or discovery of an unforeseen event that requires~~
291 ~~immediate attention, the absence of which could endanger the health or safety of others.~~

292 ~~(i) “Federal Food Code” means the most current edition of the United States Public Health~~
293 ~~Service, Food and Drug Administration Food Code.~~

294 ~~(j) “Fine” means a monetary punishment issued to a person for violation of this law.~~

295 ~~(k) “Food” means a raw, cooked or processed edible substance; ice; beverage; or ingredient~~
296 ~~used or intended for use or for sale in whole or in part for human consumption or chewing~~
297 ~~gum.~~

298 ~~(l) “Food service business” means, whether individually or collectively, a permanent food~~
299 ~~service establishment; a temporary food service establishment; and/or an independent food~~
300 ~~service operator. The following shall not qualify as a food service business under this law:~~

301 ~~(1) Private rummage sales;~~

302 ~~(2) Community sponsored non-profit ~~fund raising~~fundraising and/or charity~~
303 ~~events.;~~

304 ~~(e) Official Tribal meetings such as GTC Meetings.~~

305 ~~(d) (3) Cottage food operators who satisfy the requirements of this law; and/or~~

306 ~~(4) Prepackaged restaurants that satisfy the requirements of this law.~~

307 ~~(m) “Home-canned foods” means home-canned fruits and vegetables that are naturally~~
308 ~~acidic or have been acidified by pickling or fermenting and have an equilibrium pH of 4.6~~
309 ~~or lower.~~

310 ~~(n) “Independent food service operator” means a person, other than one who qualifies as a~~
311 ~~cottage food operator, who sells, for profit, food that is prepared off-site, independent of a~~
312 ~~permanent establishment, at or within a location approved by the Department.~~

313 ~~(o) “Judiciary” means the Oneida Nation Judiciary, which is the judicial system that was~~
314 ~~established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer~~
315 ~~the judicial authorities and responsibilities of the Nation.~~

316 ~~(p) “License” means the tangible proof of authorization from the Department to operate a~~
317 ~~permanent food service establishment, operate a temporary food service establishment and/~~
318 ~~or function as an independent food service operator.~~

319 ~~(q) “Nation” means the Oneida Nation.~~

320 ~~(r) “Penalty” means a punishment, other than a fine, imposed on a person for violation of~~
321 ~~this law.~~

322 ~~(s) “Permanent food service establishment” means a permanent unit and/or location where~~
323 ~~food is processed on the premises, usually for retail sale, and intended for individual~~
324 ~~consumption, whether on or off the premises, including, but not limited to, the following:~~

325 (1) A restaurant or other eating/drinking establishment that does not qualify as a
326 prepackaged restaurant;

327 (2) A market or grocery store;

328 (3) A catering business;

329 (4) A bakery or confectionary;

330 (5) A convenience store or gas station store;

331 (6) An Oneida Nation Food Service Program; and/or

332 (7) A mobile food truck that requires a Department approved service base to
333 operate.

334 (t) "Person" means a natural person(s), sole proprietorship, partnership, corporation,
335 limited liability company or any other form of a legal entity.

336 (u) "Potentially hazardous food" means food that requires time and temperature control
337 for safety to limit toxin formation or the growth of pathogenic microorganisms.

338 (v) "Prepackaged restaurant" means an establishment that serves or sells only packaged
339 foods that are prepared and packaged off-premise by a licensed processor with preparation
340 on the premise limited to heating and serving.

341 (w) "Reservation" means all the property within the exterior boundaries of the Reservation
342 of the Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida 7 Stat. 566,
343 and any lands added thereto pursuant to federal law.

344 (x) "Temporary food service establishment" means a non-permanent food service
345 establishment that operates at a fixed location for a limited number of consecutive days in
346 conjunction with a single event.

347 305.4 ~~old on~~. **Jurisdiction**

348 305.4-1. Personal Jurisdiction. This law applies to:

349 (a) All members of the Nation; the Nation's entities and corporations; and members of
350 other federally-recognized tribes;

351 (b) Individuals and businesses leasing, occupying, or otherwise using fee land ~~other than~~
352 tribally-owned by the Nation or by individual members of the Nation; and/or lands held in
353 trust on behalf of the Nation or individual members of the Nation; and

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

357 (1) By entering into a consensual relationship with the Nation, or with the Nation's
358 entities, corporations or members, including, but not limited to, contracts or other
359 agreements; or

360 (2) By other facts which manifest an intent to consent to the authority of the Nation,
361 including, but not limited to, the failure to raise an objection to the exercise of
362 personal jurisdiction in a timely manner.

363 305.4-2. Territorial Jurisdiction. This law extends within the Reservation to all land owned by
364 the Nation and individual trust or fee land of a member of the Nation.

365 305.4-3. Liberal Construction. The provisions of this law shall apply to the fullest extent of the
366 sovereign jurisdiction of the Nation and shall be liberally construed to give full effect to the
367 objectives and purposes for which it was enacted.

368 305.5. Compliance

371 **305.12. — Violations, Enforcement**

372 ~~305.12-1. Selling food or food products on tribal property without a license is strictly prohibited~~
373 ~~and will result in a fine and/or the suspension of the vendor's right to continue to sell food, i.e., the~~
374 ~~business will be closed down.~~

375 ~~305.12-2. — A~~

376 305.5-1. No person shall operate a food service vendor's business without a valid, unexpired
377 license will be suspended and from the Department.

378 (a) Licenses to operate a food service closed down if the licensed vendor is in business are
379 non-transferable.

380 (b) Unless otherwise provided herein, strict compliance with the requirements of this
381 Code, this law is required before a license may be issued or renewed.

382 305.5-2. Federal Food Code. The Nation finds that the Federal Food Code establishes a high level
383 of stringent food and beverage handling safety standards that should apply to all food service
384 businesses within its jurisdiction.

385 (a) Unless otherwise provided herein, the Nation hereby adopts the entire Federal Food
386 Code through incorporation by reference into this law.

387 (1) Any additions to or deviations from the Federal Food Code that are included
388 within this law are designed to be specific to the Nation.

389 (2) Should a provision of this law conflict with a provision of the Federal Food
390 Code, the provision of this law shall have priority over the Federal Food Code and
391 govern.

392 (b) The Department shall maintain either an electronic or print copy of the most current
393 edition of the Federal Food Code at its office location and shall make it available or
394 accessible for inspection during regular business hours.

396 ~~305. or for any other reasons related to the protection of the Oneida Nation's~~ **6. Authority**

397 305.6-1. Authority of the Department. Subject to all applicable provisions and/or restrictions
398 contained in this or any other governing law of the Nation, the Department shall be responsible for
399 the administration and enforcement of this law, including, but not limited to, that the Department
400 shall have the power to:

401 (a) Grant, deny, renew, suspend, reinstate and/or revoke licenses to operate food service
402 businesses and make all other determinations regarding suitability for licensure and
403 exemption from licensure;

404 (b) Establish licensing fee, fine and penalty schedules;

405 (c) Establish standard operating procedures to govern how it administers and enforces the
406 provisions of this law;

407 (d) Perform all requisite inspections and conduct investigations when necessary; and/or

408 (e) Issue citations and orders for violations of this law and/or when necessary to protect
409 the welfare of the community public health, safety or welfare.

412 **305.7. Licensing** ~~12-3. — A~~

413 305.7-1. Licenses. The following shall govern the process for obtaining and renewing a license to
414 operate a food service vendor's loss of insurance coverage or inadequate coverage for their entity
415

416 ~~will be cause for a suspension of license and the business will be closed down until~~within the
417 ~~vendor procures adequate coverage and provides jurisdiction of the documents thereof~~Nation:

418 ~~(a) License Application. Persons shall be required to apply to the Risk Management~~
419 ~~Department.~~

420 ~~305.12-4. Failure to pass an inspection conducted by the EHS will be cause for a penalty,~~
421 ~~revocation or suspension of the license pursuant to EHS and Federal Code guidelines.~~

422 ~~305.12-5. The vendor's to receive or renew a license to operate a food service business may be~~
423 ~~closed down~~pursuant to the application process ~~established~~ by the ~~License~~Department ~~in~~
424 ~~conjunction with the Oneida Police~~through adoption of a standard operating procedure that
425 ~~conforms to this law and includes, at a minimum, the following:~~

426 ~~(1) That, the applicable licensing fee must accompany the application for licensure~~
427 ~~or license renewal; and~~

428 ~~(2) That, the Department for an uncorrected, critical~~shall be required to issue or
429 ~~deny a license within thirty~~ (30) days after receiving a complete
430 ~~application for licensure or license renewal, all~~ applicable fees, and any other
431 ~~information required under the governing standard~~
432 ~~operating procedure.~~

433 ~~(A) The issuance or renewal of a license may be conditioned on the~~
434 ~~applicant correcting a violation of this Code or the Federal Food Code as~~
435 ~~determined by EHS and law within a set period of time, which~~ if not
436 ~~corrected within the set time or after an extension of time approved~~
437 ~~by the Department, would render the license null and void.~~

438 ~~(B) If the Department denies an application for licensure or license renewal,~~
439 ~~it shall provide the applicant, in writing, with its reason or reasons for the~~
440 ~~denial and information on how to appeal its decision.~~

441 ~~(b) License Period.~~

442 ~~(1) Licenses for permanent food service establishments and independent food~~
443 ~~service operators shall be issued and renewed by the Department for terms of one~~
444 ~~(1) year, commencing October 1st and ending September 30th of every year.~~

445 ~~(2) Licenses for temporary food service establishments shall be issued by the~~
446 ~~Department to cover one (1) single event for a period of not more than fourteen~~
447 ~~(14) consecutive days.~~

448 ~~(c) License Fee. On an annual basis, the Department shall be required to set a licensing~~
449 ~~fee schedule, subject to approval by the Oneida Business Committee through adoption of~~
450 ~~a resolution, that is applicable to all food service businesses.~~

451 ~~(1) The fee amount shall cover the initial license term for permanent food service~~
452 ~~establishments and independent food service operators and shall cover a single~~
453 ~~event of not more than fourteen (14) consecutive days for temporary food service~~
454 ~~establishments.~~

455 ~~(A) A separate licensing fee shall be required when applying to renew a~~
456 ~~license for a permanent food service establishment or independent food~~
457 ~~service operator.~~

458 ~~(B) The licensing fee for a permanent food service establishment license or~~
459 ~~independent food service operator license that was issued after October 1st~~
460 ~~shall be prorated for that term pursuant to a standard operating procedure~~
461 ~~established by the Department.~~

462 (C) Unless otherwise provided herein, if an application for licensure is
463 denied by the Department, the licensing fee submitted with the application
464 shall be returned to the applicant in full.

465 (2) The Department shall post the licensing fee schedule in a prominent area within
466 its offices and elsewhere as it deems appropriate.

467 (3) *Exemptions.* The Oneida Nation Food Service Programs and other non-profit
468 service programs of the Nation shall not be required to pay a licensing fee to obtain
469 a license under this law.

470 (A) The Department may, within its discretion, waive the licensing fee for
471 other food service businesses to obtain or renew a license when justifiable
472 circumstances exist.

473 305.7-2. License Eligibility.

474 (a) *Permanent Food Service Establishments.* To be eligible to receive a license to operate
475 a permanent food service establishment, applicants must:

476 (1) Submit the appropriate licensing fee with their application;

477 (2) Pass an inspection by the Department of the proposed premises for the
478 permanent food service establishment; and

479 (3) Satisfy any other provision within or arising out of this law that is a prerequisite
480 for licensure to operate a permanent food service establishment.

481 (b) *Temporary Food Service Establishments.* To be eligible to receive a license to operate
482 a temporary food service establishment, applicants must:

483 (1) Submit the appropriate licensing fee with their application;

484 (2) Submit proof of having undergone either:

485 (A) Certification under the applicable food safety training offered through
486 the Department; or

487 (B) Certification or training that the Department, in its discretion, deems
488 equivalent to the corresponding food safety training offered through the
489 Department.

490 (3) Pass an inspection by the Department of the proposed premises for the
491 temporary food service establishment; and

492 (4) Satisfy any other provision within or arising out of this law that is a prerequisite
493 for licensure to operate a temporary food service establishment.

494 (c) *Independent Food Service Operators.* To be eligible to receive a license to function as
495 an independent food service operator, applicants must:

496 (1) Submit the appropriate licensing fee with their application;

497 (2) Submit proof of having undergone either:

498 (A) Certification under the applicable food safety training offered through
499 the Department; or

500 (B) Certification or training that the Department, in its discretion, deems
501 equivalent to the corresponding food safety training offered through the
502 Department.

503 (3) Pass an inspection by the Department of the proposed premises designated in
504 writing by the applicant as the food preparation site; and

505 (4) Satisfy any other provision within or arising out of this law that is a prerequisite
506 for licensure to function as an independent food service operator.

507 (d) *Training.* The Department shall provide reasonable opportunities for persons to
508 undergo the food safety training that is referenced in section 305.7-2(b)(2)(A) and (c)(2)(A)
509 of this law.

510
511
512
513 **305.7-3. *License Placement.***

514 (a) *Permanent and Temporary Food Service Establishments.* A valid license shall, at all
515 times, be posted in a conspicuous area within the premises of every permanent food service
516 establishment and every temporary food service establishment.

517 (b) *Independent Food Service Operators.* A valid license shall, at all times, be prominently
518 displayed on the body of the license holder whenever functioning as an independent food
519 service operator.

520
521 **305.8. Exemptions**

522 **305.8-1. *Cottage Food Sales.*** Cottage food operators are exempt from the requirements of this
523 law, except as follows:

524 (a) *Registration.* Before selling any cottage food products, individuals must register with
525 the Department as a cottage food operator by providing, at a minimum, their:

526 (1) Full name;

527 (2) Address of domestic residence; and

528 (3) Any additional information required by a standard operating procedure that the
529 Department may establish, consistent with this law, to govern cottage food sales.

530 (A) By registering as a cottage food operator, the individual is confirming
531 that the information he or she provided is correct and agreeing to operate
532 within the confines of the exemption.

533 (b) *Labeling.* Cottage food products must be labeled with the following information:

534 (1) The name and address of the cottage food operator;

535 (2) The name of the cottage food product and the date on which it was prepared,
536 processed or canned; and

537 (3) A clearly legible sign or placard that states: “this product is homemade and not
538 subject to inspection by the Nation.”

539 (c) *Home-canned foods.* Individuals who intend to sell home-canned foods under the
540 cottage food sales exemption must first complete the food safety training approved by the

541 ~~Business Committee.~~ Department.

542 ~~305.12-6. The EHS may~~ **305.8-2. *Prepackaged Restaurants.*** Prepackaged restaurants are
543 exempt from the requirements of this law, except as follows:

544 (a) *Authorization.* Before selling or serving any prepackaged foods, persons must apply to
545 the Department for permission to operate as a prepackaged restaurant pursuant to the
546 application process established by the Department through adoption of a standard operating
547 procedure that conforms to this law and includes, at a minimum, the following:

548 (1) That, the fee established by the Department to operate a prepackaged restaurant,
549 as set forth in the licensing fee schedule referenced in section 305.7-1 of this law,
550 must accompany the application;

551 (2) That, the applicant passes an inspection by the Department of the proposed
552 premises for the prepackaged restaurant; and

553 (3) That, by applying to operate as a prepackaged restaurant, the applicant is
554 agreeing to serve and/or sell only the prepackaged foods that are approved by the
555 Department and to not engage in any food processing or preparation on the premises
556 of the prepackaged restaurant other than the heating and serving of the food.

557 (A) The Department shall provide written notice, accessible to the public,
558 of the prepackaged foods approved hereunder.

559 (b) Permission to operate as a prepackaged restaurant shall not be conditioned on any prior
560 training or certification in food safety.

561 (1) Paragraph (b) shall not prohibit the Department from issuing a corrective order
562 under section 305.10 of this law that requires food safety training or certification.

563 (c) The Department shall be authorized to conduct a reinspection during reasonable hours
564 of the prepackaged restaurant premises as often as it deems necessary so long as it does not
565 exceed more than one (1) time per year, absent cause.

566 305.8-3. *Enforcement.* Violations of this section shall be enforced in accordance with section
567 305.10 of this law.

568 (a) Upon receipt of a complaint or its own reasonable suspicion of noncompliance with
569 this section, the Department, in its discretion, may conduct an inspection of a prepackaged
570 restaurant or a cottage food operator's domestic residence; provided, the inspection of the
571 cottage food operator's domestic residence is limited to the subject matter of the complaint
572 or event giving rise to the Department's reasonable suspicion.

573 (b) This section does not preempt the application of any other law of the Nation or other
574 local governing ordinance to which individuals must comply.

575 (c) This section does not limit the liability of the owner of a prepackaged restaurant or a
576 cottage food operator for damages that arise out of their sale or service of food hereunder.

577 **305.9 Inspections**

578 305.9-1. In addition to the inspections required under section 305.7 of this law, no more than two
579 (2) times per license term, the Department may, for any reason, enter a food service business to
580 conduct an inspection, so long as at a reasonable hour.

581 305.9-2. The Department may, at any time during the term of a license, enter a food service
582 business to conduct an unscheduled inspection based on the following:

583 (a) Receipt of a complaint;

584 (b) Outbreak of a food borne illness; and/or

585 (c) Reasonable suspicion of a violation of this law or an emergency.

586 305.9-3. Any reinspection that must be conducted by the Department as a result of a violation of
587 this law, will result in an additional fee as set forth in the license fee schedule.

588 **305.10. Violations, Enforcement**

589 305.10-1. *Non-compliance.* Violations of this law may result in any one or more of the following
590 as determined by the Department:

591 (a) The suspension or revocation of a license or license exemption status;

592 (b) The issuance of an order to close down; and/or

593 (c) The issuance of a citation that may include one or more of the fines, penalties and/or
594 other corrective orders set forth in the fine and penalty schedule established by the
595 Department, subject to approval of the Oneida Business Committee through adoption by
596 resolution.

599 (1) Failure to pass an inspection conducted pursuant to this law may be cause for
600 the issuance of a citation hereunder.

601 (2) Citations shall be processed in accordance with the procedure contained in the
602 Nation's laws and policies governing citations.

603 305.10-2. ~~a business~~ In addition to satisfying any other corrective order issued by the Department
604 under section 305.10-1 of this law, a food service business, cottage food operator or prepackaged
605 restaurant that has been closed down due to a violation of this law must pass a reinspection by the
606 Department before being re-eligible for operation.

607 (a) A food service business that has been closed down may only receive a probationary
608 license for six (6) months upon evidence of satisfactory compliance with this law.

609 (1) After six (6) months of satisfactory compliance with this law, as determined by
610 the Department upon a follow-up inspection, the license holder may apply for an
611 annual license.

612 (b) A food service business or prepackaged restaurant that has had its license or license
613 exemption status suspended or has become subject to a close down order shall not be
614 entitled to a reimbursement of all or any portion of the licensing fee or fees.

615 305.10-3. *Emergency.* The Department may order a close down of a food service business, cottage
616 food operation and/or prepackaged restaurant immediately on an emergency basis upon evidence
617 of a serious health and/or safety threat to the community ~~due to the imminent nature of the food~~
618 service violation.

619 ~~305.12-7. Any food service vendor that has been~~ (a) Persons issued a closed down order by
620 EHS the Department as an emergency measure ~~due to the evidence of a serious health or safety~~
621 threat hereunder must provide evidence of ~~satisfactorily corrected~~ compliance to the
622 EHS Department and pass an inspection by the Department prior to being allowed to ~~reopen~~
623 the business.

624 (a) ~~Any food vendor that has been closed due to a violation of the Food Code must be~~
625 ~~reinspected by EHS at the vendors cost with a resulting satisfactory score pursuant to this~~
626 ~~Code and the Federal Food Code guidelines.~~

627 (b) ~~Any food service vendor that has been closed down may only receive a probationary license~~
628 ~~for six months upon evidence of satisfactory compliance with this Code~~ re-open ~~and the Federal~~
629 ~~Food Code.~~ /or continue operations.

630 (c) ~~After six months of satisfactory compliance with this Code and the Federal Food Code,~~
631 ~~as determined by EHS pursuant to follow up inspections, the vendor may apply for an~~
632 ~~annual license as before.~~

633 (d) ~~Any food service vendor who violates any provision of this Code, upon conviction,~~
634 ~~shall forfeit not less than \$5.00 nor more than \$500.00, together with the costs of~~
635 ~~prosecution. In default of payment of such forfeitures and costs, the Food Service business~~
636 ~~shall be closed down or remain closed down until such forfeitures and costs are paid and~~
637 ~~all other areas of non-compliance with this Code or the Federal Food Code have been cured.~~

638
639 **305.13.—11. Appeal Rights**

640 305.13-1. ~~Parties~~ Persons who disagree with the decisions of the EHS, Licensing or Risk
641 Management Departments, Department regarding ~~issues of licensing, inspections,~~ license or license
642 exemption eligibility, inspections, orders to close down and/or license or license exemption
643 suspensions or insurancerevocations may appeal to the Trial Court of the Judiciary.

644 ~~305.13-2.~~ (a) Hearings by the Judiciary will be pursuant to the rules established for the
645 Judiciary.

646 ~~305.11-2. Persons who disagree with the issuance of a citation for violations of this law shall~~
647 ~~contest the citation in accordance with the procedure contained in the Nation's laws and policies~~
648 ~~governing citations.~~

649
650 *End.*

651

653 Adopted ~~BC-10-03~~06-13-01-DB

654 Amended ~~BC-02-25-15-C~~

655

~~Attachment A.~~

~~Food Service License Fees for 2001-2002~~

~~(To be adjusted annually)~~

- ~~1. Food Service Establishment License~~
 - ~~a. Restaurants and Eating/Drinking Establishments~~
 - ~~1. With 0-49 seats \$100.00~~
 - ~~2. With 50-100 seats \$150.00~~
 - ~~3. With 101+ seats \$350.00~~
 - ~~b. Retail Food Market, Grocery Store \$175.00~~
 - ~~c. Retail Food Market, Grocery Store
With restaurant \$225.00~~
 - ~~d. Bakery/Confectionary \$100.00~~
 - ~~e. Convenience Store/Gas Station \$100.00~~
 - ~~f. Catering Business \$100.00~~
- ~~2. Independent Food Service License~~
 - ~~a. \$75.00 annually~~
- ~~3. Temporary Food Service License~~
 - ~~a. \$25.00 for each event, not to exceed fourteen consecutive days~~
- ~~4. Tribal Schools No Fee~~

~~**THIS LICENSE IS NOT TRANSFERABLE**~~

~~All licenses expire on September 30th annually. A penalty of \$50.00 will be applied to renewal applications postmarked after October 15th. Operation in any fiscal year requires a licence.~~

Schedule of Fines
For Non-Compliance with this code or the Federal Food Code

Any food service vendor who violates any provision of this chapter, upon conviction, shall forfeit not less than \$5.00 nor more than \$500.00, together with costs of prosecution. In default of payment of such forfeiture and costs, the Food Service business will be closed and/or remain closed until such forfeitures and costs are paid and all areas of non-compliance with this Code or the Federal Food Code have been cured. *Oneida Food Code 305.12-7(d).*

1 st Offense, non critical:	<u>\$25.00</u>
2 nd Offense in Five Years, non critical:	<u>\$100.00</u>
3 rd Offense in Five Years, non critical:	<u>\$200.00</u>
All Subsequent Non-Critical Offenses in Five Years:	<u>\$250.00</u>
1 st Offense, Critical:	<u>\$100.00</u>
2 nd Offense in Five Years, Critical:	<u>\$300.00</u>
3 rd Offense in Five Years: Critical:	<u>\$500.00</u>
All Subsequent Critical Offenses in Five Year:	<u>\$750.00</u>

***Note:** Five or more critical offenses in five years will result in the suspension of the license for one year, the business will be closed down and a fine will be imposed to be paid prior to reinstatement.

Fees for reinspection as a result of an original finding of non-compliance by EHS is \$100.00.

~~ONEIDA NATION IN WISCONSIN~~

~~APPLICATION~~

~~FOR LICENSE FOR THE SALE OF FOOD ON TRIBAL PROPERTY~~

~~ENVIRONMENTAL HEALTH AND SAFETY DEPARTMENT-
COMPLIANCE DIVISION LICENSE DEPARTMENT-~~

~~In accordance with the Oneida Food Code, I the undersigned, do hereby respectfully make application to the Environmental Health and Safety Department of the Oneida Nation in Wisconsin, for a license to sell food on tribal property for the year ending September 30, 2002.~~

~~I hereby certify that I am familiar with the Federal laws and Oneida Food Code pertaining to the conditions of said establishment on Oneida Nation tribal property, and I hereby agree, if granted said license, to obey all provisions of said Federal laws and Oneida Food Code.~~

~~ESTABLISHMENT NAME _____~~

~~ESTABLISHMENT ADDRESS _____~~

~~ESTABLISHMENT TELEPHONE _____~~

~~AGENT/MANAGER HOME PHONE _____~~

~~LEGAL LICENSE _____~~

~~(List the name of the Individual, Partnership or Corporation)~~

~~LICENSEE ADDRESS _____~~

~~PROPERTY OWNER _____~~

~~DATE WHEN ONEIDA FOOD HANDLING COURSE COMPLETED _____~~

~~NAME OF INSURER _____~~

~~(Attach copy of Insurance deck sheet)~~

~~SIGNATURE OF APPLICANT _____~~

~~* MUST BE SIGNED TO OBTAIN A CURRENT LICENSE.~~

~~*****
*****~~

~~APPROVED: _____ TOTAL FEE PAID: _____~~

~~Environment Health and Safety Dept.~~

~~ONEIDA NATION~~

~~ONEIDA FOOD VENDOR'S LICENSE~~

~~October 1, 2002 through September 30, 2003~~

~~Business: _____ Licensee:~~

~~(Name and address of business) _____ (Name of Person, partnership or corporation)~~

~~The person, firm or corporation whose name appears on this license has complied with the provisions of the Oneida Food Code and, as adopted, the Federal Food Code and is hereby authorized to engage in the activity as indicated below at the location named from October 1, 2001 to September 31, 2001. This license is non-transferrable.~~

~~_____

(Name of type(s) of food service; restaurant, independent, _____ (License fee)
temporary, market, bakery, caterer, etc.) _____~~

~~Dated at the office of the Oneida License Department, this _____ (Date issued) _____.~~

~~_____

Oneida License Department Officer _____ Oneida Health and Safety Department Officer~~

~~POST IN A CONSPICUOUS PLACE~~ ~~Amended - BC- - - -~~



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(gah kwa oh goo)
about the food

**ONEIDA FOOD SERVICE CODE AMENDMENTS
 LEGISLATIVE ANALYSIS**

SECTION 1. EXECUTIVE SUMMARY

REQUESTER: Environmental, Health and Safety Department and Licensing Department	SPONSOR: Ernest Stevens III	DRAFTER: Kristen M. Hooker	ANALYST: Maureen Perkins
Intent of the Amendments	<p>The proposed amendments to the Oneida Food Service Code intend to:</p> <ul style="list-style-type: none"> ▪ update the outdated Oneida Food Service Code including formatting required by the Legislative Procedures Act; ▪ update the exclusive authority of the Environmental, Health and Safety (EHS) Department to develop license fee and penalty schedules both adopted by OBC Resolution; ▪ include exemptions for cottage food sales and prepackaged restaurants; ▪ include mobile food trucks in the definition of permanent food service operators; ▪ include a waiver of license fees at the discretion of the EHS Department; ▪ include a thirty (30) day response time for EHS to make determinations regarding eligibility; ▪ require the EHS Department to provide applicants who have been denied licensure or license renewal a written explanation of the denial and an explanation of the appeals process; ▪ allow the EHS Department the discretion to accept alternate training options; and ▪ update the title of the Law to Oneida Food Service law (Law). 		
Purpose	<p>The purpose of this Law is to ensure the safety of food that is provided at retail or through Oneida Nation Food Service Programs to members of the community by establishing a system of overlapping safeguards designed to minimize foodborne illness; ensure employee health, industry manager knowledge, safe food handling, nontoxic/cleanable equipment and acceptable levels of sanitation on the premises of food service businesses; and promote fair dealings with consumers through adoption of licensing requirements, exemptions, regulation, control, supervision and enforcement procedures that govern food service businesses within the jurisdiction of the Nation [1 O.C. 305.1-1].</p>		
Affected Entities	<p>Environmental, Health and Safety Department (EHS Department), Oneida Nation Judiciary, Oneida Business Committee (OBC), Oneida Nation Members, Oneida Nation Food Service Programs, Cottage Food Operators, Independent Food Service Operators, Permanent Food Service Operators, Prepackaged Restaurants, Licensing Department, Oneida Police Department, Risk Management Department</p>		
Related Legislation	<p>Judiciary law, Oneida Judiciary Rules of Civil Procedure, Rules of Appellate Procedure, Legislative Procedures Act</p>		
Public Meeting	<p>A public meeting has not yet been held.</p>		
Fiscal Impact	<p>A fiscal impact statement prepared in accordance with the Legislative Procedures Act has not yet been requested.</p>		

1 **SECTION 2. LEGISLATIVE DEVELOPMENT**

2 A. **Background.** The Oneida Food Dispensary and Vendor’s Licensing Regulations and Procedures law
3 was adopted by the Oneida Business Committee on January 18, 1985 to regulate food preparation and
4 sales by departments, enterprises and programs of the Nation and Oneida Tribal members. The Oneida
5 Food Service Code was adopted on October 3, 2001 by resolution BC-10-03-01-D and replaced the
6 Oneida Food Dispensary and Vendor’s Licensing Regulations and Procedures law. The Oneida Food
7 Service Code was amended on February 25, 2015, by resolution BC-02-25-15-C to remove reference
8 to the Oneida Appeals Commission and add reference to the Oneida Judiciary as the hearing body
9 authority authorized to hear appeals to decisions of the EHS, Risk Management and Licensing
10 departments.

11
12 B. **Expected Benefits.** The amendments comprehensively update the Oneida Food Service law with
13 current food service standards and provides members of the Nation the opportunity to register for an
14 exemption to sell cottage food products from their residence. The Oneida Nation is one of the first
15 tribes in the country to offer cottage food exemptions [3 O.C. 305.8-1]. The cottage food amendments
16 can be viewed as an act of food sovereignty exercised by the Nation because the amendments deviate
17 from the model Federal Food Code intended to be used as guidance to develop state or tribal food codes
18 [3 O.C. 305.5-2(a)(2)].

19 Additionally; the amendments add mobile food trucks to the definition of permanent food service
20 establishment [3 O.C. 305.3-1(s)] which insures mobile food trucks operating within the Nation’s
21 jurisdiction are regulated by the EHS Department.
22

23 **SECTION 3. CONSULTATION AND OUTREACH**

24 A. **Departments.** Representatives from the following departments participated in the development of
25 this Law:

- 26 ▪ Environmental, Health and Safety Department
- 27 ▪ Licensing Department
- 28 ▪ Risk Management Department
- 29 ▪ Community Health Nursing
- 30 ▪ Oneida Cannery Department

31
32 B. **Laws of the Nation.** The drafting of this legislative analysis included a review of the following laws
33 of the Nation: Judiciary [8 O.C. 801], Oneida Judiciary Rules of Civil Procedure [8 O.C. 803], Rules
34 of Appellate Procedure [8 O.C. 805], and Legislative Procedures Act [1 O.C. 109].
35

36 C. **Area and Tribal Laws.** The following area and tribal laws were reviewed in the development of this
37 legislative analysis:

- 38 ▪ 2009 Wisconsin Act 101
- 39 ▪ University of Arkansas Model Tribal Cottage Food Law
- 40 ▪ Minnesota Cottage Foods Law
- 41 ▪ Stockbridge-Munsee Food Service Code
- 42 ▪ Jamestown S’Klallam Tribe Tribal Food Code
- 43 ▪ Montana Code 50-50-101-403

44
45 D. **Current Licenses Issued by the Nation**

- 46 ▪ The Nation currently provides food service business licenses and inspections for thirty-four
47 (34) food service businesses. Fifteen (15) of these food services are Oneida Nation Food
48 Service Programs. The Nation has authority to license all entities within the jurisdiction of the
49 Nation.

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SECTION 4. PROCESS

- A. The Oneida Food Service Code amendments have thus far followed the required process contained in the Legislative Procedures Act.
- B. On September 19, 2018, the LOC added the Oneida Food Service Code Amendments to the active files list and assigned Ernest Stevens III as the sponsor.
- C. The following work meetings were held in the development of this legislative analysis and the amendments to the law:
 - October 4, 2018, a work meeting was held with EHS Department staff, Cannery Department staff, Community Health Nursing Program staff and LRO staff.
 - November 29, 2018, a work meeting was held with EHS Department staff, Licensing Department staff, and LRO staff.
 - January 25, 2019, a work meeting was held with EHS Department staff and LRO staff.
 - February 28, 2019, a work meeting was held with EHS Department staff, Licensing Department staff and LRO staff.
 - June 6, 2019, a work meeting was held with EHS Department staff and LRO staff.
 - November 6, 2019, a work meeting was held with the LOC and LRO staff.
 - November 15, 2019, a work meeting was held with the LOC and LRO staff.

SECTION 5. CONTENTS OF THE LEGISLATION

A. *Purpose and Policy* [3 O.C. 305.1]

- The Law was amended to meet the requirements in the Legislative Procedures Act related to consistency in format and required sections [1 O.C. 109.11-1]. The amended Law contains a purpose section to direct why the Law is needed and policy section to indicate the direction the Law is to take including the underlying goal of the law.
- The purpose and policy sections were retitled from the previous title of authority, amendment, repeal and were updated to include Oneida Nation Food Service Programs and to clearly state that the policy of the Law is to exercise the Nation’s inherent sovereignty over the Nation’s resources and membership, as well as to strengthen self-governance.
- The term vendor was removed from the purpose and policy section, as well as throughout the Law [3 O.C. 305.1-2]. Applicants who apply for a food services license under this law are not necessarily vendors and removing the term vendor from the law removes implications that this law requires the Licensing Department to process vendor applications [Work Meeting 01/25/19]. By removing the term vendor and the Licensing Department from the law; the application process is streamlined with the EHS Department.

B. *Definitions* [3 O.C. 305.3]. Distinction was made between the various types of licenses issued by the EHS Department to indicate whether the business is permanent or temporary, as well as removing the term vendor from the definitions and using the term operator instead. The definitions for licenses in the law are now permanent food service establishment licenses, temporary food service establishment licenses, and independent food service operator licenses which are collectively and individually termed food service businesses under the Law. Permanent food service establishment now includes Oneida Nation Food Service Programs and mobile food trucks. The term food service business excludes private rummage sales and community sponsored non-profit fundraising and/or charity events which are not governed by the Law, as well as cottage food operators and prepackaged restaurants who satisfy the requirements in this Law and obtain an exemption from the EHS Department [3 O.C. 305.3-1(l)]. The term permanent was added to the definition of food service establishment for clarity [3 O.C. 3-1(e)].

- The terms consumer, food and person were added and used in the law provide clarity.

- 100 ▪ The following definitions were added to reflect the addition of the cottage foods exemption [3
101 *O.C. 305.8-1*]: cottage food operator, cottage food products, direct sale, domestic residence,
102 home-canned foods, and potentially hazardous food.
- 103
- 104 ▪ The definition for prepackaged restaurant was added to reflect the prepackaged restaurant
105 exemption [3 *O.C. 305.8-2*].
- 106
- 107 ▪ Definitions were added for both fines and penalties.
- 108
- 109 ▪ The definition for vendor was removed from independent food service vendors and this
110 definition is now titled independent food service operator [3 *O.C. 305.3-1(n)*] and is included
111 in the definition for food service business [3 *O.C. 305.3-1(l)*]. Definitions for Licensing
112 Department and Risk Management were removed from the Law because these departments are
113 no longer referenced in the law. The Oneida Business Committee and the Oneida Police
114 Department were removed from the definition of close down because these two entities are no
115 longer involved in the decision or act of closing a food service business down. The term tribal
116 property was removed as it is not used in the amended law. The term compliance was removed
117 as this word is used in the everyday sense and does not require a definition.
- 118

119 C. **Jurisdiction** [3 *O.C. 305.4*]. A separate section was added to the Law detailing and expanding the
120 jurisdiction of the Nation from the jurisdiction described in the current draft of the Law. The current
121 Law mentions jurisdiction within the purpose section and does not clearly define the jurisdiction of the
122 Nation. The amended Law clearly defines the jurisdiction of the Nation as it applies to all land within
123 the Reservation and to all members of the Nation, the Nation's entities and corporations, members of
124 other federally-recognized tribes, individuals and businesses leasing, occupying, or otherwise using fee
125 land owned by the Nation or by individual members of the Nation, and/or lands held in trust on behalf
126 of the Nation or individual members of the Nation and individuals who have consented to the jurisdiction
127 of the Nation. A provision was added titled Liberal Construction which means the words are interpreted
128 in a loose way which allows the Nation to exercise its sovereign jurisdiction to the fullest extent [3 *O.C.*
129 *305.4-3*].

130

131 D. **Compliance** [3 *O.C. 305.5*]. This section was updated to provide clarity to the Law. The Law continues
132 to adopt the current Federal Food Code and any additions or deviations from the Federal Food code are
133 designed to be specific to the Nation. The Law will have priority with respect to any conflicts between
134 the Law and the Federal Food Code [3 *O.C. 305.5-2*].

135

136 E. **Authority** [3 *O.C. 305.6*]. This section of the Law has been updated. This section in the current Law is
137 titled Responsibilities and Duties. The EHS Department is now responsible for issuing all licenses
138 pursuant to this Law [3 *O.C. 305.6-2*] based on recommendations made from both the EHS Department
139 and the Licensing Department. Previously; the Licensing Department was responsible to issue licenses
140 [3 *O.C. 305.4-5 of Current Law*]. Additionally; the EHS Department is now required to annually set
141 licensing fees [3 *O.C. 305.6-1(b)*] which are approved by the OBC by Resolution [3 *O.C. 305.7-1(c)*].
142 Previously, the Licensing Department and the EHS Department jointly determined licensing fees
143 updated on an annual basis with OBC approval [3 *O.C. 305.4-7 and 305.9-9 of Current Law*]. The
144 requirement for EHS to conduct food handling classes was removed from this section [3 *O.C. 305.4-2*
145 *of Current Law*] and moved to the license eligibility section [3 *O.C. 305.7-2(b) and (c)*]. The Risk
146 Management Department and the requirement to obtain insurance coverage were removed [3 *O.C.*
147 *305.4-6*].

- 148 ▪ The current license fee schedule and fine and penalty schedule will be void with the
149 adoption of the amended Law because these schedules are no longer included in the Law
150 [3 *O.C. 305 Attachment A and Attachment B*].

151 F. **Licensing** [3 O.C. 305.7]. This section was amended. The licensing and fees sections have been
 152 combined [3 O.C. 305.6 and 305.5-9 of Current Law] into a licensing section. The EHS Department
 153 was granted authority to receive, issue and renew licenses [3 O.C. 305.7-1(a)]. A provision was added
 154 granting the EHS Department the discretion to waive a licensing fee when justifiable circumstances exist
 155 [3 O.C. 305.7-1(c)(3)(A)]. The Licensing Department was removed as the authority to issue licenses [3
 156 O.C. 305.4-6].

157 A process was added requiring the EHS Department to make a determination to issue or deny an
 158 application for a license or license renewal within thirty (30) days following the submission of a
 159 complete application including the payment of all applicable fees and any information contained in the
 160 standard operating procedure created by the EHS Department [3 O.C. 305.7-1(a)]. This requirement
 161 ensures applicants for new and renewal licenses receive a timely response from the EHS Department to
 162 avoid any potential delays by the EHS Department that could impact the applicant’s food service
 163 business. The current Law does not contain a timeframe for issuing decisions regarding decisions of
 164 license eligibility.

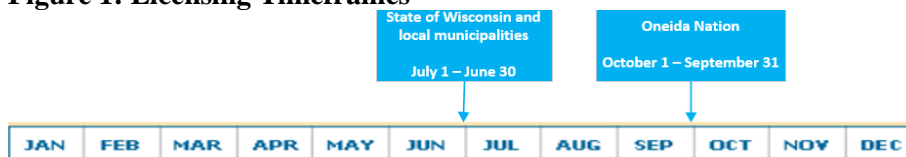
165 The license issued may be conditional upon a correction of a violation within a set period of time
 166 and if not corrected within that time period will nullify the license. If an application is denied, the EHS
 167 Department will provide the applicant with the reason for the denial in writing and instructions on how
 168 to appeal the decision [3 O.C. 305.7-1]. The current Law does not require written notification of the
 169 reason for the denial of a license.

170 The prorated formula used by the EHS Department related to a reduction of a license fee when the
 171 application is received after October 1st will be added to the required standard operating procedure [3
 172 O.C. 305.7-1(c)(B)]. A provision was added that grants the EHS Department discretion to approve
 173 equivalent training to satisfy the Temporary Food Service establishment requirements [3 O.C. 305.7-
 174 3(b)(3)(B)] and the Independent Food Service Operator requirements [3 O.C. 305.7-2(b)(2)(B) and
 175 (c)(2)(B)]. This process alleviates the burden for applicants and the department when sufficient training
 176 has already been obtained by the applicant.

177 The Licensing Department was removed from the current Law as the department responsible for
 178 issuing food service licenses and all licenses will now be processed by the EHS Department instead.
 179 This change makes the process of issuing licenses more efficient for the EHS Department and license
 180 applicants. The requirement that vendor fees be used for the operational budget of the EHS Department
 181 (80%) and the administrative budget of the License Department (20%) was removed [3 O.C. 305.9-9 of
 182 Current Law]. The amended Law is silent regarding where licensing fees are allocated which means
 183 these funds will be directed to the General Fund.

184 Oneida Tribal Enterprises and Oneida Tribal Businesses were removed from the licensing section
 185 of the law [3 O.C. 305.9-10 and 9-11 of Current Law]. The current Law requires Oneida Tribal
 186 Enterprise Units and Oneida Tribal Business Units to adhere to the requirements of the code when selling
 187 food for profit on tribal property. Although it is unclear what Oneida Tribal Enterprise Units and Oneida
 188 Tribal Business Units is referring to because there are no definitions provided for these entities in the
 189 current Law; it can be assumed that these entities are included in the amended Law under the definition
 190 of permanent food service establishment which includes restaurants, a market or grocery store, a
 191 convenience store, and Oneida Nation Food Service Programs. Permanent food service establishments
 192 are required to adhere to the amended Law [3 O.C. 305.7-2(a)].

193 **Figure 1: Licensing Timeframes**



194 The food service licenses issued by the Oneida Nation under this Law run from October 1 to September
 195 31 of each year to match the Nation’s fiscal year. Food service licenses in the State of Wisconsin and
 196 local municipalities within and around the Oneida Nation reservation run from July 1 to June 30 of each
 197 year.
 198

- 199 • **Exemptions** [3 O.C. 305.8]. This section was amended. The amended Law provides exemptions
200 to cottage food operators and prepackaged restaurants if certain requirements contained in the
201 law are met. The meaning of exemption in an everyday sense is the process of freeing from an
202 obligation imposed on others.
203

204 **Figure 2: Exemptions Listed in the Current Law were Removed from the Exemption Section and are**
205 **not Governed by the Amended Law**

305.11 of Current Law
305.11. Exceptions and Exemptions 305.11-1. The following food service vendors will be exempt from the requirements of this Code: (a) Private rummage sales. (b) Community sponsored non-profit fund raising and/or charity events. (c) Official Tribal meetings such as GTC Meetings. (d) Food sold on land other than tribally owned land.

- 206 • The private rummage sales, community sponsored non-profit fund raising and/or charity events
207 in the exemption section of the current Law [3 O.C. 305.11 of Current Law] were moved to the
208 definition section of the amended Law [3 O.C. 305.3-1(i)] as an example of what does not qualify
209 as a food service business and is not governed by the law. In the current law these exemption
210 eligible food services are listed in this section. The amended draft moves them to the definitions
211 section and defines them as services that are not included in this law completely.
212 • Food sold at GTC meetings was removed from the law because this practice is not allowed.
213 • Food sold on land other than tribally owned land was removed because it is not necessary under
214 the amended law.
215
216

217 **Figure 3: Private Rummage Sales and Community Sponsored Non-Profit Fundraising and/or**
218 **Charity Events are not Governed by the Amended Law**

The definition for food service business means, whether individually or collectively, a permanent food service establishment; a temporary food service establishment; and/or an independent food service operator. The following shall not qualify as a food service business under this law [3 O.C. 305.3-1(1)]:

<p>The amended Law does not apply to the events listed below, so the exemption detailed in the current Law is no longer required [3 O.C 305.11 of Current Law]. These events do not have to follow this law. This has not changed from the current law.</p> <ul style="list-style-type: none">• private rummage sales• community sponsored -non-profit fundraising and/or charity events	<p>The entities listed below do not qualify for a food service business license, but are eligible for an exemption further described in section 305.11:</p> <ul style="list-style-type: none">• cottage food operators• prepackaged restaurants
---	--

- 219 • Private rummage sales, community sponsored non-profit fundraising and/or charity events were
220 moved to the definition section as not qualifying as a food service business because these events
221 are not governed by the amended Law.
222 • Cottage food operators and prepackaged restaurants do not qualify as a food service business
223 under the law and are eligible for an exemption if specific requirements contained in the law are
224 met. The purpose of the exemption in the amended Law is to remove much of the requirements
225 of the Law for these particular entities while still affording the Nation the opportunity to have
226 some oversight over these entities in certain circumstances such as inspection of entity if an
227 outbreak of a food born illness occurs that can be tied back to the exempted entity.
228
229

230 **Exemptions are Obtained by Meeting Specific Requirements in the Amended Law**

- 231 • Cottage food sales and prepackaged restaurants were added to the exemption section.
232 • The requirements to qualify for an exemption are detailed below.

233

234 **Cottage Food Sales**

235 What Are Cottage Food Products?

236 Cottage food products are foods produced in a home kitchen of a domestic residence that are non-
237 potentially hazardous which means that it does not require any type of temperature control to prevent
238 it from going bad. Cottage food products include:

- 239 1. Home baked goods such as cakes, most fruit pies, breads, brownies, cookies and muffins, dry
240 mixes, dried fruit;
241 2. Home canned naturally acidic fruits and vegetables or with a pH of 4.6 or lower such as apples,
242 peaches and lemons;
243 3. Acidified by pickling or fermenting home canned salsas, pickled vegetables and hot sauces with
244 a pH of 4.6 or lower;
245 4. Jams, jellies and applesauce; and
246 5. Other non-potentially hazardous foods the EHS department characterizes as cottage food
247 products for purposes of this law.

248 Cottage food products have a low risk to health and most states in the country have exempted these
249 products with varying levels of oversight, permit, license, or inspection requirements. Cottage food
250 laws function as an exemption to general food safety laws and allow small processors to sell their
251 products directly to consumers on a small scale [*University of Arkansas Cottage Foods Model Food*
252 *Code*]. Some states have implemented a requirement to register an address and the name of the
253 individual preparing cottage foods [*Montana Code 50-50-116, page 10*] to conduct some type of
254 inspection should an outbreak occur directly linked to cottage food products [*Montana Code 50-50-*
255 *301(3), page 18*].

256

257 *Cottage Food Sales [3 O.C. 305.8-1]*. The EHS Department has the authority under the amended
258 Law to add or subtract any additional qualifying foods from the list of cottage foods [*3 O.C. 305.3-*
259 *1(e)*] that are processed or packaged at a person's home kitchen of a domestic residence and only for
260 direct sale to the consumer [*3 O.C. 305.3-1(d)*]. Cottage food operators are exempt from the
261 requirements of the Law upon registering with the EHS Department, which requires that they disclose
262 the cottage food operator's name and domestic address where products will be produced.
263 Additionally, the cottage food operator is required to package and label their cottage food products
264 with the name and address of the operator, date processed, name of food product, and display a sign
265 that states that the products are homemade and not subject to inspection by the Nation [*3 O.C. 305.8-*
266 *1*]. Home canned foods require a food safety training approved by the EHS Department [*3 O.C*
267 *308.8-1(c)*]. The EHS Department has the authority to inspect the cottage food operator's domestic
268 residence, limited to the subject matter of a complaint received or event giving rise to the EHS
269 Department's reasonable suspicion of noncompliance of the cottage food exemption [*3 O.C. 305.8-*
270 *3*].

271

272

273

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276

277

278 **Figure 4: Cottage Foods License Exemptions Comparison**

Cottage Foods License Exemptions Comparison						
Home Bakers and Home Canners						
Provision	Oneida Nation Reservation		State of Wisconsin		State of Minnesota	
	Home Bakers	Home Canners	Home Bakers	Home Canners	Home Bakers	Home Canners
License	No	No	No	No (under \$5000 in sales)	No (under \$18,000 in sales)	No (under \$18,000 in sales)
Registration	Yes	Yes	No	No	Yes	Yes
Required Training	No	Yes	No	No (training is recommended)	Yes	Yes
Inspections	Yes Complaint Received or Reasonable Suspicion	Yes Complaint Received or Reasonable Suspicion	Yes Complaint Received or Reasonable Suspicion	Yes Complaint Received or Reasonable Suspicion	Yes Complaint Received or Reasonable Suspicion	Yes Complaint Received or Reasonable Suspicion
Label Requirements	Yes	Yes	Yes	Yes	Yes	Yes

279 Although cottage food producers are exempt from the requirements of the Law, there will be some
 280 oversight to protect the Nation from potential foodborne illness that may arise from the production of
 281 cottage foods. The LOC decided that some oversight for cottage food producers would be in the best
 282 interest of the Nation, The law will require home bakers and canners to label their products, register
 283 with their name and address of domestic residence where cottage foods are produced and undergo
 284 inspections if a complaint is made or if the EHS Department has reasonable suspicion of noncompliance
 285 with the requirements for a cottage food sales exemption [3 O.C. 305.8-3]. For comparison; the State
 286 of Wisconsin exemption requires labeling of cottage food products but does not require a license,
 287 registration, training or inspections for cottage food producers that make less than \$5,000 from the sale
 288 of cottage foods per year. The State of Minnesota requires the labeling of cottage food products,
 289 registration of cottage foods producers with the local health authority in the county where the domestic
 290 residence is located, and training requirements related to the production of cottage foods; but does not
 291 require inspections.
 292

293
 294 1) Prepackaged Restaurants [3 O.C. 305.8-2]. The LOC added an exemption for prepackaged
 295 restaurants to the Law governing establishments that only heat prepackaged food with the following
 296 criteria: a reduced fee, fewer inspections and no training requirement [LOC Work Meeting 11/15/19].
 297 Prepackaged restaurants are establishments that serve and/or sell only prepackaged foods with
 298 preparation on site limited to heating and serving [3 O.C. 305.3-1(w)]. Prepackaged restaurants are
 299 exempt from the requirements of the Law except that they must apply with the EHS Department
 300 which includes a requirement for an inspection and agree to sell only prepackaged foods approved
 301 by the Department [3 O.C. 305.8-2]. The EHS Department has discretion to draft a standard operating
 302 procedure for the application process and will determine how the EHS Department will keep track of
 303 prepackaged restaurants [3 O.C. 305.8-2(a)]. The Food safety training or certification is not required
 304 but can be ordered by the EHS Department by the issuance of a corrective order [3 O.C. 305.8-2(b)].
 305 The reason the training requirement was removed for prepackaged restaurants is because these
 306 establishments are only heating precooked foods according to directions on the package and the LOC
 307 determined this doesn't require training. The EHS Department will provide written notice to the
 308 public of prepackaged foods allowed under this exemption [3 O.C. 305.8-2(a)(3)(A)]. The EHS
 309 Department may inspect prepackaged restaurants as often as deemed necessary for cause; but only
 310 once per year without cause [3 O.C. 305.8-2(c)].
 311

312 Enforcement of cottage food operations and prepackaged restaurants includes an inspection by the EHS
 313 Department based on a receipt of a complaint or reasonable suspicion by the EHS Department [3 O.C.
 314 305.8-3(a)] which may result in an action by the EHS Department according to the Violations,
 315 Enforcement section detailed below [3 O.C. 305.10]. Exemption status does not limit the liability of the

316 owner of a cottage food operator or a prepackaged restaurant from damages that may happen due to the
317 sale of their products [3 O.C. 305.8-3(c)].

318
319 G. **Inspections** [3 O.C. 305.9]. This section has been clarified. The EHS Department is authorized to
320 conduct two (2) inspections at any time during reasonable hours per license term for any reason; in
321 addition to any inspections required for the issuance of a license under section 305.7 of this Law [3 O.C.
322 305.9-1]. Additionally; the amendments clarify that the EHS Department may conduct an unscheduled
323 inspection based on the receipt of a complaint, an outbreak of a food bourn illness or reasonable
324 suspicion of a violation of this Law or an emergency [3 O.C. 305.9-2]. Any reinspection as a result of
325 a violation of this Law requires additional fees [3 O.C. 305.9-3].

326
327 H. **Violations, Enforcement** [3 O.C. 305.10]. This section has been amended. The amendments authorize
328 EHS Department as the sole entity to issue and enforce violations of this law. Non-compliance with the
329 Law may result in the EHS Department issuing the following: a license suspension or revocation, an
330 order to close down or a citation [3 O.C. 305.10]. Any food service business or prepackaged restaurant
331 ordered to close down must comply with corrective order issued and pass a reinspection and pay any
332 applicable fees by the EHS Department before being eligible for operation and is not entitled to any
333 portion of the licensing fee or fees [3 O.C. 305.10-2]. Any food service business or prepackaged
334 restaurant ordered to close down will only be eligible for a probationary license for six (6) months which
335 is the same as the current Law [3 O.C. 305.10-2(a)]. License fees are not reimbursable if a close down
336 is issued [3 O.C. 305.10-2]. Reference to loss of insurance and the Risk Management Department was
337 removed from the Law [3 O.C. 305.12-3 of Current Law] because the LOC decided that it is up to
338 individual food service businesses to carry insurance as each is already personally responsible for any
339 damages as a result of the sale of their food. The Licensing Department, Oneida Police Department and
340 Oneida Business Committee were removed from this section of the Law to streamline this process within
341 the EHS Department [3 O.C. 305.12-5 of Current Law]. The forfeitures were removed from the Law
342 [3 O.C. 305.12-7(d)] and referenced in the amended Law as citations which include fines, penalties
343 and/or corrective orders as set forth in the fine and penalty schedule established by the EHS Department,
344 subject to approval by the OBC resolution [3 O.C. 305.10-1(c)].

345
346 I. **Appeal Rights** [2 O.C. 305.11]. Persons who disagree with the decisions of the EHS Department
347 regarding license or license exemption eligibility, inspections, orders to close down and/or license or
348 license exemption suspensions and revocations may appeal to the Trial Court of the Judiciary [3 O.C.
349 305.11-1].

- 350 ▪ This law authorizes the Trial Court to exercise jurisdiction over appeals [8 O.C. 801.5-2]
351 following the Oneida Judiciary Rules of Civil Procedure [8 O.C. 803].
- 352 ▪ Decisions of the Trial Court are appealable to the Court of Appeals [8 O.C. 801.8-2(a)(1)]
353 following the Rules of Appellate Procedure [8 O.C. 805]. Decisions of the Court of
354 Appeals are final.

355 Persons who wish to contest the issuance of a citation for violation of this law will follow the procedure
356 contained in the Nation’s laws and policies governing citations.

- 357 ▪ There are not currently any laws of the Nation governing citations. A law is currently being
358 developed governing citations.

359
360 J. **Minor Drafting Changes.** The Law has been clarified through additional minor drafting changes.

361
362 K. **Insurance** [3 O.C. 305.7 of Current Law]. Insurance requirements and the Risk Management
363 Department were removed from the law. Insurance is no longer referenced in the law. The LOC has
364 determined that each individual food service business is liable for any damages caused by the food they
365 sell, and insurance is obtained at the discretion of each food service business.

366

367 **SECTION 6. RELATED LEGISLATION**

- 368 A. **Reference to Other Laws.** The following laws of the Nation are referenced in this Law and legislative
369 analysis and are required to be followed:
- 370 • Judiciary [8 O.C. 801]. The Trial Court of the Judiciary has subject matter jurisdiction
371 where laws of the Nation specifically authorize the Trial Court to exercise jurisdiction [8
372 O.C. 801.5-2]. The Oneida Food Service law authorizes the Trial Court to hear appeals of
373 EHS Department decisions related to licenses or license exemption eligibility, inspections,
374 orders to close down and/or license exemption suspensions or revocations [3 O.C. 305.11].
375 The Judiciary law authorizes the Court of Appeals to review final orders and judgments of
376 the Trial Court [8 O.C. 801.8-2(a)(1)].
 - 377 • Oneida Judiciary Rules of Civil Procedure [8 O.C. 803]. This law governs the procedure used
378 when filing an action with the Oneida Judiciary.
 - 379 • Rules of Appellate Procedure [8 O.C. 805]. This law governs the procedure used when filing
380 an action with the Court of Appeals and are used in conjunction with the Oneida Judiciary
381 Rules of Civil Procedure.
 - 382 • Legislative Procedures Act [1 O.C. 109]. This law governs the format that will be followed
383 for all laws of the Nation. The format of the amended law was updated to meet requirements
384 in this law.
- 385 B. There are no conflicts between the proposed amendments and the Oneida Code of Laws.
386

387 **SECTION 7. IMPLEMENTATION**

- 388 A. **Inspections.** Inspection authority has not changed. The EHS Department has authority to conduct
389 inspections twice per year at their discretion [3 O.C. 305.9-2].
- 390 B. **Resources.** The EHS Department will utilize existing staff to enforce the law. The Licensing
391 Department staff and Risk Management Department staff were removed from the law.
- 392 C. **Due Process.** Parties who disagree with decisions of the EHS Department regarding licenses or license
393 exemption eligibility, inspections, orders to close down and/or license exemption suspensions or
394 revocations can appeal to the Trial Court of the Judiciary [3 O.C. 305.11]. Decisions of the Trial Court
395 are appealable to the Court of Appeals [8 O.C. 801.8-2(a)(1)].
- 396 D. **Implementation.** The EHS Department is responsible for the implementation and operation of the Law
397 [3 O.C. 305.6].
398

399 **SECTION 8. OTHER CONSIDERATIONS**

- 400 A. **Citations Law.** A citation for a violation of this Law will be processed in accordance with the procedure
401 contained in the Nation’s laws and policies governing citations [3 O.C. 305.10-1(c)(1)].
- 402 ▪ There are currently no laws of the Nation governing citations. There is a Citations law on the
403 LOC’s active files list that is currently being developed at the same time as these Oneida Food
404 Service law amendments.
- 405 B. **License Fee.** On an annual basis, the Department shall be required to set a licensing fee schedule,
406 subject to approval by the Oneida Business Committee through adoption of a resolution, that is
407 applicable to all food service businesses. [3 O.C. 305.7-1(c)]. The LOC may consider removing the
408 annual requirement that is carried over from the current law to prevent unnecessary burden to the EHS
409 Department and the LOC in processing fee schedules that may not need an annual update. No other
410 laws of the Nation require fee schedules to be updated annually.
- 411 C. **Waiver of Licensing Fee.** The LOC discussed duplicative fees and the possible impact of deterring
412 businesses from coming to the Reservation [LOC Work Meeting 11/15/19]. To avoid inconsistent
413 application of the waiver provision related to licensing fees; the LOC may want to include specific
414 reasons for waivers [3 O.C. 305.7-1(c)(3)(A)].
- 415 D. **Appeals Rights.** The LOC may consider changing the approach to the appeals rights section of the

416 amended law. As drafted; an applicant may appeal each decision of the EHS Department to the Trial
417 Court and then may appeal decisions of the Trial Court to the Court of Appeals. It may be a better use
418 of resources to state that appeals of EHS Department decisions will be reviewed by the Environmental,
419 Health, Safety and Land Division Director and that this decision is not appealable [8 O.C. 801.5-
420 2(c)(2)].

421 E. **Licensing Fee Schedule and Fine and Penalty Schedule.** The EHS Department will be responsible
422 to bring forward a license fee schedule annually [3 O.C. 305.7-1(c)] and a fine and penalty schedule [3
423 O.C. 305.10-1(c)] both to be adopted by the OBC by separate resolutions. The current license
424 fee schedule and fine and penalty schedule will be void with the adoption of the amendments because
425 these schedules are no longer included in the Law [3 O.C. 305 Attachment A and Attachment B].

426 F. **Fiscal Impact.** Please refer to the fiscal impact statement for any fiscal impacts.
427 ▪ Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation
428 except emergency legislation.
429 i. A fiscal impact statement shall be submitted by agencies as directed by the Legislative
430 Operating Committee [1 O.C. 109.6-1].
431 ii. Fiscal impact statements may be prepared by any agency who may receive funding if
432 the legislation is enacted, any agency who may administer a program if the legislation
433 is enacted, any agency who may have financial information concerning the subject
434 matter of the legislation, or by the Finance Office, upon request of the Legislative
435 Operating Committee [1 O.C. 109.6-1(a) and (b)].
436 iii. The fiscal impact statement is important in the decision-making process related to
437 legislation developed by the Legislative Operating Committee. When a fiscal impact
438 statement is requested from the Finance Department; the Chief Financial Officer will
439 submit a Fiscal Impact Statement to the LOC within ten (10) days of final approval of
440 the draft legislation [Resolution BC-09-25-19].

441
442 **Research Citations**

443 Cottage Food Exemption, 2019 Minnesota Statutes. <https://www.revisor.mn.gov/statutes/cite/28A.152>

444
445 FDA Food Code <https://www.fda.gov/food/retail-food-protection/fda-food-code>

446
447 Montana Code Annotated Statute for: Retail Food, Temporary Event Permitting and Cottage Foods
448 <https://dphhs.mt.gov/Portals/85/publichealth/documents/FCS/Retail%20food%20MCAs.pdf>

449
450 2009 Wisconsin Act 101 <http://docs.legis.wisconsin.gov/2009/related/acts/101>

451
452 University of Arkansas Cottage Foods Model Food Code. <https://www.tribalfoodcode.com/>

453

December 4, 2019, Legislative Operating Committee E-Poll Rescission of the December 4, 2019, LOC Motion Regarding the Sanctions and Penalties Law

LOC Daniel P. Guzman; David P. Jordan; Ernest L. Stevens; Jennifer A. Webster; Kirby W. Metoxen; Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Orosco; +4- 1 1:10 PM

E-POLL REQUEST: Rescission of the December 4, 2019, LOC Motion Regarding the Sanctions and Penalties Law

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Vote by clicking Vote in the Respond group above.
This message was sent with High importance.

2019 12 04 Sanctions and Penalties HANDOUT.pdf
4 MB

Good Afternoon Legislative Operating Committee,

This e-mail serves as the e-poll for the rescission of the December 4, 2019, Legislative Operating Committee motion regarding the Sanctions and Penalties law.

EXECUTIVE SUMMARY

At the December 4, 2019, Legislative Operating Committee meeting the Legislative Operating Committee adopted a motion to “approve the January 20, 2020, General Tribal Council meeting materials and forward to the Oneida Business Committee.” The purpose of this motion was to send the proposed Sanctions and Penalties law materials to the December 4, 2019, special Oneida Business Committee meeting for approval for inclusion in the January 20, 2020, General Tribal Council meeting materials.

After careful consideration of comments expressed during the Legislative Operating Committee meeting, the Legislative Operating Committee decided to reconsider its strategy in the presentation of the Sanctions and Penalties law materials to the General Tribal Council. The Legislative Operating Committee has determined that it no longer wishes to include Sanctions and Penalties law materials at the January 20, 2020, General Tribal Council meeting.

An e-poll is necessary for this matter because the next Legislative Operating Committee meeting is scheduled for December 18, 2019, and immediate action is required by Legislative Operating Committee to rescind its earlier motion so that the Sanctions and Penalties law materials are not forwarded to the Oneida Business Committee for consideration during the December 4, 2019, special Oneida Business Committee meeting.

REQUESTED ACTION

Rescind the December 4, 2019, Legislative Operating Committee motion to “Approve the January 20, 2020, General Tribal Council meeting materials and forward to the Oneida Business Committee.”

DEADLINE FOR RESPONSE

December 4, 2019 at 2:30 p.m.


All supporting documentation has been attached to this email for your convenience.




A good mind. A good heart. A strong fire.

E-POLL RESULTS:


The e-poll was approved by Ernest Stevens III, Kirby Metoxen, Jennifer Webster, David P. Jordan. Daniel Guzman King did not provide a response to the e-poll during the e-poll time frame.

 Ernest L. Stevens | LOC; Daniel P. Guzman; David P. Jordan; Jennifer A. Webster; Kirby W. Metoxen; Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Orosco; + 4 - | 1:12 PM
Re: E-POLL REQUEST: Rescission of the December 4, 2019, LOC Motion Regarding the Sanctions and Penalties Law


Support
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 Kirby W. Metoxen | LOC; Daniel P. Guzman; David P. Jordan; Ernest L. Stevens; Jennifer A. Webster; Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Orosco; + 4 - | 1:23 PM
Re: E-POLL REQUEST: Rescission of the December 4, 2019, LOC Motion Regarding the Sanctions and Penalties Law

Support to, Rescind the December 4, 2019, Legislative Operating Committee motion to "Approve the January 20, 2020, General Tribal Council meeting materials and forward to the Oneida Business Committee."

 Jennifer A. Webster | LOC; Daniel P. Guzman; David P. Jordan; Ernest L. Stevens; Kirby W. Metoxen; Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Orosco; + 4 - | 1:28 PM
Re: E-POLL REQUEST: Rescission of the December 4, 2019, LOC Motion Regarding the Sanctions and Penalties Law

Support.
Jenny

 David P. Jordan | LOC; Daniel P. Guzman; Ernest L. Stevens; Jennifer A. Webster; Kirby W. Metoxen; Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Orosco; + 4 - | 1:44 PM
Re: E-POLL REQUEST: Rescission of the December 4, 2019, LOC Motion Regarding the Sanctions and Penalties Law

Support



HANDOUT

Oneida Nation
Oneida Business Committee
Legislative Operating Committee
PO Box 365 • Oneida, WI 54155-0365
Oneida-nsn.gov

241 of 319



Legislative Operating Committee
December 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.
- 9/4/19 LOC:** Motion by Jennifer Webster to 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, edition; seconded by Ernest Stevens III. Motion carried unanimously.
- 9/19/19:** Article and community outreach event notice published in the Kalihwisaks.
- 10/7/19:** *Community Outreach Event.* The Legislative Operating Committee held a community outreach event at the Elder Services Congregate Meal Site over the lunch hour. Staff in attendance included: David P. Jordan, Kirby Metoxen, Jennifer Webster, Daniel Guzman King, Ernest Stevens III, Clorissa N. Santiago, Brandon Wisneski. Kirby gave an introduction and then opened up for discussion of any questions the community members in attendance had.
- 10/16/19:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Daniel Guzman King, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was to discuss the 10/18/19 outreach event in Milwaukee and begin planning for how the LOC wants to present this item to GTC again. All materials will have to be submitted to the OBC by November 18, 2019, for inclusion on the annual GTC meeting agenda.
- 10/18/19:** *Community Outreach Event.* The Legislative Operating Committee held a community outreach event at the SEOTS building in Milwaukee. Those in attendance included: David P. Jordan, Jennifer Webster, Kirby Metoxen, Daniel Guzman King, Clorissa N. Santiago, Brandon Wisneski, Mike Debraska. Kirby gave an introduction, and then the LOC and Mike Debraska reviewed the law line by line stopping for questions and discussion.
- 10/31/19:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Daniel Guzman King, Ernest Stevens III, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was to strategize how the LOC would like to present this law again to the GTC, and review and discuss the first draft of a memo that can be included in the GTC materials.
- 11/6/19:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Daniel Guzman King, Ernest Stevens III, Clorissa N. Santiago, Brandon Wisneski, Jameson Wilson. The purpose of this work meeting was to provide a brief update that the LRO will be holding a work meeting with the Communications Department on Thursday, November 7, 2019, to discuss the development of the multi-media presentation for the January 2020 GTC meeting.

- 11/15/19:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Daniel Guzman King, Ernest Stevens III, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was to finalize the memo that would be presented to the GTC on January 20, 2020. LRO will conduct an e-poll of the memo today so that the materials can be forwarded to the OBC.
- 11/15/19:** *E-Poll Conducted.* E-Poll was titled “Approval of the Sanctions and Penalties Law Materials for the January 20, 2020, GTC Meeting.” The requested action of this e-poll was to approve the Sanctions and Penalties law materials and forward to the Oneida Business Committee for inclusion in the January 20, 2020, General Tribal Council meeting packet materials. The e-poll was approved by David P. Jordan, Jennifer Webster, Ernest Stevens III, and Daniel Guzman King. Kirby Metoxen did not provide a response to the e-poll during the e-poll time frame.
- 11/19/19:** *Work Meeting.* Present: Clorissa N. Santiago, Brandon Wisneski, Xavier Horkman. The purpose of this work meeting was to begin collaborations between the LOC and the Communications Department on the development of a multimedia presentation for the January 2020 GTC meeting.
- 11/20/19 LOC:** Motion by Kirby Metoxen to enter the November 15, 2019, Sanction and Penalties Law material for the January 20, 2020, GTC Meeting E-Poll results into record; seconded by Daniel Guzman King. Motion carried unanimously.
- 11/20/19:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Daniel Guzman King, Ernest Stevens III, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was to update the LOC on the collaboration with the Communications Department on the development of a multimedia presentation for the January 20, 2020, annual GTC meeting. LOC also discussed potential ideas for a Sanctions and Penalties law promotional video.
- 11/26/19 OBC:** Motion by Lisa Summers to approve back to the Legislative Operating Committee, for General Tribal Council consideration, number one (1) as identified in the request [on page 90 of the meeting packet], seconded by David P. Jordan. Motion withdrawn.
- Motion by Daniel Guzman King to defer the Sanctions and Penalties law materials back to the Legislative Operating Committee for consideration of today's discussion and reformatting of the request to General Tribal Council, seconded by Ernie Stevens III. Motion carried
- 11/26/19:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Daniel Guzman King, Ernest Stevens III, Clorissa N. Santiago, Brandon Wisneski, JoAnne House. The purpose of this work meeting was to consider the discussion that occurred at the OBC meeting and determine a new strategy for moving this item forward. The LOC directed that an updated memo, draft, legislative analysis, resolution, and statement of effect be developed for inclusion on the December 4, 2019, special OBC meeting.
- 12/2/19:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Daniel Guzman King, Ernest Stevens III, Clorissa N. Santiago, Brandon Wisneski, Jennifer Falck. The purpose of this work meeting was to review the updated draft and memo and determine if there were any other considerations that needed to be made by the LOC before this item moves forward.

Next Steps:

- Approve the Sanctions and Penalties for Elected Officials law materials and forward to the Oneida Business Committee for inclusion on the January 20, 2020, General Tribal Council meeting agenda.



TO: General Tribal Council
FROM: David P. Jordan, Legislative Operating Committee Chairperson
DATE: January 20, 2020
RE: Sanctions and Penalties Law

Summary

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 for misconduct in office, including the Oneida Business Committee. During the last four (4) years the GTC has discussed sanctioning an official during at least ten (10) GTC meetings, but the requests to sanction an official have been declined often times due to the fact that the Nation lacks a law that allows for an official to be sanctioned for misconduct. After discussion on the proposed Sanctions and Penalties law, the GTC took the following actions:

- *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.*



The LOC at the Elder Congregate Meal Site for a Sanctions and Penalties law community outreach event on October 7, 2018.

Community Outreach Efforts

Rather than just waiting the sixty (60) days to see if anyone came forward with input, the LOC planned and hosted many opportunities for members of the community to become more informed

about the Sanctions and Penalties law and provide input and suggestions as to what should be addressed in the law.

EFFORTS FOR OUTREACH AND INPUT	
<i>Opportunities for Input Prior to the March 17, 2019 GTC Meeting:</i>	
November 1, 2017	Work Meeting with all Boards, Committees, and Commissions Invited
May 3, 2018	Community Meeting Potluck
October 4, 2018	Public Meeting*
October 11, 2018	Public Comment Period Closed*
February 7, 2019	Article Published in the Kalihwisaks
February 21, 2019	Informational Video Posted on Facebook
<i>Opportunities for Input After the March 17, 2019 GTC Meeting:</i>	
July 11, 2019	Community Outreach Event held at the Radisson Hotel and Conference Center prior to GTC Meeting
July 17, 2019	Community Outreach Event held at the Norbert Hill Center
August 9, 2019	Community Outreach Event held during Oneida Veteran's Breakfast
August 15, 2019	Community Outreach Event held during Oneida Farmer's Market
August 31, 2019	First Period for Written Submissions Closed
September 19, 2019	Article Published in the Kalihwisaks
October 7, 2019	Community Outreach Event held at Elder Congregate Meal Site
October 18, 2019	Community Outreach Event held at SEOTS
October 25, 2019	Input Opportunity at Community Budget Meeting
October 31, 2019	Second Period for Written Submissions Closed
November 7, 2019	Article Published in the Kalihwisaks

* *The public meeting and public comment period are required by the Legislative Procedures Act.*

What opportunities for input did the LOC provide before March 17, 2019?

Before providing what efforts the LOC made after the March 17, 2019, GTC directive to defer this item for GTC to have additional time to consider it and have input, it is important to note the efforts that were already made as the LOC provided various opportunities for members of the community to provide input during the development of the Sanctions and Penalties law.

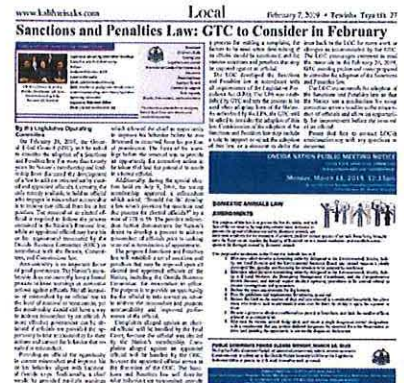
Work Meetings and Community Meetings. On November 1, 2017, the LOC invited all members of boards, committees, and commissions of the Nation to attend a work meeting to provide input on what the Sanctions and Penalties law should address. The LOC then held a community meeting on the proposed Law on May 3, 2018. This community meeting was a potluck style meeting where those community members in attendance shared input, questions, and concerns regarding the Law.

Public Meeting and Public Comment Period. 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, 2018, 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 Meeting Agendas. 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.

Kalihwisaks Article. 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.



Article as it appeared in the February 7, 2019, Kalihwisaks edition.



Behind the scenes look at Councilman Daniel Guzman King filming the Sanctions and Penalties law informational video.

Informational Video. 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 made many additional efforts to provide an opportunity for community engagement with

the proposed Sanctions and Penalties law.

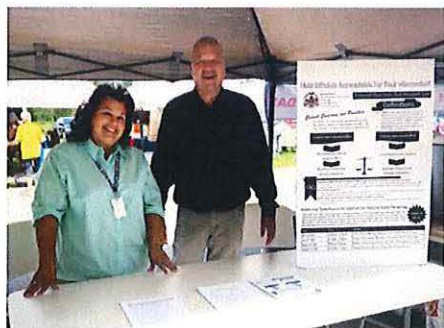


Councilman Ernest Stevens III and Councilman Daniel Guzman King conducting community outreach at the Oneida Farmer’s Market.

Community Outreach Events. The LOC has held six (6) community outreach events. Notices for these community outreach events were published in the July 3, 2019, and September 19, 2019, Kalihwisaks editions and published on the Nation’s website. At the community outreach events the LOC had informational flyers, drafts of the law, and a frequently asked questions document available for people to take and learn more. At many of the community

outreach events the LOC gave a short presentation on the Sanctions and Penalties law and had open discussion on the proposed law with those in attendance. At one (1) event the LOC even read the Sanctions and Penalties law line by line with the community member in attendance in an effort to educate, answer questions, and collect concerns. The LOC was available during these community outreach events to answer questions and collect input from community members. The community outreach events were held at the following dates and locations:

- July 11, 2019, held at the Radisson hotel and conference center prior to the GTC meeting;
- July 17, 2019, held at the Norbert Hill Center;
- August 9, 2019, held during the Oneida Veteran's Breakfast;
- August 15, 2019, held at the Oneida Farmer's Market;
- October 7, 2019, held at the Elder Congregate Meal Site; and
- October 18, 2019, held in Milwaukee at the South Eastern Oneida Tribal Services (SEOTS) building.



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



LOC members held a community outreach event at the SEOTS building in Milwaukee.



LOC Chairman David P. Jordan and Vice-Chairman Kirby Metoxen at Oneida Veteran's Breakfast.

Period for Written Submissions of Comments. 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 from July 3, 2019, until August 31, 2019, and then from September 18, 2019, until October 31, 2019. Written submissions of comments were received from two (2) individuals.

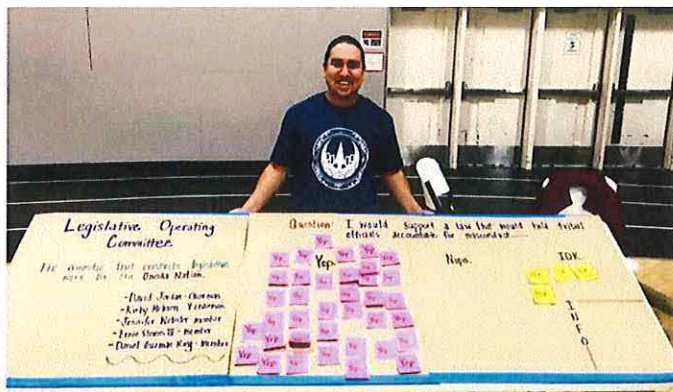
Kalihwisaks Articles. In addition to the various community outreach events, the LOC also published multiple articles in the Kalihwisaks about the proposed Sanctions and Penalties law. An article was published in the September 19, 2019, Kalihwisaks edition for the purpose of informing the community on the various outreach efforts the Legislative Operating Committee has made for the proposed Sanctions and Penalties law. Another article was then published in the November 7, 2019, Kalihwisaks edition for the purpose of informing the community why the Legislative Operating Committee is the body developing the Sanctions and Penalties law.

Community Budget Meeting. During the October 25, 2019, Community Budget Meeting the LOC had an interactive display at the Legislative Reference Office's booth which allowed those community members in attendance to provide input by responding to the statement, "I would

support a law that would hold tribal officials accountable for misconduct.” Individuals could respond with either a “Yep,” “No,” or “IDK.” Thirty-seven (37) individuals responded with “Yep,” four (4) individuals responded with “IDK,” and no one responded with “No.”

Input Received from Community Outreach Efforts

Most of the engagement during the community outreach events that resulted from the March 17, 2019, GTC directive focused on educating the community on the purpose and provisions of the Sanctions and Penalties law and answering questions that community members may have on the Sanctions and Penalties law.



Councilman Daniel Guzman King with the information collected at the Community Budget Meeting held on October 25, 2019. 37 of the 41 people who participated stated they would support a law to hold officials accountable for misconduct.

Some members of the community did take the opportunity to provide input to the LOC on issues they would like to see addressed in the law. Some of the input the LOC has received includes:

- We should eliminate every board, committee, or commission of the Nation that is not required by law or grant. We can have employees of the Nation doing the work instead of elected and appointed officials.
- We cannot fault the misconduct of boards, committees, and commissions when there is no performance outcome associated with boards, committees, and commissions, or any way to ensure that the boards, committees, and commissions are aligned with the vision of the Nation as a whole.
- Internal Audit should be delegated the authority to handle investigations of complaints of appointed officials that come before the Oneida Business Committee.
- Complaints against appointed officials should go to the Judiciary and not go to the Oneida Business Committee.
- The Sanctions and Penalties law should only address complaints against elected officials, and not address appointed officials.
- Verbal and written reprimands should be removed from the law. Political figures should be held to a higher standard and there should be zero tolerance for misconduct.
- Sanctions such as loss of stipend and mandatory participation in training should be a mandatory and immediate sanction for any misconduct.
- There should not be a timeframe for when complaints can be brought forward, you should be able to bring a complaint forward as long as that official is in office.
- To reduce frivolous complaints there should be a requirement that the complainant have standing and was the person aggrieved by the conduct of an official.

Additionally, during the March 17, 2019, GTC meeting the following input was received:

- This law allows for too many people to file a complaint resulting in the official being in court.

- Only members of the Nation should have standing to file a complaint against our officials.
- The Oneida Business Committee should not be a hearing body for appointed officials.
- The Judiciary should not be a hearing body for complaints against elected officials.

The Legislative Operating Committee carefully considered all input that was received during the various outreach events. The most common piece of input that the Legislative Operating Committee received regarding the proposed Sanctions and Penalties law referenced how complaints against appointed officials are handled under the Law. Many people expressed dissatisfaction with the Oneida Business Committee serving as a hearing body for complaints against an appointed official.

Why do we need a Sanctions and Penalties law?

If an official of the Nation engages in misconduct, the only remedy available today to hold that official accountable is removal from office. Removal from office must be pursued in accordance with the Removal law if an elected official. Although not every instance of misconduct rises to the level of removal from office, that does not mean that we should fail to address or attempt to correct every instance of misconduct. The Nation is currently lacking a process to issue warnings, suspensions, or other corrective actions against an official for his or her misconduct.

The desire for a process to be able to better hold officials accountable for misconduct in office has been discussed within the Nation for more than twenty (20) years. From 2016 to 2019, the GTC has discussed sanctioning an official, whether through suspension or loss of stipend or wage, during at least eleven (11) GTC meetings. The requests to sanction an official have often times been declined due to the fact that the Nation lacks a law that allows for an official to be sanctioned for misconduct while still protecting the due process rights of that official. In November 2018 the GTC even considered a petition regarding “*Rescinding the Removal law*” for the purpose of addressing disciplinary actions such as suspensions or removals of officials through an easier process than what the Removal law provides.

Additionally, during the Special Election held on July 9, 2016, the Nation’s voting membership was asked to consider a referendum question of “*Should the BC develop a law which provides for sanctions and due process for elected officials?*” This referendum question was approved by a vote of one hundred and seventy-eight (178) to fifty-nine (59), requiring this topic to come before the GTC for consideration and discussion.

Most other governments, including tribal, local, state and federal, have some sort of sanctions and penalties process for officials. Through the adoption of the Sanctions and Penalties law the GTC can close the current gap by providing a process to address the misconduct of officials and empower themselves to take action to hold officials accountable.

Conclusion

The LOC has fulfilled the March 17, 2019, GTC directive to defer this item for at least sixty (60) days for GTC to have additional time to consider it and have input. The LOC then used the input that was received from community members during the various community outreach efforts to

determine how the proposed Law should be revised to address the concerns of the community.

The LOC determined that the proposed Sanctions and Penalties law should be revised so that the Oneida Business Committee is removed as a hearing body for complaints. The LOC has updated the Sanctions and Penalties law to remove the Oneida Business Committee as a hearing body for complaints against appointed officials by removing all references to appointed officials from the Law. Now, the proposed Sanctions and Penalties law only addresses elected officials of the Nation and provides that those complaints against elected officials be handled by the Judiciary – Trial Court.

Additionally, the LOC revised the Law to limit who can file a complaint against an elected official. Previously, the Law allowed any individual at least eighteen (18) years of age or older who in good faith has knowledge or reason to believe that an official has committed misconduct file a complaint. The proposed Law now also requires that an individual be an enrolled member of the Nation or an employee of the Nation in order to file a complaint against an elected official.

Attached to this memorandum for review and consideration are the following updated documents:

- Resolution: Sanctions and Penalties for Elected Officials Law
- Statement of Effect: Sanctions and Penalties for Elected Officials Law
- Sanctions and Penalties for Elected Officials Law Legislative Analysis
- Sanctions and Penalties for Elected Officials Law (Clean Draft)
- Sanctions and Penalties for Elected Officials Law (Redline Draft Demonstrating Changes Since the Draft Presented at the 3/17/19 GTC Meeting)

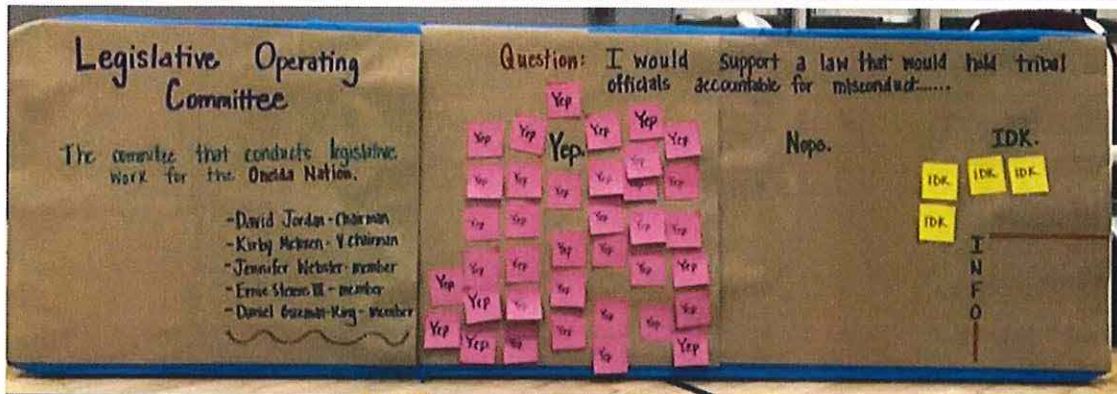
The fiscal impact statement for the proposed Sanctions and Penalties law provided in the March 17, 2019, General Tribal Council materials identified there would be no fiscal impact as a result of adoption of the Law. The subsequent revisions to the Law proposed by the LOC either eliminate or limit provisions of the proposed Law. Therefore, it is presumed that the fiscal impact statement's original determination of no fiscal impact is still valid, and an updated fiscal impact statement is not included with these materials.

The Legislative Operating Committee is asking the General Tribal Council to consider the adoption of the updated Sanctions and Penalties for Elected Officials law.

Requested Action

Adopt the updated Resolution: Sanctions and Penalties for Elected Officials Law

PHOTOGRAPHS FROM THE LEGISLATIVE OPERATING COMMITTEE'S COMMUNITY OUTREACH EVENTS



Interactive display from the Community Budget Meeting where 37 of the 41 participants stated they would support a law that held officials accountable for misconduct.



LOC at the Elder Congregate Meal Site for a Sanctions and Penalties law community outreach event on October 7, 2018.



LOC Chairman David P. Jordan and Councilwoman Jennifer Webster in Milwaukee discussing the Sanctions and Penalties law with a community member.



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



LOC Chairman David P. Jordan and Vice-Chairman Kirby Metoxen conversing about the Sanctions and Penalties law with those in attendance at the Oneida Veterans Breakfast.

PHOTOGRAPHS FROM THE LEGISLATIVE OPERATING COMMITTEE'S COMMUNITY OUTREACH EVENTS



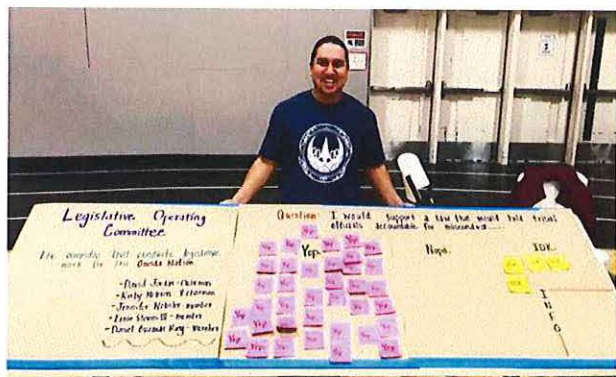
Above: LOC members in Milwaukee holding a community outreach event at the SEOTS building. Below: LOC's materials for the Sanctions and Penalties law outreach events.



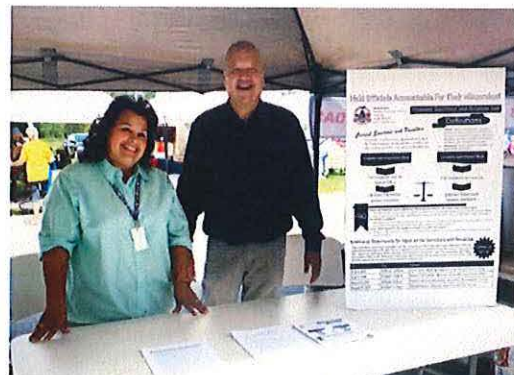
LOC Chairman David P. Jordan and Vice-Chairman Kirby Metoxen at the Oneida Veterans Breakfast community outreach event.



LOC Vice-Chairman Kirby Metoxen presenting on the Sanctions and Penalties law at the Elder Congregate Meal Site.



Left: Councilman Daniel Guzman King collecting input at the Community Budget Meeting.



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



Oneida Nation

Post Office Box 365

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Oneida, WI 54155

GTC Resolution # _____ Sanctions and Penalties for Elected Officials Law

- 1
2
3 **WHEREAS,** the Oneida Nation is a federally recognized Indian government and a treaty tribe
4 recognized by the laws of the United States of America; and
5
6 **WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Nation; and
7
8 **WHEREAS,** the Oneida Business Committee has been delegated the authority of Article IV, Section 1,
9 of the Oneida Tribal Constitution by the Oneida General Tribal Council; and
10
11 **WHEREAS,** the purpose of the Sanctions and Penalties for Elected Officials law (“the Law”) is to
12 establish a consistent set of sanctions and penalties that may be imposed upon elected
13 officials of the Nation for misconduct in office for the purpose of providing an opportunity
14 for the official to take corrective action to address the misconduct and promote
15 accountability and improved performance of the official; and
16
17 **WHEREAS,** the Law will require an elected official of the Nation to behave in a manner that promotes
18 the highest ethical and moral standard; and
19
20 **WHEREAS,** the Law will subject an elected official of the Nation to sanctions and penalties for behaving
21 in a manner that constitutes misconduct; and
22
23 **WHEREAS,** the Law will provide a process for filing a complaint alleging misconduct against an elected
24 official, including who may file a complaint, when to file a complaint, where a complaint
25 may be filed, and the necessary contents of a complaint; and
26
27 **WHEREAS,** the Law will prohibit retaliation against any individual who makes a complaint, is a witness
28 to a complaint, or offers testimony or evidence; and
29
30 **WHEREAS,** the Law will require all complaints alleged against an elected official to be handled in a
31 confidential manner; and
32
33 **WHEREAS,** the Law will delegate the responsibility to handle complaints alleged against an elected
34 official to the Judiciary - Trial Court; and
35
36 **WHEREAS,** the Law will allow an appeal of a decision of the Trial Court to be made to the Nation’s
37 Court of Appeals; and
38
39 **WHEREAS,** the Law provides the various sanctions and penalties that may be imposed against an
40 elected official, and the factors that shall be used when determining the appropriate
41 sanctions and/or penalties to impose; and
42

43 **WHEREAS,** the Law will clarify that the imposition of sanctions and/or penalties does not exempt an
44 official from individual liability for the underlying misconduct, and does not limit any
45 penalties that may be imposed in accordance with other laws; and
46

47 **WHEREAS,** the Law will provide for the effect of a resignation by an elected official; and
48

49 **WHEREAS,** the Law will require that the Business Committee Support Office maintain a record of
50 conduct in office for each elected official; and
51

52 **WHEREAS,** a public meeting on the proposed Law was held on October 4, 2018, in accordance with
53 the Legislative Procedures Act, and the public comments were reviewed and accepted by
54 the Legislative Operating Committee on October 17, 2018 and October 25, 2018; and
55

56 **WHEREAS,** a proposed Sanctions and Penalties law was presented to the General Tribal Council for
57 consideration on March 17, 2019; and
58

59 **WHEREAS,** on March 17, 2019 after discussion the General Tribal Council took action to defer this item
60 for at least at least sixty (60) days for the General Tribal Council to have additional time to
61 consider it and have input; and
62

63 **WHEREAS,** after the March 17 directive the Legislative Operating Committee held seven (7) community
64 outreach events, allowed for the written submission of comments and questions, and
65 published two (2) articles in the Kalihwisaks regarding the proposed Law and outreach
66 efforts; and
67

68 **WHEREAS,** based on the input received during the various community outreach events, the Legislative
69 Operating Committee decided to revise the Law to eliminate the Oneida Business
70 Committee as a hearing body for complaints against appointed officials by removing all
71 references to appointed officials throughout the Law, and well as limit who can file a
72 complaint to enrolled members of the Nation or employees of the Nation; and
73

74 **NOW THEREFORE BE IT RESOLVED,** that the Sanctions and Penalties for Elected Officials law is hereby
75 adopted and shall become effective ten (10) business days after the date of the adoption of this resolution.
76
77



Statement of Effect

Sanctions and Penalties for Elected Officials Law

Summary

This resolution adopts a Sanctions and Penalties for Elected Officials law for the purpose of establishing a consistent set of sanctions and penalties that may be imposed upon elected officials of the Nation for misconduct in office for the purpose of providing an opportunity for the official to take corrective action to address the misconduct and promote accountability and improved performance of the official.

Submitted by: Clorissa N. Santiago, Staff Attorney, Legislative Reference Office

Date: December 3, 2019

Analysis by the Legislative Reference Office

The Legislative Procedures Act (“the LPA”) was adopted by the General Tribal Council through resolution GTC-01-07-13-A for the purpose of providing a process for the adoption of laws of the Nation. [1 O.C. 109.1-1]. This resolution adopts a Sanctions and Penalties for Elected Officials law (“the Law”), which complies with all processes and procedures required by the LPA, including the development of a legislative analysis, a fiscal analysis¹, and the opportunity for public review during a public meeting and public comment period. [1 O.C. 109.6, 109.7, 109.8].

This resolution adopts the proposed Law which will establish a consistent set of sanctions and penalties that may be imposed upon elected officials of the Nation for misconduct in office for the purpose of providing an opportunity for the official to take corrective action to address the misconduct and promote accountability and improved performance of the official. The Sanctions and Penalties for Elected Officials law will:

- Require an elected official of the Nation to behave in a manner that promotes the highest ethical and moral standard [1 O.C. 120.4-1];
- Subject an elected official of the Nation to sanctions and penalties for behaving in a manner that constitutes misconduct [1 O.C. 120.4-2];
- Provide a process for filing a complaint, including:
 - who may file a complaint [1 O.C. 120.5-1];
 - when a complaint may be filed, [1 O.C. 120.5-2];
 - where a complaint may be filed [1 O.C. 120.5-4]; and
 - the necessary contents of a complaint [1 O.C. 120.5-3];

¹ The fiscal impact statement provided in the March 17, 2019, GTC meeting materials identified there would be no fiscal impact as a result of adoption of the Law. The subsequent revisions to the Law proposed by the LOC either eliminate or limit provisions of the proposed Law. Therefore, it is presumed that the fiscal impact statement’s original determination of no fiscal impact is still valid, and an updated fiscal impact statement was not included in the January 20, 2020, General Tribal Council meeting materials.

- Prohibit retaliation against any individual who makes a complaint, is a witness to a complaint, or offers testimony or evidence complying with directives under this law [*1 O.C. 120.5-5*];
- Require all complaints alleged against an elected official to be handled in a confidential manner [*1 O.C. 120.6-4*];
- Delegate the responsibility to handle complaints alleged against an elected official to the Trial Court [*1 O.C. 120.6-1*];
- Allow for an individual to appeal the decision of the Trial Court to the Nation's Court of Appeals [*1 O.C. 120.6-6*];
- Provide sanctions and penalties that may be imposed against an elected official [*1 O.C. 120.7-2*];
- Provide factors to be used when determining the appropriate sanctions and/or penalties to impose [*1 O.C. 120.7-3*];
- Clarify that the imposition of sanctions and/or penalties does not exempt an official from individual liability for the underlying misconduct, and does not limit any penalties that may be imposed in accordance with other laws [*1 O.C. 120.7-5*];
- Discuss the effect of a resignation by an elected official [*1 O.C. 120.8*]; and
- Require that the Business Committee Support Office maintain a record of conduct in office for each elected official [*1 O.C. 120.9*].

In accordance with the LPA, a public meeting on the proposed Law was held on October 4, 2018. Six (6) members of the community attended the public meeting with three (3) people providing oral comments. The public comment period closed on October 11, 2018. The Legislative Operating Committee received four (4) submissions of written comments during the public comment period. All sixty-four (64) public comments received were accepted, reviewed, and considered by the Legislative Operating Committee on October 17, 2018, and October 25, 2018.

The Legislative Operating Committee presented a proposed Law to the General Tribal Council for consideration on March 17, 2019. After discussion on the Law, the General Tribal Council took action to defer this item for at least sixty (60) days for the General Tribal Council to have additional time to consider it and have input.

After the March 17, 2019, directive the Legislative Operating Committee held seven (7) community outreach events, allowed for the written submission of comments and questions, and published two (2) articles in the Kalihwisaks regarding the proposed Law and outreach efforts. Based on the input received during the various community outreach events, the Legislative Operating Committee decided to revise the Law to eliminate the Oneida Business Committee as a hearing body for complaints against appointed officials by removing all references to appointed officials throughout the Law, as well as limit who can file a complaint to enrolled members of the Nation or employees of the Nation.

The Sanctions and Penalties law will become effective ten (10) business days after the adoption of the resolution by the General Tribal Council.

Conclusion

Adoption of this resolution would not conflict with any of the Nation's laws.



SANCTIONS AND PENALTIES FOR ELECTED OFFICIALS LEGISLATIVE ANALYSIS

SECTION 1. EXECUTIVE SUMMARY

REQUESTER: Oneida Business Committee	SPONSOR: Jennifer Webster	DRAFTER: Clorissa N. Santiago	ANALYST: Brandon Wisneski
Intent of the Amendments	To increase accountability among elected officials of the Nation, including members of the Oneida Business Committee. This new law creates a formal complaint process and allows for corrective actions against officials who engage in misconduct.		
Purpose	To establish a consistent set of sanctions and penalties that may be imposed upon elected officials of the Nation for misconduct in office for the purpose of providing an opportunity for the official to take corrective action to address the misconduct and promote accountability and improved performance of the official [120.1-1].		
Affected Entities	All elected officials of the Nation; Any enrolled tribal member or employee age 18 years and older who has knowledge that an official has committed misconduct; Oneida Business Committee; Judiciary Trial Court; Judiciary Court of Appeals; Business Committee Support Office. This law does not apply to the judges of the Oneida Judiciary, whose misconduct process is located within the Judiciary Law. This law does not apply to members of corporate boards. This law does not apply to appointed officials.		
Related Legislation	Rules of Civil Procedure; Rules of Appellate Procedure; Code of Ethics; Boards, Committees and Commissions Law; Garnishment Law; Per Capita law; and any of the Nation's laws and bylaws that may be violated by an official.		
Enforcement/Due Process	Sanctions and penalties against elected officials will be imposed by the Trial Court. Officials accused of misconduct have the right to be represented by an attorney or advocate. Officials also have the right to submit a written response to the complaint, and an opportunity to appear at the hearing to answer the allegations and provide evidence on their behalf. Complaints against officials must be proven by clear and convincing evidence.		
Public Meeting	A public meeting was held on October 4, 2018.		
Fiscal Impact	A fiscal impact statement was prepared by the Finance Department on December 27, 2018.		

1 SECTION 2. LEGISLATIVE DEVELOPMENT

- 2 **A.** When an official of the Nation commits misconduct while in office, there are few remedies available
 3 for the Nation to discipline that official. Currently, elected officials may be removed in accordance with
 4 the Removal Law. However, there may be instances of misconduct that do not rise to the level of
 5 removal. In these cases, other remedies such as verbal reprimands, fines, or suspensions may be more
 6 appropriate.
- 7 **B.** This law creates a formal complaint process that gives all tribal members, employees and entities an
 8 opportunity to file complaints against elected officials while ensuring that due process rights for those

9 accused are protected. This law also creates a range of potential sanctions and penalties for officials
10 who violate the laws of the Nation or commit other forms of misconduct.

11 C. During the Special Election held on July 9, 2016, the following referendum question was approved by
12 a vote of 178 to 59: “Should the BC develop a law which provides for sanctions and due process for
13 elected officials?” The Election Law requires the Oneida Business Committee to present referendum
14 questions that receive a majority vote to the General Tribal Council (GTC) for discussion and action
15 [*Election Law 1 O.C. 102.12-9(c)*].

16 D. This law will apply to elected officials of the Nation, including members of the following entities:

ELECTED BOARDS, COMMITTEES AND COMMISSIONS

- Oneida Business Committee
- Oneida Election Board
- Oneida Gaming Commission
- Oneida Land Claims Commission
- Oneida Land Commission
- Oneida Nation Commission on Aging (ONCOA)
- Oneida Nation School Board
- Trust Enrollment Committee
- GTC Legal Resource Center Advocates and Attorney

17 *This law does not apply to appointed boards, members of the Judiciary or corporate entities of the
18 Nation.

19 **SECTION 3. CONSULTATION AND OUTREACH**

20 A. The Rules of Civil Procedure, Rules of Appellate Procedure, Judiciary Law, Code of Ethics, Open
21 Meetings and Open Records Law, and the Boards, Committees and Commissions Law were reviewed
22 in drafting this analysis. In addition, the following laws were reviewed in drafting this analysis:

- 23 ▪ Ho Chunk Nation Code of Ethics 2 HCC 1;
- 24 ▪ Oglala Sioux Tribe Code of Ethics Ordinance No. 08-11;
- 25 ▪ Pokagon Band of Potawatomi Indians Ethics Code;
- 26 ▪ Rosebud Sioux Tribal Code of Ethics Ordinance 86-04;
- 27 ▪ Siletz Tribal Council Ethics Ordinance –Siletz Tribal Code 2.200;
- 28 ▪ Skokomish Code of Ethics S.T.C. 1.05;
- 29 ▪ Pit River Tribal Government Code of Conduct Section 80.

30 B. The Business Committee Support Office, Records Management Department, Human Resources
31 Department and representatives from the following Boards, Committees and Commissions were
32 consulted in the development of this law and analysis:

- 33 ▪ Anna John Resident Centered Care Community Board (AJRCCC);
- 34 ▪ Election Board;
- 35 ▪ Environmental Resource Board (ERB);
- 36 ▪ Gaming Commission;
- 37 ▪ Land Commission;
- 38 ▪ Police Commission;
- 39 ▪ Pow-wow Committee;
- 40 ▪ Trust Enrollment Committee;
- 41 ▪ Oneida Nation Veterans Affairs Committee (ONVAC).

- 42 C. *Community Outreach Events*. In addition to the public meeting required by the LPA held on October
43 4, 2018, the LOC held the following outreach events on this legislation:
- 44 ▪ May 3, 2018: A community pot-luck meeting at Norbert Hill Center to gather community input
45 on this law.
 - 46 ▪ July 11, 2019: Community outreach event held prior to GTC meeting at Radisson Conference
47 Center.
 - 48 ▪ July 17, 2019: Community outreach held at Norbert Hill Center in Oneida.
 - 49 ▪ August 9, 2019: Community outreach held at Veteran’s Breakfast in Oneida.
 - 50 ▪ August 15, 2019: Community outreach held at Farmer’s Market in Oneida.
 - 51 ▪ October 7, 2019: Community outreach held at Elder Congregate Mealsite in Oneida.
 - 52 ▪ October 16, 2019: Community outreach held at SEOTS Building in Milwaukee.
- 53

54 **SECTION 4. PROCESS**

- 55 A. Thus far, this law has followed the process set forth in the Legislative Procedures Act (LPA).
- 56 B. The law was originally added to the Active Files List on October 15, 2014 and was carried over from
57 the previous term. The law was re-added to the Active Files List on September 6, 2017.
- 58 C. At the time this legislative analysis was developed, the following work meetings had been held
59 regarding the most recent efforts to develop this law and legislative analysis:
- 60 ▪ September 6, 2017: LOC work meeting.
 - 61 ▪ November 1, 2017: LOC work meeting with representatives from the following boards, committees
62 and commissions: Police Commission, Trust Enrollment Committee, Election Board, Land
63 Commission, Oneida Gaming Commission, Pow-wow Committee. All boards, committees and
64 committees were invited to attend this work meeting.
 - 65 ▪ December 6, 2017: LOC work meeting.
 - 66 ▪ March 9, 2018: LOC work meeting.
 - 67 ▪ May 3, 2018: Community pot-luck meeting with LOC, Oneida community members, BC Support
68 Office, and representatives from the following boards, committees and commissions: Police
69 Commission, ONVAC, ERB, AJRCCC, and Gaming Commission. All boards, committees and
70 commissions were invited to attend this meeting.
 - 71 ▪ May 11, 2018: LOC work meeting.
 - 72 ▪ July 9, 2018: Work meeting with BC Support Office.
 - 73 ▪ August 1, 2018: LOC work meeting.
 - 74 ▪ October 17, 2018: LOC work meeting.
 - 75 ▪ October 25, 2018: LOC work meeting.
 - 76 ▪ December 20, 2018: Work meeting with Cultural Heritage.
 - 77 ▪ January 2, 2019: LOC Work meeting.
 - 78 ▪ January 24, 2019: LOC Work meeting.
 - 79 ▪ February 4, 2019: LOC Work meeting.
 - 80 ▪ February 6, 2019: LOC work meeting.
 - 81 ▪ February 8, 2019: LOC work meeting.
 - 82 ▪ February 14, 2019: LOC work meeting.
 - 83 ▪ February 20, 2019: LOC work meeting.
 - 84 ▪ March 1, 2019: LOC work meeting.
 - 85 ▪ March 15, 2019: LOC work meeting.

- 86 ▪ March 20, 2019: LOC work meeting
- 87 ▪ March 28, 2019: LOC work meeting.
- 88 ▪ May 1, 2019: LOC work meeting.
- 89 ▪ June 13, 2019: LOC work meeting.
- 90 ▪ August 21, 2019: LOC work meeting.
- 91 ▪ October 16, 2019: LOC work meeting.
- 92 ▪ October 31, 2019: LOC work meeting.
- 93 ▪ November 6, 2019: LOC work meeting.
- 94 ▪ November 15, 2019: LOC work meeting.
- 95 ▪ November 20, 2019: LOC work meeting.
- 96 ▪ November 26, 2019: LOC work meeting.
- 97 ▪ December 2, 2019: LOC work meeting.

98

99 **SECTION 5. CONTENTS OF THE LEGISLATION.**

100 **A. *What Qualifies as Misconduct.*** The Oneida Nation expects elected officials to uphold high ethical and
101 moral standards. Officials who engage in misconduct may be subject to sanctions and penalties. This
102 section describes what behaviors could be considered misconduct [120.4]. Under this law, the
103 definition of misconduct is very broad and includes any of the following:

- 104 ▪ Violating the Oneida Constitution or any law, policy or rule of the Oneida Nation.
 - 105 ○ Examples include the Code of Ethics and Conflict of Interest Law.
- 106 ▪ Violating the bylaws or standard operating procedures of the board the official serves on.
- 107 ▪ Being convicted of a felony under federal or Wisconsin law, or being convicted of a crime
108 elsewhere that would be considered a felony in the state of Wisconsin or the United States.
- 109 ▪ Any other activity that does not uphold the moral and ethical standards expected of the Nation’s
110 officials.

111 **B. *Filing a Complaint.***

- 112 ▪ *Who Can File a Complaint?* Under this law, any enrolled member of the Nation or employee of the
113 Nation age 18 years or older can file a complaint, so long as they have knowledge or reason to
114 believe that an official has committed misconduct. Entities of the Nation, such as a board,
115 committee or commission, can also file complaints against elected officials.
- 116 ▪ *When to File Complaint?* The complaint must be filed within 90 days of when the alleged
117 misconduct occurred or was discovered [120.5-1 & 5-2].
- 118 ▪ *Contents of the Complaint.* Complaints must include the following information [120.5-3]:
 - 119 ○ Information about the official, including the official’s name and the entity they serve on.
 - 120 ○ Information about the alleged misconduct, including date, time, location and specific
121 details.
 - 122 ○ The specific law, policy, rule or bylaw that the official violated.
 - 123 ○ Information about any witnesses or others with knowledge of the violation.
 - 124 ○ Contact information of the individual filing the complaint.
 - 125 ○ Supporting documents and any other information required by the Rules of Civil Procedure
126 [8 O.C. 803.5-1].
- 127 ▪ *Where to File Complaints?* Complaints against elected officials are filed with the Trial Court, with
128 is located within the Oneida Judiciary [120.5-4].

129 ▪ *Retaliation.* Retaliation against someone who files a complaint or cooperates with a misconduct
130 investigation is not allowed [120.5-5].

131 **C. *Complaint Procedure.*** Complaints against elected officials, including members of the Oneida Business
132 Committee, will be heard by the Nation’s Trial Court [120.6-1]. The law outlines the process for how
133 the Judiciary will hear the complaint:

134 ▪ *Right to an Attorney or Advocate.* Any official who has been accused of misconduct has the right
135 to be represented by an attorney or an advocate, at their own expense [120.6-2].

136 ○ *Legal Resource Center.* The Legal Resource Center Law established an office to provide
137 legal advice and representation to Tribal members and employees in cases before the
138 Judiciary.

139 ▪ *Burden of Proof.* The burden of proof for allegations made under this law is “clear and convincing
140 evidence” [120.6-3]. This is the same standard the Nation uses in misconduct cases against judges
141 in the Oneida Judiciary [8 O.C. 801.12-6(c)].

142 ○ This means that the person filing the complaint must provide evidence “indicating that the
143 [allegation] to be proved is highly probably or reasonably certain” [Black’s Law
144 Dictionary]. This is a greater burden than “preponderance of the evidence,” the standard
145 in most civil trials, but less than evidence “beyond a reasonable doubt,” which is used for
146 criminal trials.

147 ▪ *Confidentiality.* All complaints against officials of the nation will be handled confidentially, with
148 hearings and proceedings regarding the complaint closed to the public. Records of the hearings will
149 be kept confidential. However, the final decision of the Judiciary and any sanctions and penalties
150 imposed against an official will be public information [120.6-4].

151 ○ *Judiciary Law.* The Judiciary Law states that proceedings of the court are open to the public
152 except for peacemaking, mediation, proceedings where the judge has safety or
153 confidentiality concerns, or “if expressly prohibited by law” [8 O.C. 801.4-4].

154 **D. *Hearings Under Rules of Civil Procedure.*** All hearings under this law must follow the Judiciary Rules
155 of Civil Procedure. The following is a brief overview of how a civil case is processed by the Trial Court
156 using the Rules of Civil Procedure. For more detailed information regarding the trial court process, see
157 the Judiciary Rules of Civil of Civil Procedure in the Nation’s Code of Laws.

158 ▪ *Petitioner Files a Complaint with the Trial Court and Pays Filing Fee.* The Trial Court has a
159 standard complaint form with instructions to fill out the complaint.

160 ○ *Complaint.* At the time this analysis was drafted, the Rules of Civil Procedure require the
161 complaint to include the full name and address of the plaintiff and defendant, why the
162 defendant is being sued, facts supporting each claim, why the trial court has jurisdiction,
163 specifically what relief is sought from the defendant, and a summons [Oneida Judiciary
164 Rules of Civil Procedure 803.5-1].

165 ○ *Filing Fee.* The Oneida Judiciary Trial Court currently charges a \$50 filing fee to file a
166 general civil case. However, individuals may request a fee waiver from the court for the
167 following reasons: unemployed, health/medical, or below poverty level.

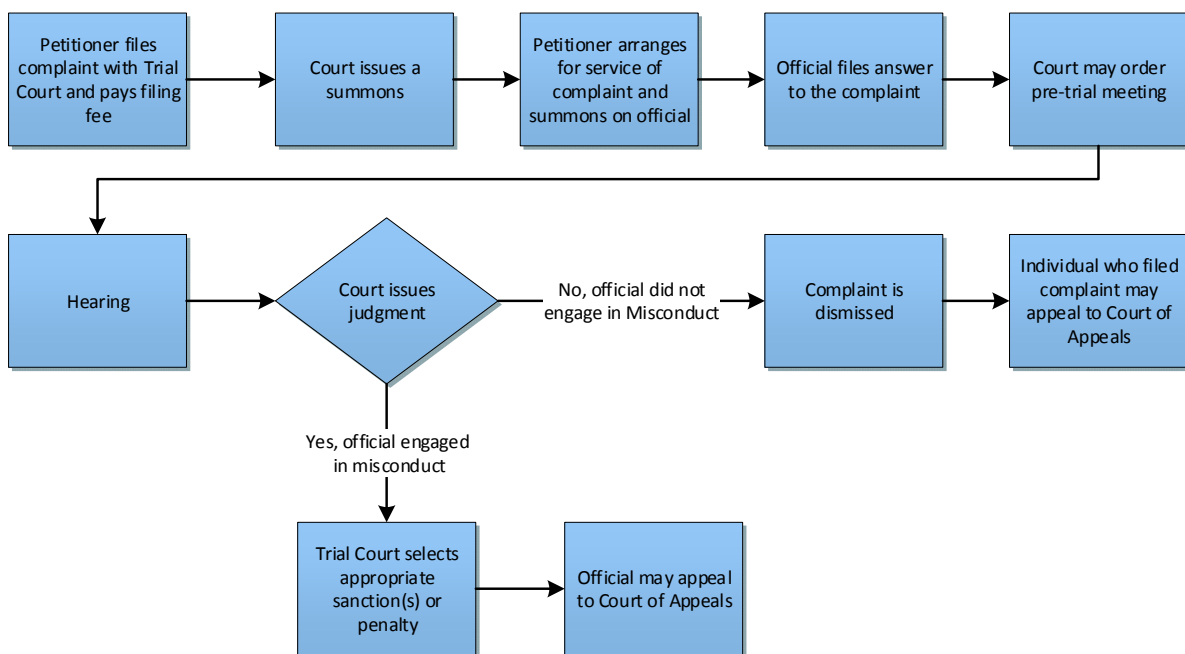
168 ○ *Summons:* A summons is a document ordering a defendant to appear before a judge. The
169 Trial Court has a standard summons form.

170 ▪ *Complaint and Summons are served on Official.* The complaint and summons must be delivered to
171 the elected official within 30 days after the complaint is filed. In addition, for complaints against
172 officials, notice must also be served to the Secretary’s office. The petitioner must provide proof to

173 the Court that the complaint and summons were delivered to the defendant within 10 days of
 174 delivery. If proof of service is not completed, then the case will be dismissed [Rules of Civil
 175 Procedure 8 O.C. 803.5].

- 176 ■ *Official Files an Answer.* The official responds to the complaint by filing an answer. The official
 177 can either admit to or deny the allegations made in the complaint and provide defenses to each
 178 claim made in the complaint [Rules of Civil Procedure 8 O.C. 803.7].
- 179 ■ *Pre-Trial Meeting.* A pre-trial meeting may be scheduled between the judge, petitioner and
 180 defendant. The purpose for this meeting could include preparing for the trial, creating a plan
 181 regarding discovery, or facilitating a settlement, such as peacemaking [Rules of Civil Procedure
 182 803.12].
- 183 ■ *Hearing.* Hearings are conducted in accordance with the Rules of Civil Procedure, which may
 184 include opening statements, presentation of the parties' cases, rebuttals and closing statements
 185 [Rules of Civil Procedure 8 O.C. 803.38].
- 186 ■ *Judgment.* If the Trial Court determines, by clear and convincing evidence, that there is enough
 187 evidence to substantiate the allegations of misconduct by the official, then the Trial Court will
 188 impose any sanctions and penalties that they deem appropriate. If the Trial Court does not find
 189 there is clear and convincing evidence to support the allegations, the complaint will be dismissed
 190 [120.6-5].
- 191 ■ *Appeals.* Both the official accused of misconduct and the individual who filed the complaint have
 192 the right to appeal the decision of the Trial Court to the Court of Appeals. The appeal must be filed
 193 with the Court of Appeals in accordance with the Rules of Appellate Procedure [120.6-6].
 - 194 ○ *Timeline for Appeal.* Appeals of judgments of the Trial Court must be filed with the Court
 195 of Appeals within 30 days after the judgment was rendered [8 O.C 805.5-2(a)].

197 **Chart 3. Complaint Process Against Elected Officials – Overview of Rules of Civil Procedure.**
 198



199
 200

201 **E. *Sanctions and Penalties.*** This law includes a list of sanctions and penalties that may be imposed on
202 an official for misconduct in office. The Trial Court is responsible for imposing sanctions on an elected
203 official. Officials may receive one or more of the following penalties. The Trial Court will select
204 whichever penalty it deems appropriate [120.7].

- 205 ■ *Conditional Penalties.* Sanctions and penalties may be imposed on a conditional basis. For
206 example, an official could be ordered to make a public apology and attend mandatory training, or
207 otherwise face suspension [120.7-4].
- 208 ■ *Failure to Comply.* If an official fails to comply with a sanction or penalty imposed against them,
209 that official can face additional sanctions as a result of additional misconduct complaints under this
210 law. An example would be an official failing to pay a fine, failing to attend mandatory training or
211 violating the terms of their suspension [120.7-6].

212
213

Chart 5. List of Potential Sanctions and Penalties

- **Verbal Reprimand**
- **Public Apology**
- **Written Reprimand**
- **Suspension**
- **Restitution**
- **Fines**
- **Loss of Stipend**
- **Mandatory Training**
- **Removal, in accordance with Removal Law**

214

- 215 ■ **Verbal Reprimand.** During a BC or GTC meeting, the Nation’s chairperson will read a statement
216 describing the official’s misconduct. The chairperson will also state that the official’s behavior was
217 unacceptable and direct the official not to engage in misconduct again [120.7-2(a)].
- 218 ■ **Public Apology.** An official may be ordered to make a public apology at a BC or GTC meeting.
219 The apology must include a description of the misconduct, a statement that the actions were wrong,
220 a description of the harm caused by the misconduct, and a “clear and unambiguous” apology
221 [120.7-2(b)].
- 222 ■ **Written Reprimand.** The Judiciary Trial Court may publish a written reprimand in the Nation’s
223 official media outlets. The Nation’s official media outlets are the Oneida Nation website and the
224 Kalihwisaks newspaper [BC Resolution #03-22-17-B]. The written reprimand will include the same
225 information as a verbal reprimand [120.7-2(c)].
- 226 ■ **Suspension.** The Trial Court may suspend part-time officials for up to two (2) meetings. Full-time
227 officials, such as members of the Business Committee or Gaming Commission, may be suspended
228 for up to fifteen (15) business days. During a suspension, the official cannot attend meetings,
229 trainings, or conferences. The official also cannot vote or perform work for the entity. In addition,
230 the official cannot earn any stipends, salary or mileage during the suspension [120.7-2(d)].
 - 231 ○ **Multiple Suspensions on One Entity.** If multiple officials on the same entity are suspended
232 at the same time, the suspensions must be imposed on a staggered basis so that the business
233 of the Nation is not interrupted. For example, if multiple members of the Business
234 Committee are suspended, each member will be suspended one at a time on a staggered
235 basis [120.7-2(d)(3)].

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- **Restitution.** An official can be ordered to pay restitution, which means paying back any improperly received benefit, such as returning funds or paying to replace damaged property. The point of restitution is to make someone whole. [120.7-2(e)].
 - **Fines.** An official can be ordered to pay a fine for each act of misconduct. Unlike restitution, a fine is a punishment. The maximum amount of each fine is \$2500 [120.7-2(f)].
 - **Fine Process.** All fines will be paid to the trial court and deposited into the Nation’s General Fund. Officials must pay their fine within 90 days after the fine is issued or upheld on final appeal. If the fine is not paid on time, the Nation may collect the money through garnishment or the official’s per capita payment.
 - **Community Service Alternative.** An official can complete community service to make up all or part of their fine. The rate earned for community service will be the Nation’s minimum wage, which is currently \$10.10 per hour. The Nation currently allows community service for fines issued in the Hunting, Fishing and Trapping Law [Hunting Fishing and Trapping 4 O.C. 406.10-5(a)].
 - **Loss of Stipend.** An official may lose their stipend for up to two (2) meetings. Members of elected boards may receive up to two (2) meeting stipends per month, so this could amount to the loss of one month’s stipends for a member of a board that meets twice monthly [Boards, Committees and Commissions law 1 O.C. 105.13-3(b)].
 - **Mandatory Training.** An official can be ordered to complete a mandatory training program to address their behavior. Examples include anger management or sexual harassment training [120.7-2(h)].
 - **Removal.** The Trial Court can recommend that the removal process be initiated for an official in accordance with the Removal Law. However, this would only be a recommendation. The Removal Law provides a strict process that must be followed to remove elected officials [120.7-2(i)].
 - **Removal Law Process.** In order to remove an elected official, an eligible voter must file a petition with the Secretary signed by at least 30% of the vote cast in the previous general election. For example, the number of votes cast in the 2017 general election was 1612, so the number of signatures needed to initiate removal is approximately 484. Then, the Judiciary conducts a preliminary review to determine whether there is sufficient grounds for removal. If so, the Judiciary holds a hearing. If the Judiciary determines that sufficient grounds for removal has been proven, the findings are forwarded to the Nation’s Chairperson, who schedules a GTC meeting. At the GTC meeting, an elected official may be removed from office after a 2/3 vote [Removal Law 1 O.C. 104].
- F. **Factors in Determining Appropriate Sanction and/or Penalty.** The Trial Court may consider the following when deciding which sanction or penalty to apply [120.7-3].
- How severe the misconduct was, whether it was intentional, and how likely the official is to repeat the misconduct.
 - The damage to the finances or reputation of the Nation, the entity, or any person or organization.
 - Whether the official has expressed remorse and is willing to take steps to correct the harm done.
 - Whether any prior complaints have been filed against the official. For example, whether this is the first complaint against the official or represents a pattern of behavior.
- G. **Civil Liability and Criminal Prosecution.** In addition to the sanctions and penalties in this law, an official who commits misconduct may also experience other consequences. These include [120.7-5]:
- Removal from office in accordance with the Removal law.

- 280 ▪ Criminal prosecution, if the official violated a criminal law. For example, criminal charges for theft
281 or violent acts.
- 282 ▪ Civil liability, in accordance with any applicable law of any jurisdiction. For example, a lawsuit for
283 damages.
- 284 ▪ Any other penalties listed in another law of the Oneida Nation.
- 285 ○ For example, a violation of the Computer Resources Ordinance may result in loss of access
286 to the Nation’s computer resources [*Computer Resources Ordinance 2 O.C. 215.9-1*].
- 287 **H. *Effect of Resignation by an Official.*** If an official resigns from office after a complaint has been filed,
288 that complaint will still be investigated and sanctions and penalties may still be pursued. Resigning
289 from office does not end or prevent an investigation [*120.8*].
- 290 **I. *Record of Conduct in Office.*** A record of conduct for each official will be maintained by the BC
291 Support Office, which will include copies of complaints filed against the official, outcome of the
292 complaints, and any sanctions and penalties the official received. This record will be maintained for at
293 least seven (7) years [*120.9*].
- 294 ▪ *Public Access to Record of Conduct.* The record of conduct maintained by the BC Support Office
295 will only be made available for review to the Trial Court. The purpose of the record of conduct is
296 so that the Trial Court can review previous complaints against the official when determining a
297 potential sanction or penalty [*120.6-4(b)*].
- 298 ▪ *Public Access to BC & Trial Court Decisions.* However, the decisions of the Trial Court regarding
299 a complaint against an elected official and any sanctions and penalties imposed against an official
300 will be public information [*120.6-4(c)*].
- 301

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

- 303 **A. *References to the Other Laws of the Nation:*** The following laws of the Nation are referenced in this
304 law. This law does not conflict with any of the referenced laws.
- 305 ▪ *Rules of Civil Procedure.* Complaints against an official shall be filed in accordance with the
306 Nation’s Trial Court in accordance with the Rules of Civil Procedure [*120.5-4*].
- 307 ▪ *Rules of Appellate Procedure.* Appeals of the Trial Court’s decision shall be filed pursuant to the
308 Nation’s Rules of Appellate Procedure.
- 309 ▪ *Garnishment Law.* If an official is ordered to pay a fine in accordance with this law and does not
310 pay according to the deadline, the Trial Court may seek to collect that fine through the Nation’s
311 garnishment process [*120.7-2(f)(2)*].
- 312 ▪ *Per Capita Law.* If an official is ordered to pay a fine in accordance with this law and does not pay
313 according to the deadline, the Trial Court may seek to collect that fine through the Nation’s per
314 capita attachment process [*120.7-2(f)(2)*].
- 315

316 **SECTION 7. EFFECTS ON EXISTING RIGHTS, PRIVILEGES, OR OBLIGATIONS**

- 317 **A. *Due Process.*** Officials accused of misconduct have the right to be represented by an attorney or
318 advocate. Officials also have the right to submit a written response to the complaint, and an opportunity to
319 appear at the investigatory hearing to answer the allegations, provide witness testimony, documents and
320 evidence on their behalf. Complaints against officials must be proven by clear and convincing evidence.
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324 **SECTION 8. OTHER CONSIDERATIONS**

- 325 **A. *Complaints against Judiciary.*** The Judiciary Law already contains a process for reprimand,
 326 suspension and removal of judges for willful misconduct in office. The complaint and hearing
 327 procedure for complaints against judges can be found in the Judiciary law [*Judiciary law 8 O.C.*
 328 *801.12*]. Therefore, the Judiciary is not included in this law.
- 329 **B. *Judiciary Conflicts of Interest.*** The Oneida Tribal Judiciary Canons of Judicial Conduct requires a
 330 Judge to withdraw from any matter where the Judge has or could be perceived to have a conflict of
 331 interest. Violating the Oneida Tribal Judiciary Canons of Judicial Conduct would be grounds for
 332 reprimand under the Nation’s Judiciary law [*Judiciary Canons of Judicial Conduct 8 O.C. 802.2-2*].
- 333 **C. *Complaints Against Appointed Officials.*** This law applies to elected officials only. Appointed officials
 334 are appointed by the Oneida Business Committee in accordance with the Boards, Committees and
 335 Commissions law and serve at BC’s discretion. If an appointed official commits misconduct, the that
 336 official’s board, committee or commission or a member of the BC may recommend termination of
 337 appointment. A member of an appointed entity may have their appointment terminated by a 2/3 majority
 338 vote of the Oneida Business Committee [*Boards, Committees and Commissions 1 O.C. 105.7-4*].
- 339 **D. *Code of Ethics.*** Most other tribal, municipal and state governments place sanctions and penalties within
 340 their Code of Ethics law. This makes sense, as the Code of Ethics and Sanctions and Penalties are
 341 closely related. The Code of Ethics is currently on the LOC’s Active Files List for potential
 342 amendments. Updating the Code of Ethics would provide additional guidance to elected officials,
 343 individuals filing complaints, and the Judiciary when they begin hearing complaints under this law.
- 344 **E. *Comparison to Other Nations.*** Research of other tribal nations and municipalities indicate that there
 345 are many different processes for sanctions and penalties of public officials. There is no uniform standard
 346 used by all tribal governments. Examples of other sanctions and penalties processes are provided for
 347 information:
 348

349 ***Chart 6. Sanctions and Penalties Process of other Tribal Nations***

Tribe	Where Complaints Are Filed	Who Investigates or Hears the Complaint	Who Decides the Sanction or Penalty
Siletz	Tribal Council*	Ad Hoc Committee or Special Advisor appointed by Tribal Council*	Tribal Council*
Ho Chunk	Judiciary	Judiciary	President
Rosebud Sioux	Ethics Commission, appointed by Tribal Council*	Ethics Commission, appointed by Tribal Council*	Tribal Council*
Skokomish	Ethics Officer, appointed by Tribal Council*	Ethics Officer, appointed by Tribal Council*	Chairman

350 *Note that “Tribal Council” refers to an elected body similar to the Oneida Business Committee.
 351

- 352 **F. *Number of Potential Complaints.*** Since the Nation currently has no formal sanctions and penalties
 353 process, it is not possible to predict the number of complaints that may be filed against elected officials.

354 ▪ *Conclusion:* Given the uncertainty regarding the number of potential complaints, the Judiciary
355 should be prepared to potentially process a large number of complaints upon passage of this
356 law.

357 **G. *Impact of Suspension on Full-Time Officials.*** Members of the Oneida Business Committee and
358 Oneida Gaming Commission are full-time elected officials. Therefore, suspension of these officials
359 would impact salaries, benefits such as health insurance, and access to workplaces. The Human
360 Resources Department reports that they have a suspension procedure in place for employees of the
361 Nation, and that this procedure could be applied or modified for suspension of full-time officials.

362 ▪ *Conclusion:* Since notifications of suspension go to the BC Support Office, it is suggested that
363 the BC Support Office work with HRD to develop a process should suspensions of full-time
364 BC members or Gaming Commissioners occur.

365 **H. *Rules of Civil Procedure.*** Complaints filed in the Judiciary Trial Court must follow the Judiciary Rules
366 of Civil Procedure. At the time this analysis was drafted, the Judiciary Rules of Civil Procedure is on
367 the LOC's Active Files List and may be amended in the future.

368 **I. *Fiscal Impact.*** Please refer to the fiscal impact statement for any fiscal impacts.

369 ▪ Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except
370 emergency legislation [*Legislative Procedures Act 1 O.C. 109.6-1*].

371 ▪ A fiscal impact statement shall be submitted by agencies as directed by the Legislative Operating
372 Committee and may be prepared by any agency who may receive funding if the legislation is
373 enacted; who may administer a program if the legislation is enacted; who may have financial
374 information concerning the subject matter of the legislation; or by the Finance Office, upon request
375 of the Legislative Operating Committee [*Legislative Procedures Act 1 O.C. 109.6-1(a and b)*].

376

Title 1. Government and Finances - Chapter 120
Kalihwahníla:tú: Okhale? Atatlihwá?thlewáhtu Kayanlása
Giving strength to the issues and Forgiving oneself for the issue at hand Laws
SANCTIONS AND PENALTIES FOR ELECTED OFFICIALS

120.1. Purpose and Policy
120.2. Adoption, Amendment, Repeal
120.3. Definitions
120.4. Misconduct
120.5. Filing of a Complaint

120.6. Complaint Procedure
120.7. Sanctions and Penalties
120.8. Effect of Resignation by an Official
120.9. Record of Conduct in Office

1
2 **120.1. Purpose and Policy**
3 120.1-1. *Purpose.* The purpose of this law is to establish a consistent set of sanctions and penalties
4 that may be imposed upon elected officials of the Nation for misconduct in office for the purpose
5 of providing an opportunity for the official to take corrective action to address the misconduct and
6 promote accountability and improved performance of the official.

- 7 (a) This law applies to members of the Oneida Business Committee.
8 (b) This law does not apply to judges of the Oneida Nation Judiciary.
9 (c) This law does not apply to members of corporate entities of the Nation.

10 120.1-2. *Policy.* It is the policy of the Nation to ensure that elected officials who commit
11 misconduct while in office be subject to appropriate sanctions and penalties; and to ensure that
12 there is a fair process in place that enables officials to fairly respond to allegations of misconduct.

13 120.1-3. It is the intent of the Nation that all elected officials strive to exhibit and uphold the
14 Nation's core values of The Good Mind as expressed by Onlayote?a'ka, which includes:

- 15 (a) Kahletsyalúsla. The heart felt encouragement of the best in each of us.
16 (b) Kanolukhwásla. Compassion, caring, identity, and joy of being.
17 (c) Ka?nikuhli'yó. The openness of the good spirit and mind.
18 (d) Ka?tshatstásla. The strength of belief and vision as a People.
19 (e) Kalihwi'yó. The use of the good words about ourselves, our Nation, and our future.
20 (f) Twahwahtsílawayλ. All of us are family.
21 (g) Yukwatsístayλ. Our fire, our spirit within each one of us.
22

23 **120.2. Adoption, Amendment, Repeal**

24 120.2-1. This law was adopted by the General Tribal Council by resolution GTC-__-__-__-__.

25 120.2-2. This law may be amended or repealed by the General Tribal Council pursuant to the
26 procedures set out in the Legislative Procedures Act.

27 120.2-3. Should a provision of this law or the application thereof to any person or circumstances
28 be held as invalid, such invalidity shall not affect other provisions of this law which are considered
29 to have legal force without the invalid portions.

30 120.2-4. In the event of a conflict between a provision of this law and a provision of another law,
31 the provisions of this law shall control.

32 120.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.
33

34 **120.3. Definitions**

35 120.3-1. This section shall govern the definitions of words and phrases used within this law. All
36 words not defined herein shall be used in their ordinary and everyday sense.

- 37 (a) “Business Committee Support Office” means the office that provides administrative
38 support for the Oneida Business Committee and various other governmental operations.
39 (b) “Business day” means Monday through Friday 8:00 a.m. – 4:30 p.m., excluding
40 holidays recognized by the Nation.
41 (c) “Clear and convincing evidence” means that it is substantially more likely than not that
42 the facts presented are true.
43 (d) “Complainant” means an individual who has made a complaint.
44 (e) “Constitution” means the Constitution and By-Laws of the Oneida Nation.
45 (f) “Court of Appeals” means the Court of Appeals of the Oneida Nation Judiciary.
46 (g) “Entity” means a board, committee, commission, office, or other group of the Nation
47 an individual may be elected to serve a position on, including the Oneida Business
48 Committee.
49 (h) “Misconduct” means wrongful, improper or unlawful conduct or behavior.
50 (i) “Nation” means the Oneida Nation.
51 (j) “Official” means any person who is elected to serve a position for the Nation, including,
52 but not limited to, a position on a board, committee, commission, or office of the Nation,
53 including the Oneida Business Committee.
54 (k) “Restitution” means compensation to an individual or entity for an injury, damage or
55 loss.
56 (l) “Stipend” means the amount paid by the Oneida Nation to elected individuals serving
57 on boards, committees and commissions of the Nation to offset the expenses of being a
58 member on the board, committee or commission.
59 (m) “Substantiate” means to find that the complaint or allegation in the complaint is valid
60 because there is clear and convincing evidence.
61 (n) “Trial Court” means the Trial Court of the Oneida Nation Judiciary, which is the
62 judicial system that was established by Oneida General Tribal Council resolution GTC-01-
63 07-13-B, and then later authorized to administer the judicial authorities and responsibilities
64 of the Nation by Oneida General Tribal Council resolution GTC-03-19-17-A.
65

66 **120.4. Misconduct**

67 120.4-1. It shall be the obligation of every official to behave in a manner that promotes the highest
68 ethical and moral standard. High moral and ethical standards amongst officials of the Nation is
69 essential to the conduct of government.

70 120.4-2. An official may be subject to sanctions and penalties for behaving in a manner which
71 constitutes misconduct. Misconduct includes:

- 72 (a) a violation of the Constitution or any of the Nation’s laws, policies, or rules;
73 (b) a violation of the bylaws, standard operating procedures or other internal operating
74 documents that govern the entity upon which the official serves;
75 (c) a conviction of a felony, or any crime in any jurisdiction that would be classified as a
76 felony under federal law or Wisconsin law; and
77 (d) any other activity that is incompatible with the high moral and ethical standards that
78 are expected of the Nation’s officials.
79

80 **120.5. Filing of a Complaint**

81 120.5-1. *Who May File.* Any individual at least eighteen (18) years of age or older who is an
82 enrolled member of the Nation or an employee of the Nation, or an entity, who in good faith, has

83 knowledge or reason to believe that an official has committed misconduct, may file a written
84 complaint.

85 120.5-2. *When to File.* A complaint may be filed as long as the alleged misconduct has occurred,
86 or was discovered to have occurred, within the previous ninety (90) days.

87 120.5-3. *Contents of the Complaint.* The complaint alleging misconduct by an official shall
88 include the following information:

89 (a) The name(s) of the official alleged to have committed the misconduct;

90 (b) The entity or entities upon which the official serves;

91 (c) The specific date(s), time(s), and location(s) of the alleged misconduct;

92 (d) The specific details of the official's misconduct;

93 (e) The specific provision of law, policy, rule, or bylaw of the Nation allegedly violated
94 by the official;

95 (f) Names of any witnesses of the alleged misconduct, or individuals who may have
96 knowledge pertinent to the alleged misconduct;

97 (g) The contact information for the person filing the complaint, which at minimum shall
98 include the person's name, address, and telephone number;

99 (h) A notarized sworn statement attesting that the information provided in and with the
100 complaint is true, accurate, and complete to the best of the complainant's knowledge;

101 (i) Any supporting documentation; and

102 (j) Any other information required by the Nation's Rules of Civil Procedure.

103 120.5-4. *Where to File.* Complaints against an official shall be filed with the Nation's Trial Court
104 pursuant to the Nation's Rules of Civil Procedure.

105 120.5-5. *Retaliation Prohibited.* Retaliation against any individual who makes a complaint or party
106 or witness to a complaint is prohibited. This protection shall also be afforded to any person offering
107 testimony or evidence or complying with directives authorized under this law. Retaliation shall
108 include any form of adverse or punitive action by, or caused by, any official.

109 (a) If an individual alleges that retaliatory action has been threatened or taken based on the
110 individual's complaint, or cooperation with directives authorized under this law, the
111 individual may file a complaint for the retaliatory action in accordance with section 120.5
112 of this law.

113

114 **120.6. Complaint Procedure**

115 120.6-1. *Jurisdiction of the Trial Court.* The Trial Court shall have jurisdiction to hear complaints
116 of alleged misconduct of officials.

117 120.6-2. Any official who is the subject of a complaint has the right to be represented by an
118 attorney or advocate, at his or her own expense, for any actions or proceedings related to the
119 complaint.

120 120.6-3. *Burden of Proof.* In a civil action against an official for misconduct, the complainant has
121 the burden of proving by clear and convincing evidence that the official engaged in misconduct.

122 120.6-4. *Confidentiality.* All complaints alleged against an official of the Nation shall be handled
123 in a confidential manner.

124 (a) All hearings and/or proceedings related to a complaint shall be closed to the general
125 public.

126 (b) All records of hearings and/or proceedings shall not be subject to public review or
127 inspection. An official's record of conduct shall only be made available for review by the
128 Trial Court.

129 (c) *Exception.* A decision of the Trial Court regarding a complaint alleged against an
130 official, and any sanctions and/or penalties that are imposed against an official, shall be
131 public information.

132 120.6-5. *Determination of the Trial Court.* In making a final determination, the Trial Court shall
133 determine if there is enough evidence to substantiate the allegations of misconduct by the official
134 by clear and convincing evidence.

135 (a) If the Trial Court finds that there is clear and convincing evidence that the official
136 engaged in misconduct, the Trial Court shall determine and impose any sanctions and/or
137 penalties deemed appropriate in accordance with this law.

138 (b) If the Trial Court does not find that there is clear and convincing evidence to support
139 the allegations that the official engaged in misconduct, the complaint shall be dismissed.

140 120.6-6. *Appeal.* The complainant and the official who is the subject of the complaint shall both
141 have the right to appeal the Trial Court's decision to the Court of Appeals pursuant to the Nation's
142 Rules of Appellate Procedure. The appeal shall be limited to review of the record, and the Trial
143 Court's decision may only be overturned if the Court of Appeals determines that:

144 (a) The findings or penalties imposed were clearly erroneous, unsupported by the record,
145 or made on unreasonable grounds or without any proper consideration of circumstances;
146 or

147 (b) Procedural irregularities occurred which prevented a fair and impartial hearing.

148 120.6-7. The Trial Court shall provide the Business Committee Support Office a copy of the
149 complaint and the determination of the Trial Court for the official's record of conduct in office.

150

151 **120.7. Sanctions and Penalties**

152 120.7-1. A sanction or penalty, or any combination of sanctions and/or penalties, may be imposed
153 upon the Nation's officials for misconduct in office, in accordance with this law.

154 120.7-2. Sanctions and penalties may include:

155 (a) *Verbal Reprimand.* A verbal reprimand may be imposed on the official.

156 (1) The Trial Court shall submit written notices to both the official and to the
157 Business Committee Support Office of the specific date, time and location of the
158 verbal reprimand. The verbal reprimand shall occur at an Oneida Business
159 Committee meeting and/or a General Tribal Council meeting.

160 (2) To impose the verbal reprimand, the presiding Oneida Business Committee
161 Chairperson, or another Oneida Business Committee member if the verbal
162 reprimand is imposed against the presiding Oneida Business Committee
163 Chairperson, shall read a statement that identifies:

164 (A) The Trial Court's findings regarding the specific actions or inaction
165 taken by the official that were found to be misconduct;

166 (B) The reasons why the official's actions or inactions amounted to
167 misconduct;

168 (C) A statement identifying that the misconduct violates the high standards
169 of behavior expected of the Nation's officials and is not acceptable; and

170 (D) A direction to the official to refrain from engaging in future misconduct.

171 (b) *Public Apology.* The official may be ordered to make a public apology. The Trial
172 Court shall submit written notices to both the official and to the Business Committee
173 Support Office of the specific date, time and location of the public apology. The public
174 apology shall occur at an Oneida Business Committee meeting and/or a General Tribal
175 Council meeting. The public apology shall:

- 176 (1) identify the specific misconduct committed by the official;
177 (2) recognize that the official's actions or inactions were wrong;
178 (3) identify the effects of the official's misconduct; and
179 (4) include a clear and unambiguous apology from the official.
- 180 (c) *Written Reprimand*. A written reprimand may be imposed on the official by publication
181 on the Nation's official media outlets, as determined by the Oneida Business Committee.
182 The Trial Court may publish a written reprimand which includes the information required
183 for the verbal reprimand as stated in section 120.7-2(a)(2)(A)-(D).
- 184 (d) *Suspension*. An official may be suspended from performing his or her duties as an
185 official for a period of time not to exceed two (2) meetings, or fifteen (15) business days if
186 the official serves in a full-time capacity.
- 187 (1) During a suspension, the official shall not:
188 (A) attend meetings, trainings or any other event as part of the entity;
189 (B) attend conferences or other events on behalf of, or as a representative
190 of, the entity;
191 (C) vote or participate in any activities of the entity;
192 (D) perform work on behalf of the entity; or
193 (E) be eligible for any compensation, including regular pay, stipends, or
194 mileage reimbursement.
- 195 (2) When an official is suspended, the Trial Court shall submit written notices to
196 both the official and to the Business Committee Support Office of the specific start
197 and end date of the suspension.
- 198 (3) If a suspension is imposed on multiple officials of the same entity at one time,
199 the Trial Court shall impose the suspensions of the officials on a staggered basis to
200 avoid an interruption of the official business and function of the entity.
- 201 (e) *Restitution*. An official may be ordered to pay restitution, which may include the
202 repayment of any improperly received benefit, or any other payment which is intended to
203 make another whole after suffering losses as a result of the official's misconduct.
- 204 (f) *Fines*. An official may be ordered to pay a fine not to exceed two thousand and five
205 hundred dollars (\$2,500).
- 206 (1) Fines shall be paid to the Trial Court.
207 (2) Fines shall be paid within ninety (90) days after the order is issued or upheld
208 on final appeal, whichever is later. If the fine is not paid by this deadline, the Trial
209 Court may seek to collect the money owed through the Nation's garnishment and/or
210 per capita attachment process.
211 (3) Money received from fines shall be deposited into the General Fund.
212 (4) Community service may be substituted for part or all of any fine at the minimum
213 wage rate of the Nation for each hour of community service.
- 214 (g) *Loss of Stipend*. An official may be ordered to forfeit a stipend for his or her service
215 on an entity not to exceed two (2) meetings.
- 216 (h) *Mandatory Participation in Training*. An official may be ordered to participate in and
217 complete a training class or program that will assist the official in addressing and
218 improving his or her behaviors and/or actions.
- 219 (1) The mandated training class or program may address a variety of topics
220 including, but not limited to, anger management, sexual harassment, or other
221 sensitivity training.

222 (i) *Removal*. The Trial Court may recommend that the process for removing an elected
223 official as contained in the Nation's laws and/or policies governing removal be initiated.

224 120.7-3. *Factors in Determining an Appropriate Sanction and/or Penalty*. When determining the
225 appropriate sanction or sanctions to impose, the Trial Court may consider all factors it deems
226 relevant, including but not limited to:

- 227 (a) the seriousness or severity of the misconduct;
- 228 (b) whether the conduct was intentional or not;
- 229 (c) the likelihood of repetition;
- 230 (d) the extent of probable damage to the finances or reputation of the Nation, the
231 complainant, the entity, or to any other person or organization;
- 232 (e) whether the official or his or her family personally profited, financially or otherwise,
233 from the prohibited conduct;
- 234 (f) the official's remorse, or
- 235 (g) the official's willingness and ability to take steps to mitigate the harm caused by the
236 violation, and
- 237 (h) any prior complaints filed, including any previous sanctions and penalties imposed
238 upon the official while serving on an entity.

239 120.7-4. The Trial Court may impose a sanction and/or penalty on a conditional basis, whereas
240 compliance with a specific sanction and/or penalty shall prevent the imposition of a more stringent
241 or burdensome sanction and/or penalty.

242 120.7-5. The imposition of sanctions and/or penalties in accordance with this law does not exempt
243 an official from individual liability for the underlying misconduct, and does not limit any penalties
244 that may be imposed in accordance with other applicable laws. In addition to any sanctions and
245 penalties that may be imposed in accordance with this law, officials who commit misconduct in
246 office may be subject to other consequences; including but not limited to:

- 247 (a) removal in accordance with the Nation's laws and/or policies governing removal;
- 248 (b) criminal prosecution, for misconduct that also violates applicable criminal law;
- 249 (c) civil liability, in accordance with the applicable law of any jurisdiction; and/or
- 250 (d) penalties for specific misconduct as authorized by any other law of the Nation.

251 120.7-6. An official who does not comply with a sanction and/or penalty that has been imposed
252 against him or her by the Trial Court may be subject to the following:

- 253 (a) additional sanctions and/or penalties that result from a complaint of misconduct filed
254 in accordance with this Law based on the non-compliance;
- 255 (b) removal in accordance with the Nation's laws and policies governing removal.

257 **120.8. Effect of Resignation by an Official**

258 120.8-1. The resignation of an official after a complaint has been filed against the official shall
259 not affect the status of the hearing and determination by the Trial Court.

260 120.8-2. An official who resigns may still be subject to sanctions and/or penalties at the discretion
261 of the Trial Court.

263 **120.9. Record of Conduct in Office**

264 120.9-1. The Business Committee Support Office shall maintain a record of conduct in office for
265 each official.

266 120.9-2. The record of conduct in office maintained for each official shall include, at a minimum:

- 267 (a) a copy of each complaint filed against the official;
- 268 (b) recording and/or transcript from any hearings and/or proceedings;

269 (c) the outcome of the complaint, and
270 (d) any sanctions or penalties imposed upon an official.
271 120.9-3. The record of conduct in office for each official shall be maintained for a period of no
272 less than seven (7) years.

273
274 *End.*

275
276 _____
277 Adopted – GTC-__-__-__-__

Title 1. Government and Finances - Chapter 120

SANCTIONS AND PENALTIES

Kalihwahníla·tú· Okhale? Atatlihwá?thlewáhtu Kayanlása

Giving strength to the issues and Forgiving oneself for the issue at hand Laws

SANCTIONS AND PENALTIES FOR ELECTED OFFICIALS

120.1. Purpose and Policy	120.9. Record of Conduct in Office
120.2. Adoption, Amendment, Repeal	120.5. Filing of a Complaint
120.3. Definitions	120.6. Complaint Alleged Against an Appointed Official
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120.1. Purpose and Policy	120.8. Sanctions and Penalties
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120.1. Purpose and Policy

120.1-1. *Purpose.* The purpose of this law is to establish a consistent set of sanctions and penalties that may be imposed upon elected ~~and appointed~~ officials of the Nation for misconduct in office for the purpose of providing an opportunity for the official to take corrective action to address the misconduct and promote accountability and improved performance of the official.

- (a) This law applies to members of the Oneida Business Committee.
- (b) This law does not apply to judges of the Oneida Nation Judiciary.
- (c) This law does not apply to members of corporate entities of the Nation.

120.1-2. *Policy.* It is the policy of the Nation to ensure that elected ~~and appointed~~ officials who commit misconduct while in office be subject to appropriate sanctions and penalties; and to ensure that there is a fair process in place that enables officials to fairly respond to allegations of misconduct.

120.1-3. It is the intent of the Nation that all elected ~~and appointed~~ officials strive to exhibit and uphold the Nation’s core values of The Good Mind as expressed by Onlayote’a’ka, which includes:

- (a) Kahletsyalása. The heart felt encouragement of the best in each of us.
- (b) Kanolukhwása. Compassion, caring, identity, and joy of being.
- (c) Ka?nikuhli·yó. The openness of the good spirit and mind.
- (d) Ka?tshatstása. The strength of belief and vision as a People.
- (e) Kalihwi·yó. The use of the good words about ourselves, our Nation, and our future.
- (f) TwahwahtsílawayΛ. All of us are family.
- (g) YukwatsístayΛ. Our fire, our spirit within each one of us.

120.2. Adoption, Amendment, Repeal

120.2-1. This law was adopted by the General Tribal Council by resolution GTC-__-__-__-__.

120.2-2. This law may be amended or repealed by the General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

120.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

31 120.2-4. In the event of a conflict between a provision of this law and a provision of another law,
32 the provisions of this law shall control.

33 120.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

34

35 **120.3. Definitions**

36 120.3-1. This section shall govern the definitions of words and phrases used within this law. All
37 words not defined herein shall be used in their ordinary and everyday sense.

38 ~~(a) “Affirmative defense” means a fact or set of facts other than those alleged by the~~
39 ~~complainant which, if proven by the official, defeats or mitigates the consequences of the~~
40 ~~official’s otherwise unlawful conduct.~~

41 ~~(b) “Answer” means a formal written statement addressing the dispute on the merits~~
42 ~~and presents any defenses and counterclaims.~~

43 ~~(e)~~(a) “Business Committee Support Office” means the office that provides administrative
44 support for the Oneida Business Committee and various other governmental operations.

45 ~~(d)~~b) “Business day” means Monday through Friday 8:00 a.m. – 4:30 p.m., excluding
46 holidays recognized by the Nation.

47 ~~(e)~~c) “Clear and convincing evidence” means that it is substantially more likely than not
48 that the facts presented are true.

49 ~~(f)~~d) “Complainant” means an individual who has made a complaint.

50 ~~(g)~~e) “Constitution” means the Constitution and By-Laws of the Oneida Nation.

51 ~~(h)~~f) “Court of Appeals” means the Court of Appeals of the Oneida Nation Judiciary.

52 ~~(i)~~g) “Entity” means a board, committee, commission, office, ~~unincorporated agency,~~ or
53 other group of the Nation an individual may be ~~appointed or~~ elected to serve a position on,
54 including the Oneida Business Committee.

55 ~~(j) “Frivolous” means a complaint without any reasonable basis or merit, that cannot be~~
56 ~~supported by a good faith argument. Most often frivolous complaints are intended to~~
57 ~~merely harass, delay, or embarrass the opposition.~~

58 ~~(k)~~(h) “Misconduct” means wrongful, improper or unlawful conduct or behavior.

59 ~~(l)~~i) “Nation” means the Oneida Nation.

60 ~~(m)~~j) “Official” means any person who is elected ~~or appointed~~ to serve a position for the
61 Nation, including, but not limited to, a position on a board, committee, commission, or
62 office of the Nation, including the Oneida Business Committee.

63 ~~(n)~~k) “Restitution” means compensation to an individual or entity for an injury, damage or
64 loss.

65 ~~(o)~~l) “Stipend” means the amount paid by the Oneida Nation to elected individuals serving
66 on boards, committees and commissions of the Nation to offset the expenses of being a
67 member on the board, committee or commission.

68 ~~(p)~~m) “Substantiate” means to find that the complaint or allegation in the complaint is valid
69 because there is clear and convincing evidence.

70 ~~(q)~~n) “Trial Court” means the Trial Court of the Oneida Nation Judiciary, which is the
71 judicial system that was established by Oneida General Tribal Council resolution GTC-01-
72 07-13-B, and then later authorized to administer the judicial authorities and responsibilities
73 of the Nation by Oneida General Tribal Council resolution GTC-03-19-17-A.

74

75 **120.4. Misconduct**

76 120.4-1. It shall be the obligation of every official to behave in a manner that promotes the highest
77 ethical and moral standard. High moral and ethical standards amongst officials of the Nation is
78 essential to the conduct of government.

79 120.4-2. An official may be subject to sanctions and penalties for behaving in a manner which
80 constitutes misconduct. Misconduct includes:

- 81 (a) a violation of the Constitution or any of the Nation's laws, policies, or rules;
- 82 (b) a violation of the bylaws, standard operating procedures or other internal operating
83 documents that govern the entity upon which the official serves;
- 84 (c) a conviction of a felony, or any crime in any jurisdiction that would be classified as a
85 felony under federal law or Wisconsin law; and
- 86 (d) any other activity that is incompatible with the high moral and ethical standards that
87 are expected of the Nation's officials.

88 89 **120.5. Filing of a Complaint**

90 120.5-1. *Who May File.* Any individual at least eighteen (18) years of age or older, ~~or~~ who is an
91 enrolled member of the Nation or an employee of the Nation, or an entity, who in good faith, has
92 knowledge or reason to believe that an official has committed misconduct, may file a written
93 complaint.

94 120.5-2. *When to File.* A complaint may be filed as long as the alleged misconduct has occurred,
95 or was discovered to have occurred, within the previous ninety (90) days.

96 120.5-3. *Contents of the Complaint.* The complaint alleging misconduct by an official shall
97 include the following information:

- 98 (a) The name(s) of the official alleged to have committed the misconduct;
- 99 (b) The entity or entities upon which the official serves;
- 100 (c) The specific date(s), time(s), and location(s) of the alleged misconduct;
- 101 (d) The specific details of the official's misconduct;
- 102 (e) The specific provision of law, policy, rule, or bylaw of the Nation allegedly violated
103 by the official;
- 104 (f) Names of any witnesses of the alleged misconduct, or individuals who may have
105 knowledge pertinent to the alleged misconduct;
- 106 (g) The contact information for the person filing the complaint, which at minimum shall
107 include the person's name, address, and telephone number;
- 108 (h) A notarized sworn statement attesting that the information provided in and with the
109 complaint is true, accurate, and complete to the best of the complainant's knowledge;
- 110 (i) Any supporting documentation; and
- 111 (j) Any other information required by the Nation's Rules of Civil Procedure ~~if the~~
112 complaint is alleging misconduct of an elected official.

113 120.5-4. *Where to File.*

114 ~~(a) Appointed Official.~~ Complaints against an ~~appointed official shall be filed with the~~
115 ~~Business Committee Support Office.~~

116 ~~(b) Elected Official.~~ Complaints against an ~~elected~~ official shall be filed with the Nation's Trial
117 Court pursuant to the Nation's Rules of Civil Procedure.

118 120.5-5. *Retaliation Prohibited.* Retaliation against any individual who makes a complaint or party
119 or witness to a complaint is prohibited. This protection shall also be afforded to any person offering
120 testimony or evidence or complying with directives authorized under this law. Retaliation shall
121 include any form of adverse or punitive action by, or caused by, any official.

122 (a) If an individual alleges that retaliatory action has been threatened or taken based on the
 123 individual's complaint, or cooperation with directives authorized under this law, the
 124 individual may file a complaint for the retaliatory action in accordance with section 120.5
 125 of this law.

127 **120.5-6. Complaint Procedure**

128 120.6-1. Jurisdiction of the Trial Court. The Trial Court shall have jurisdiction to hear complaints
 129 of alleged misconduct of officials.

130 120.6-2. Any official who is the subject of a complaint has the right to be represented by an
 131 attorney or advocate, at his or her own expense, for any actions or proceedings related to the
 132 complaint.

133 120.5-76-3. Burden of Proof. In a civil action against an official for misconduct, the complainant
 134 has the burden of proving by clear and convincing evidence that the official engaged in
 135 misconduct.

136 120.6-4. Confidentiality. All complaints alleged against an official of the Nation shall be handled
 137 in a confidential manner.

138 (a) All hearings and/or proceedings related to a complaint shall be closed to the general
 139 public.

140 (b) All records of hearings and/or proceedings shall not be subject to public review or
 141 inspection. An official's record of conduct shall only be made available for review ~~to the~~
 142 ~~Oneida Business Committee and~~by the Trial Court.

143 (c) *Exception.* A decision of the Trial Court ~~or the Oneida Business Committee~~ regarding
 144 a complaint alleged against an official, and any sanctions and/or penalties that are imposed
 145 against an official, shall be public information.

146 ~~120.6-Complaints Alleged Against an Appointed Official~~

147 ~~-5. Determination~~ ~~120.6-1. Due to the fact that an appointed official serves at the discretion of~~
 148 ~~the Oneida Business Committee, all complaints alleged against an appointed official shall be~~
 149 ~~handled by the Oneida Business Committee.~~

150 ~~120.6-2. Receipt of Complaint. Upon receiving a complaint, the Business Committee Support~~
 151 ~~Office shall:~~

152 (a) ~~immediately forward copies of the complaint, including any supporting documentation,~~
 153 ~~to:~~

154 (1) ~~all members of the Oneida Business Committee for review; and~~

155 (2) ~~the individual who is the subject of the complaint.~~

156 (b) ~~place the complaint on the executive session portion of the agenda of a regular or~~
 157 ~~special meeting of the Oneida Business Committee for an initial review which shall occur~~
 158 ~~within thirty (30) business days after the initial receipt of a complaint.~~

159 ~~120.6-3. Mediation. The complainant or the official who is the subject of the complaint shall have~~
 160 ~~up to five (5) business days after the initial receipt of the complaint to contact the Business~~
 161 ~~Committee Support Office and request mediation.~~

162 (a) ~~If both the complainant and the official who is the subject of the complaint agree to~~
 163 ~~mediation, then the Business Committee Support Office shall schedule a mediation~~
 164 ~~between the parties. The intent of this mediation meeting is to resolve the complaint prior~~
 165 ~~to commencing an initial review.~~

167 ~~(b) The Business Committee Support Office shall utilize a trained mediator to facilitate~~
168 ~~the mediation meeting. Every mediator shall have at least twenty five (25) hours of~~
169 ~~mediation training or at least three (3) years of experience in dispute resolution.~~

170 ~~(c) The mediation shall occur before the investigatory hearing is scheduled to take place.~~

171 ~~(d) If a resolution is reached during mediation, the Oneida Business Committee shall be~~
172 ~~informed of the resolution before the initial review and the complaint shall be formally~~
173 ~~dismissed during the initial review.~~

174 ~~(e) If the matter is not resolved through mediation, the initial review shall occur as~~
175 ~~prescribed by this law.~~

176 ~~120.6 4. Answer to the Complaint. The individual who is the subject of the complaint shall have~~
177 ~~ten (10) business days after receiving his or her copy of the complaint, to submit to the Business~~
178 ~~Committee Support Office a written answer setting forth any admission, denial, affirmative~~
179 ~~defense, or other relevant information upon which the official intends to rely during proceedings~~
180 ~~related to the complaint.~~

181 ~~(a) The Business Committee Support Office shall immediately forward the answer and~~
182 ~~any supporting documentation to all members of the Oneida Business Committee upon~~
183 ~~receipt from the individual who is the subject of the complaint.~~

184 ~~120.6 5. Conflict of Interest. An Oneida Business Committee member that has a conflict of~~
185 ~~interest in a complaint brought before the Oneida Business Committee, shall immediately recuse~~
186 ~~himself or herself and shall not participate in any portion of the complaint process.~~

187 ~~(a) Failure of an Oneida Business Committee member to recuse themselves due to a~~
188 ~~conflict of interest shall constitute grounds for sanctions and/or penalties.~~

189 ~~120.6 6. Initial Review. The Oneida Business Committee shall perform an initial review of an~~
190 ~~allegation of misconduct on the part of an official. The purpose of the initial review shall be to~~
191 ~~determine whether the allegation made within the complaint has merit.~~

192 ~~(a) During the initial review the Oneida Business Committee shall review the complaint~~
193 ~~and the written answer; as well as any supporting documentation.~~

194 ~~(b) In order to determine if a complaint has merit, the Oneida Business Committee will~~
195 ~~discuss if whether assuming the facts alleged are true, said facts would support a~~
196 ~~determination of misconduct.~~

197 ~~(c) The Oneida Business Committee shall determine, by majority vote, whether the~~
198 ~~complaint has merit.~~

199 ~~(1) Upon a finding that the complaint has merit, the Oneida Business Committee~~
200 ~~shall schedule an investigatory hearing to consider the specific allegations~~
201 ~~identified in the complaint.~~

202 ~~(A) The investigatory hearing shall occur within thirty (30) business days~~
203 ~~after the initial review has concluded and shall take place during the~~
204 ~~executive session portion of the agenda of a regular or special meeting of~~
205 ~~the Oneida Business Committee.~~

206 ~~(2) Upon finding that a complaint has no merit, the Oneida Business Committee~~
207 ~~shall dismiss the complaint. The Oneida Business Committee shall send notice that~~
208 ~~the complaint was dismissed to the complainant and the official who is the subject~~
209 ~~of the complaint within five (5) business days.~~

210 ~~(A) If the Oneida Business Committee dismisses the complaint based on a~~
211 ~~determination that the complaint was frivolous, false, or made with a~~
212 ~~malicious intent, the complainant may be subject to:~~

213 ~~(i) a fine not to exceed five hundred dollars (\$500);~~

214 ~~(ii) prohibition from filing another complaint for a period of time~~
 215 ~~not to exceed one (1) year; and/or~~

216 ~~(iii) a civil suit in the Nation's Trial Court brought by the official~~
 217 ~~accused by the frivolous, false or malicious allegation.~~

218 ~~120.6-7. Notice of the Investigatory Hearing. The Business Committee Support Office shall~~
 219 ~~provide the complainant, the official who is the subject of the complaint, and any other individual~~
 220 ~~compelled to attend the hearing with written notice of the date and the time of the investigatory~~
 221 ~~hearing at least ten (10) business days before the investigatory hearing.~~

222 ~~120.6-8. Investigatory Hearing. The purpose of the investigatory hearing is for the Oneida~~
 223 ~~Business Committee to determine if there is enough evidence to substantiate the allegations of~~
 224 ~~misconduct by clear and convincing evidence.~~

225 ~~(a) When conducting an investigatory hearing, the Oneida Business Committee shall have~~
 226 ~~the broadest grant of authority to compel any person or organization within the Nation to:~~

227 ~~(1) appear at the hearing to provide testimony under oath and/or information~~
 228 ~~relevant to the allegations against the official; and/or~~

229 ~~(2) produce physical evidence that is relevant to the allegations.~~

230 ~~(b) The Oneida Business Committee shall provide an opportunity for the official who is~~
 231 ~~the subject of the complaint to answer all allegations and to provide witness testimony,~~
 232 ~~documents, and other evidence on his or her own behalf.~~

233 ~~(c) The Oneida Business Committee shall also provide the complainant the opportunity to~~
 234 ~~answer questions, provide witness testimony or additional information, and/or to otherwise~~
 235 ~~speak on his or her own behalf.~~

236 ~~(d) The hearing shall be informal and conducted as the interests of justice so require, and~~
 237 ~~shall be recorded by the Business Committee Support Office.~~

238 ~~120.6-9. Deliberation of the Oneida Business Committee. At the conclusion of the investigatory~~
 239 ~~hearing, the Oneida Business Committee shall excuse everyone from executive session for the~~
 240 ~~deliberation of the Oneida Business Committee. Prior to making a final determination as to~~
 241 ~~whether to substantiate the complaint, the Oneida Business Committee shall:~~

242 ~~(a) consider all evidence and information provided, and shall have a full and complete~~
 243 ~~discussion of all aspects of the complaint and answer; and~~

244 ~~(b) have a full and complete discussion of all potential sanctions and penalties that may be~~
 245 ~~imposed, if appropriate.~~

246 ~~120.6-10. Determination by the Oneida Business Committee. After the investigatory hearing has~~
 247 ~~concluded and the Oneida Business Committee has deliberated, the Oneida Business Committee~~
 248 ~~shall in open session of a regular or special Oneida Business Committee meeting, by majority vote,~~
 249 ~~declare whether the Oneida Business Committee has determined there is enough evidence to~~
 250 ~~substantiate the allegations of misconduct by clear and convincing evidence.~~

251 ~~(a) If the Oneida Business Committee finds that there is clear and convincing evidence that~~
 252 ~~the official engaged in misconduct, the Oneida Business Committee shall, by majority vote,~~
 253 ~~determine and impose appropriate sanctions and/or penalties.~~

254 ~~(b) If the Oneida Business Committee does not find that there is clear and convincing~~
 255 ~~evidence to support the allegations that the official engaged in misconduct, the complaint~~
 256 ~~shall be dismissed.~~

257 ~~(c) Within ten (10) business days after the investigatory hearing, the Oneida Business~~
 258 ~~Committee shall issue a written decision and provide copies of the decision to:~~

259 ~~(1) the complainant,~~

260 ~~(2) the official who is the subject of the complaint, and~~

~~(3) the Business Committee Support Office, for recordkeeping.~~

~~120.6-11. Appeal. The complainant and the official who is the subject of the complaint shall both have the right to appeal the Oneida Business Committee's decision to the Court of Appeals pursuant to the Nation's Rules of Appellate Procedure. The appeal shall be limited to review of the record, and the Oneida Business Committee's decision may only be overturned if the Court of Appeals determines that:~~

~~(a) The findings or penalties imposed were clearly erroneous, unsupported by the record, or made on unreasonable grounds or without any proper consideration of circumstances;~~

~~or~~

~~(b) Procedural irregularities occurred which prevented a fair and impartial hearing.~~

120.7. Complaints Alleged Against an Elected Official

~~120.7-1. The Trial Court shall have jurisdiction to hear complaints of alleged misconduct of elected officials. Complaints of alleged misconduct shall be filed with the Trial Court pursuant to the Nation's Rules of Civil Procedure.~~

~~120.7-2. In a civil action against an elected official for misconduct, the complainant has the burden of proving by clear and convincing evidence that the official engaged in misconduct.~~

~~120.7-3. In making a final determination, the Trial Court shall determine if there is enough evidence to substantiate the allegations of misconduct by the official by clear and convincing evidence.~~

~~(a) If the Trial Court finds that there is clear and convincing evidence that the official engaged in misconduct, the Trial Court shall determine and impose any sanctions and/or penalties deemed appropriate in accordance with this law.~~

~~(b) If the Trial Court does not find that there is clear and convincing evidence to support the allegations that the official engaged in misconduct, the complaint shall be dismissed.~~

~~120.7-4-6-6. Appeal. The complainant and the official who is the subject of the complaint shall both have the right to appeal the Trial Court's decision to the Court of Appeals pursuant to the Nation's Rules of Appellate Procedure. The appeal shall be limited to review of the record, and the Trial Court's decision may only be overturned if the Court of Appeals determines that:~~

~~(a) The findings or penalties imposed were clearly erroneous, unsupported by the record, or made on unreasonable grounds or without any proper consideration of circumstances;~~

~~or~~

~~(b) Procedural irregularities occurred which prevented a fair and impartial hearing.~~

~~120.6-7-5. The Trial Court shall provide the Business Committee Support Office a copy of the complaint and the determination of the Trial Court for the official's record of conduct in office.~~

120.8-7. Sanctions and Penalties

~~120.8-7-1. A sanction or penalty, or any combination of sanctions and/or penalties, may be imposed upon the Nation's officials for misconduct in office, in accordance with this law.~~

~~120.8-7-2. Sanctions and penalties may include:~~

~~(a) Verbal Reprimand. A verbal reprimand may be imposed on the official.~~

~~(1) The Oneida Business Committee or Trial Court shall submit written notices to both the official and to the Business Committee Support Office of the specific date, time and location of the verbal reprimand. The verbal reprimand shall occur at an Oneida Business Committee meeting and/or a General Tribal Council meeting.~~

306 (2) To impose the verbal reprimand, the presiding Oneida Business Committee
 307 Chairperson, or another Oneida Business Committee member if the verbal
 308 reprimand is imposed against the presiding Oneida Business Committee
 309 Chairperson, shall read a statement that identifies:

310 (A) ~~The Oneida Business Committee or~~ Trial Court's findings regarding the
 311 specific actions or inaction taken by the official that were found to be
 312 misconduct;

313 (B) The reasons why the official's actions or inactions amounted to
 314 misconduct;

315 (C) A statement identifying that the misconduct violates the high standards
 316 of behavior expected of the Nation's officials and is not acceptable; and

317 (D) A direction to the official to refrain from engaging in future misconduct.

318 (b) *Public Apology.* The official may be ordered to make a public apology. ~~The Oneida~~
 319 ~~Business Committee or~~ The Trial Court shall submit written notices to both the official and
 320 to the Business Committee Support Office of the specific date, time and location of the
 321 public apology. The public apology shall occur at an Oneida Business Committee meeting
 322 and/or a General Tribal Council meeting. The public apology shall:

323 (1) identify the specific misconduct committed by the official;

324 (2) recognize that the official's actions or inactions were wrong;

325 (3) identify the effects of the official's misconduct; and

326 (4) include a clear and unambiguous apology from the official.

327 (c) *Written Reprimand.* A written reprimand may be imposed on the official by publication
 328 on the Nation's official media outlets, as determined by the Oneida Business Committee.
 329 ~~The Oneida Business Committee or the~~ The Trial Court may publish a written reprimand
 330 which includes the information required for the verbal reprimand as stated in section
 331 120.87-2(a)(2)(A)-(D).

332 (d) *Suspension.* An official may be suspended from performing his or her duties as an
 333 official for a period of time not to exceed two (2) meetings, or fifteen (15) business days if
 334 the official serves in a full-time capacity.

335 (1) During a suspension, the official shall not:

336 (A) attend meetings, trainings or any other event as part of the entity;

337 (B) attend conferences or other events on behalf of, or as a representative
 338 of, the entity;

339 (C) vote or participate in any activities of the entity;

340 (D) perform work on behalf of the entity; or

341 (E) be eligible for any compensation, including regular pay, stipends, or
 342 mileage reimbursement.

343 (2) When an official is suspended, the ~~Oneida Business Committee or~~ Trial Court
 344 shall submit written notices to both the official and to the Business Committee
 345 Support Office of the specific start and end date of the suspension.

346 (3) If a suspension is imposed on multiple officials of the same entity at one time,
 347 the ~~Oneida Business Committee or the~~ Trial Court shall impose the suspensions of
 348 the officials on a staggered basis to avoid an interruption of the official business
 349 and function of the entity.

350 (e) *Restitution.* An official may be ordered to pay restitution, which may include the
 351 repayment of any improperly received benefit, or any other payment which is intended to
 352 make another whole after suffering losses as a result of the official's misconduct.

353 (f) *Fines*. An official may be ordered to pay a fine not to exceed two thousand and five
354 hundred dollars (\$2,500).

355 (1) Fines shall be paid to the Trial Court.

356 (2) Fines shall be paid within ninety (90) days after the order is issued or upheld
357 on final appeal, whichever is later. ~~Cash shall not be accepted for payment of fines.~~
358 If the fine is not paid by this deadline, the Trial Court may seek to collect the money
359 owed through the Nation's garnishment and/or per capita attachment process.

360 (3) Money received from fines shall be deposited into the General Fund.

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

363 (g) *Loss of Stipend*. An official may be ordered to forfeit a stipend for his or her service
364 on an entity not to exceed two (2) meetings.

365 (h) *Mandatory Participation in Training*. An official may be ordered to participate in and
366 complete a training class or program that will assist the official in addressing and
367 improving his or her behaviors and/or actions.

368 (1) The mandated training class or program may address a variety of topics
369 including, but not limited to, anger management, sexual harassment, or other
370 sensitivity training.

371 ~~(i) *Termination of Appointment*. An appointed official may have his or her appointment
372 terminated by the Oneida Business Committee in accordance with the Nation's laws and/or
373 policies governing boards, committees, and commissions.~~

374 ~~(i)~~ (i) *Removal*. The Trial Court may recommend that the process for removing an elected
375 official as contained in the Nation's laws and/or policies governing removal be initiated.

376 120.87-3. *Factors in Determining an Appropriate Sanction and/or Penalty*. When determining
377 the appropriate sanction or sanctions to impose, the ~~Oneida Business Committee or the~~ Trial Court
378 may consider all factors it deems relevant, including but not limited to:

379 (a) the seriousness or severity of the misconduct;

380 (b) whether the conduct was intentional or not;

381 (c) the likelihood of repetition;

382 (d) the extent of probable damage to the finances or reputation of the Nation, the
383 complainant, the entity, or to any other person or organization;

384 (e) whether the official or his or her family personally profited, financially or otherwise,
385 from the prohibited conduct;

386 (f) the official's remorse, or

387 (g) the official's willingness and ability to take steps to mitigate the harm caused by the
388 violation, and

389 (h) any prior complaints filed, including any previous sanctions and penalties imposed
390 upon the official while serving on an entity.

391 120.87-4. The ~~Oneida Business Committee and/or the~~ Trial Court may impose a sanction and/or
392 penalty on a conditional basis, whereas compliance with a specific sanction and/or penalty shall
393 prevent the imposition of a more stringent or burdensome sanction and/or penalty.

394 120.87-5. The imposition of sanctions and/or penalties in accordance with this law does not
395 exempt an official from individual liability for the underlying misconduct, and does not limit any
396 penalties that may be imposed in accordance with other applicable laws. In addition to any
397 sanctions and penalties that may be imposed in accordance with this law, officials who commit
398 misconduct in office may be subject to other consequences; including but not limited to:

399 (a) removal in accordance with the Nation's laws and/or policies governing removal, ~~if an~~
 400 ~~elected official;~~

401 (b) ~~termination of appointment by the Oneida Business Committee, if an appointed official;~~

402 ~~(c)~~ criminal prosecution, for misconduct that also violates applicable criminal law;

403 ~~(d)~~ civil liability, in accordance with the applicable law of any jurisdiction; and/or

404 ~~(e)~~ penalties for specific misconduct as authorized by any other law of the Nation.

405 120.87-6. An official who does not comply with a sanction and/or penalty that has been imposed
 406 against him or her by ~~either the Oneida Business Committee or~~ the Trial Court may be subject to
 407 the following:

408 (a) additional sanctions and/or penalties that result from a complaint of misconduct filed
 409 in accordance with this Law based on the non-compliance;

410 ~~(b) termination of appointment by the Oneida Business Committee in accordance with the~~
 411 ~~Nation's laws and policies governing boards, committees, and commissions, if the official~~
 412 ~~was appointed to his or her position; and/or~~

413 ~~(c)~~ removal in accordance with the Nation's laws and policies governing removal, ~~if the~~
 414 ~~official was elected to his or her position.~~

415 **120.98. Effect of Resignation by an Official**

416 120.98-1. The resignation of an official after a complaint has been filed against the official shall
 417 not affect the status of the hearing and determination by ~~either the Oneida Business Committee~~
 418 ~~or~~ the Trial Court.

419 120.98-2. An official who resigns may still be subject to sanctions and/or penalties at the discretion
 420 of the ~~Oneida Business Committee or~~ Trial Court.

421 **120.10.9. Record of Conduct in Office**

422 120.10.9-1. The Business Committee Support Office shall maintain a record of conduct in office
 423 for each official.

424 120.10.9-2. The record of conduct in office maintained for each official shall include, at a
 425 minimum:

426 (a) a copy of each complaint filed against the official;

427 (b) recording and/or transcript from any hearings and/or proceedings;

428 (c) the outcome of the complaint, and

429 (d) any sanctions or penalties imposed upon an official.

430 120.10.9-3. The record of conduct in office for each official shall be maintained for a period of no
 431 less than seven (7) years.

432 *End.*

433
 434
 435
 436
 437 Adopted – GTC-__-__-__-__

December 10, 2019, Legislative Operating Committee E-Poll Approval of January 7, 2020, Public Meeting for the Sanctions and Penalties for Elected Officials Law



Good Afternoon Legislative Operating Committee,

This e-mail serves as the e-poll for the approval of the January 7, 2020, public meeting for the Sanctions and Penalties for Elected Officials law.

EXECUTIVE SUMMARY

On March 17, 2019, the General Tribal Council (GTC) adopted a motion to defer the Sanctions and Penalties law for at least sixty (60) days for GTC to have additional time to consider it and have input. To fulfill this directive, the Legislative Operating Committee planned and hosted many opportunities for members of the community to become more informed about the Sanctions and Penalties law and provide input and suggestions as to what should be addressed in the law. This included seven (7) community outreach events, and two (2) different periods of written submissions of comments.

The LOC then used the input that was received from community members during the various community outreach efforts to determine how the proposed Law should be revised to address the concerns of the community. The LOC determined that the proposed Law should be revised so that the Oneida Business Committee is removed as a hearing body for complaints. The LOC has updated the Law to remove the Oneida Business Committee as a hearing body for complaints against appointed officials by removing all references to appointed officials from the Law. Now, the proposed Law only addresses elected officials of the Nation and provides that those complaints against elected officials be handled by the Judiciary – Trial Court. Additionally, the LOC revised the Law to limit who can file a complaint against an elected official. Previously, the Law allowed any individual at least eighteen (18) years of age or older who in good faith has knowledge or reason to believe that an official has committed misconduct file a complaint. The proposed Law now also requires that an individual be an enrolled member of the Nation or an employee of the Nation in order to file a complaint against an elected official.

Before bringing the revised Law back to GTC for consideration, the Legislative Operating Committee has determined that another public meeting and public comment period should be held, and that an updated fiscal impact statement should be obtained. The Legislative Operating Committee is prepared to hold a public meeting on the proposed Sanctions and Penalties for Elected Officials law on January 7, 2020.

An e-poll is necessary for this matter because the next Legislative Operating Committee meeting is scheduled for December 18, 2019, and immediate action is required by Legislative Operating Committee to submit a public meeting notice to the Kalihwisaks by its December 12, 2019, submission deadline for inclusion in the December 19, 2019, Kalihwisaks edition. The public meeting notice is required to be published in the December 19, 2019, Kalihwisaks edition for a January 7, 2020, public meeting date.

REQUESTED ACTION

Approve the public meeting packet and forward the Sanctions and Penalties for Elected Officials law to a public meeting to be held on January 7, 2020.

DEADLINE FOR RESPONSE

December 10, 2019 at 4:30 p.m.

All supporting documentation has been attached to this email for your convenience.



A good mind. A good heart. A strong fire.

E-POLL RESULTS:

The e-poll was approved by Kirby Metoxen, Jennifer Webster, David P. Jordan, and Daniel Guzman King. Ernest Stevens III did not provide a response.

	Kirby W. Metoxen	Daniel P. Guzman; David P. Jordan; LOC; Ernest L. Stevens; Jennifer A. Webster; Jameson J. Wilson; Leyne C. Orosco; Clorissa N. Santiago; Rosa J. Laster; Jennifer A. Falck; + 3 -	2:09 PM
E-POLL REQUEST: Approval of January 7, 2020, Public Meeting for the Sanctions and Penalties for Elected Officials Law			
Support			
Sent from Workspace ONE Boxer			
	Jennifer A. Webster	LOC; Daniel P. Guzman; David P. Jordan; Ernest L. Stevens; Kirby W. Metoxen; Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Orosco; Rosa J. Laster; + 3 -	2:15 PM
RE: E-POLL REQUEST: Approval of January 7, 2020, Public Meeting for the Sanctions and Penalties for Elected Officials Law			
Support			
	David P. Jordan	LOC; Daniel P. Guzman; Ernest L. Stevens; Jennifer A. Webster; Kirby W. Metoxen; David P. Jordan; Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Orosco; + 4 -	2:21 PM
RE: E-POLL REQUEST: Approval of January 7, 2020, Public Meeting for the Sanctions and Penalties for Elected Officials Law			
Support			
	Daniel P. Guzman	LOC; David P. Jordan; Ernest L. Stevens; Jennifer A. Webster; Kirby W. Metoxen; Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Orosco; Rosa J. Laster; + 3 -	3:01 PM
RE: E-POLL REQUEST: Approval of January 7, 2020, Public Meeting for the Sanctions and Penalties for Elected Officials Law			
Approve			

ONEIDA NATION PUBLIC MEETING NOTICE

Tuesday, January 7, 2020, 12:15 pm

Norbert Hill Center-Business Committee Conference Room
N7210 Seminary Rd., Oneida, Wisconsin

Find Public Meeting Materials at

Oneida-nsn.gov/government/register/public meetings

Send Public Comments to

LOC@oneidanation.org

Ask Questions here

LOC@oneidanation.org

920-869-4312



SANCTIONS AND PENALTIES FOR ELECTED OFFICIALS LAW

The purpose of this law is to establish a consistent set of sanctions and penalties that may be imposed upon elected officials of the Nation, including members of the Oneida Business Committee, for misconduct in office; and to establish an orderly and fair process for imposing such sanctions and penalties.

The Sanctions and Penalties for Elected Officials law will:

1. Set parameters for what behavior constitutes misconduct;
2. Describe how an individual can file a complaint against an elected official;
3. Provide that complaints against an elected official shall be handled by the Judiciary—Trial Court; and
4. Describe the potential sanctions and penalties that can be imposed upon elected officials found to have engaged in misconduct, and the factors that will be utilized to determine an appropriate sanction or penalty.

PUBLIC COMMENTS PERIOD CLOSSES TUESDAY, JANUARY 14, 2020

During the Public Comment Period, anyone may submit written comments. Comments may be submitted to the Oneida Nation Secretary’s Office or the Legislative Reference Office in person, by U.S. mail, interoffice mail, or e-mail.

PROVIDING EFFECTIVE PUBLIC COMMENTS

Providing public comment is an important way to make your voice heard in decision making. Public comments can strengthen a decision or provide different perspectives. The Legislative Operating Committee wants to hear from you!



READ THE PUBLIC MEETING MATERIALS: Before you provide comments familiarize yourself with the legislation. A public meeting packet is made for every public meeting and it includes 1) a notice with the date, time, location, 2) a draft of the proposed legislation, and 3) a plain language review of the legislation and its impact on the Oneida Nation.



PREPARE YOUR COMMENTS: When you are familiar with the legislation, start to prepare comments. The LOC is responsible for reviewing every comment received. To get your message across effectively, frame your comment clearly and concisely. Here is an example of how to create an effective comment:

Least Effective Comment	More Effective Comment	Most Effective Comment
We need more accountability for our officials.	We need more strict fines in order to hold officials accountable.	The fine amount in section 120.7-2 (f) should be increased from \$2,500 to \$3,500.



SANCTIONS AND PENALTIES FOR ELECTED OFFICIALS LEGISLATIVE ANALYSIS

SECTION 1. EXECUTIVE SUMMARY

REQUESTER: Oneida Business Committee	SPONSOR: Jennifer Webster	DRAFTER: Clorissa N. Santiago	ANALYST: Brandon Wisneski
Intent of the Amendments	To increase accountability among elected officials of the Nation, including members of the Oneida Business Committee. This new law creates a formal complaint process and allows for corrective actions against officials who engage in misconduct.		
Purpose	To establish a consistent set of sanctions and penalties that may be imposed upon elected officials of the Nation for misconduct in office for the purpose of providing an opportunity for the official to take corrective action to address the misconduct and promote accountability and improved performance of the official [120.1-1].		
Affected Entities	All elected officials of the Nation; Any enrolled tribal member or employee age 18 years and older who has knowledge that an official has committed misconduct; Oneida Business Committee; Judiciary Trial Court; Judiciary Court of Appeals; Business Committee Support Office. This law does not apply to the judges of the Oneida Judiciary, whose misconduct process is located within the Judiciary Law. This law does not apply to members of corporate boards. This law does not apply to appointed officials.		
Related Legislation	Rules of Civil Procedure; Rules of Appellate Procedure; Code of Ethics; Boards, Committees and Commissions Law; Garnishment Law; Per Capita law; and any of the Nation's laws and bylaws that may be violated by an official.		
Enforcement/Due Process	Sanctions and penalties against elected officials will be imposed by the Trial Court. Officials accused of misconduct have the right to be represented by an attorney or advocate. Officials also have the right to submit a written response to the complaint, and an opportunity to appear at the hearing to answer the allegations and provide evidence on their behalf. Complaints against officials must be proven by clear and convincing evidence.		
Public Meeting	A public meeting for an earlier draft of this law was held on October 4, 2018. A 2 nd public meeting for the updated draft is scheduled for January 7, 2020.		
Fiscal Impact	A fiscal impact statement for an earlier draft of this law was prepared by the Finance Department on December 27, 2018. An updated fiscal analysis has not yet been requested.		

SECTION 2. LEGISLATIVE DEVELOPMENT

- 1
- 2 **A.** When an official of the Nation commits misconduct while in office, there are few remedies available
- 3 for the Nation to discipline that official. Currently, elected officials may be removed in accordance with
- 4 the Removal Law. However, there may be instances of misconduct that do not rise to the level of
- 5 removal. In these cases, other remedies such as verbal reprimands, fines, or suspensions may be more
- 6 appropriate.
- 7 **B.** This law creates a formal complaint process that gives tribal members, employees and entities an
- 8 opportunity to file complaints against elected officials while ensuring that due process rights for those

9 accused are protected. This law also creates a range of potential sanctions and penalties for officials
10 who violate the laws of the Nation or commit other forms of misconduct.

11 C. During the Special Election held on July 9, 2016, the following referendum question was approved by
12 a vote of 178 to 59: “Should the BC develop a law which provides for sanctions and due process for
13 elected officials?” The Election Law requires the Oneida Business Committee to present referendum
14 questions that receive a majority vote to the General Tribal Council (GTC) for discussion and action
15 [Election Law 1 O.C. 102.12-9(c)].

16 D. On March 17, 2019, the Legislative Operating Committee presented an earlier draft of the proposed
17 Sanctions and Penalties law to GTC for consideration. During this meeting, GTC directed that the
18 Sanctions and Penalties law be deferred for at least sixty (60) days for GTC to have additional time to
19 consider it and have input.

20 E. Between July and November of 2019, the LOC conducted additional outreach for the community
21 regarding the proposed Sanctions and Penalties law. This included outreach events in both Oneida and
22 Milwaukee, articles in the Kaliwihsaks, and opportunities to submit written comments. Based on input
23 received from community members during the various outreach efforts, as well as the discussion during
24 the March 17, 2019, GTC Meeting, the LOC determined that the draft should be revised. This revised
25 draft removes the Oneida Business Committee as a hearing body for complaints against appointed
26 officials by removing all references to appointed officials from the law. In addition, complaints will
27 now be filed only by enrolled tribal members or employees of the Nation aged 18 years or older.

28 F. This law will apply to elected officials of the Nation, including members of the following entities:

ELECTED BOARDS, COMMITTEES AND COMMISSIONS

- Oneida Business Committee
- Oneida Election Board
- Oneida Gaming Commission
- Oneida Land Claims Commission
- Oneida Land Commission
- Oneida Nation Commission on Aging (ONCOA)
- Oneida Nation School Board
- Trust Enrollment Committee
- GTC Legal Resource Center Advocates and Attorney

29 *This law does not apply to members of appointed boards, members of the Judiciary or corporate
30 entities of the Nation.

31 **SECTION 3. CONSULTATION AND OUTREACH**

32 A. The Rules of Civil Procedure, Rules of Appellate Procedure, Judiciary Law, Code of Ethics, Open
33 Meetings and Open Records Law, and the Boards, Committees and Commissions Law were reviewed
34 in drafting this analysis. In addition, the following laws were reviewed in drafting this analysis:

- 35 ▪ Ho Chunk Nation Code of Ethics 2 HCC 1;
- 36 ▪ Oglala Sioux Tribe Code of Ethics Ordinance No. 08-11;
- 37 ▪ Pokagon Band of Potawatomi Indians Ethics Code;
- 38 ▪ Rosebud Sioux Tribal Code of Ethics Ordinance 86-04;
- 39 ▪ Siletz Tribal Council Ethics Ordinance –Siletz Tribal Code 2.200;
- 40 ▪ Skokomish Code of Ethics S.T.C. 1.05;
- 41 ▪ Pit River Tribal Government Code of Conduct Section 80.

- 42 **B.** The Business Committee Support Office, Records Management Department, Human Resources
43 Department and representatives from the following Boards, Committees and Commissions were
44 consulted in the development of this law and analysis:
- 45 ▪ Anna John Resident Centered Care Community Board (AJRCCC);
 - 46 ▪ Election Board;
 - 47 ▪ Environmental Resource Board (ERB);
 - 48 ▪ Gaming Commission;
 - 49 ▪ Land Commission;
 - 50 ▪ Police Commission;
 - 51 ▪ Pow-wow Committee;
 - 52 ▪ Trust Enrollment Committee;
 - 53 ▪ Oneida Nation Veterans Affairs Committee (ONVAC).
- 54 **C.** *Community Outreach Events.* In addition to the public meeting required by the LPA held on October
55 4, 2018, the LOC held the following outreach events on this legislation:
- 56 ▪ May 3, 2018: A community pot-luck meeting at Norbert Hill Center to gather community input
57 on this law.
 - 58 ▪ July 11, 2019: Community outreach event held prior to GTC meeting at Radisson Conference
59 Center.
 - 60 ▪ July 17, 2019: Community outreach held at Norbert Hill Center in Oneida.
 - 61 ▪ August 9, 2019: Community outreach held at Veteran’s Breakfast in Oneida.
 - 62 ▪ August 15, 2019: Community outreach held at Farmer’s Market in Oneida.
 - 63 ▪ October 7, 2019: Community outreach held at Elder Congregate Mealsite in Oneida.
 - 64 ▪ October 16, 2019: Community outreach held at SEOTS Building in Milwaukee.

65

66 **SECTION 4. PROCESS**

- 67 **A.** Thus far, this law has followed the process set forth in the Legislative Procedures Act (LPA).
- 68 **B.** The law was originally added to the Active Files List on October 15, 2014 and was carried over from
69 the previous term. The law was re-added to the Active Files List on September 6, 2017.
- 70 **C.** At the time this legislative analysis was developed, the following work meetings had been held
71 regarding the most recent efforts to develop this law and legislative analysis:
- 72 ▪ September 6, 2017: LOC work meeting.
 - 73 ▪ November 1, 2017: LOC work meeting with representatives from the following boards, committees
74 and commissions: Police Commission, Trust Enrollment Committee, Election Board, Land
75 Commission, Oneida Gaming Commission, Pow-wow Committee. All boards, committees and
76 committees were invited to attend this work meeting.
 - 77 ▪ December 6, 2017: LOC work meeting.
 - 78 ▪ March 9, 2018: LOC work meeting.
 - 79 ▪ May 3, 2018: Community pot-luck meeting with LOC, Oneida community members, BC Support
80 Office, and representatives from the following boards, committees and commissions: Police
81 Commission, ONVAC, ERB, AJRCCC, and Gaming Commission. All boards, committees and
82 commissions were invited to attend this meeting.
 - 83 ▪ May 11, 2018: LOC work meeting.
 - 84 ▪ July 9, 2018: Work meeting with BC Support Office.
 - 85 ▪ August 1, 2018: LOC work meeting.

- 86 ▪ October 17, 2018: LOC work meeting.
- 87 ▪ October 25, 2018: LOC work meeting.
- 88 ▪ December 20, 2018: Work meeting with Cultural Heritage.
- 89 ▪ January 2, 2019: LOC Work meeting.
- 90 ▪ January 24, 2019: LOC Work meeting.
- 91 ▪ February 4, 2019: LOC Work meeting.
- 92 ▪ February 6, 2019: LOC work meeting.
- 93 ▪ February 8, 2019: LOC work meeting.
- 94 ▪ February 14, 2019: LOC work meeting.
- 95 ▪ February 20, 2019: LOC work meeting.
- 96 ▪ March 1, 2019: LOC work meeting.
- 97 ▪ March 15, 2019: LOC work meeting.
- 98 ▪ March 20, 2019: LOC work meeting
- 99 ▪ March 28, 2019: LOC work meeting.
- 100 ▪ May 1, 2019: LOC work meeting.
- 101 ▪ June 13, 2019: LOC work meeting.
- 102 ▪ August 21, 2019: LOC work meeting.
- 103 ▪ October 16, 2019: LOC work meeting.
- 104 ▪ October 31, 2019: LOC work meeting.
- 105 ▪ November 6, 2019: LOC work meeting.
- 106 ▪ November 15, 2019: LOC work meeting.
- 107 ▪ November 20, 2019: LOC work meeting.
- 108 ▪ November 26, 2019: LOC work meeting.
- 109 ▪ December 2, 2019: LOC work meeting.

110

111 **SECTION 5. CONTENTS OF THE LEGISLATION.**

112 **A. *What Qualifies as Misconduct.*** The Oneida Nation expects elected officials to uphold high ethical and
113 moral standards. Officials who engage in misconduct may be subject to sanctions and penalties. This
114 section describes what behaviors could be considered misconduct [120.4]. Under this law, the
115 definition of misconduct is very broad and includes any of the following:

- 116 ▪ Violating the Oneida Constitution or any law, policy or rule of the Oneida Nation.
 - 117 ○ Examples include the Code of Ethics and Conflict of Interest Law.
- 118 ▪ Violating the bylaws or standard operating procedures of the board the official serves on.
- 119 ▪ Being convicted of a felony under federal or Wisconsin law, or being convicted of a crime
120 elsewhere that would be considered a felony in the state of Wisconsin or the United States.
- 121 ▪ Any other activity that does not uphold the moral and ethical standards expected of the Nation's
122 officials.

123 **B. *Filing a Complaint.***

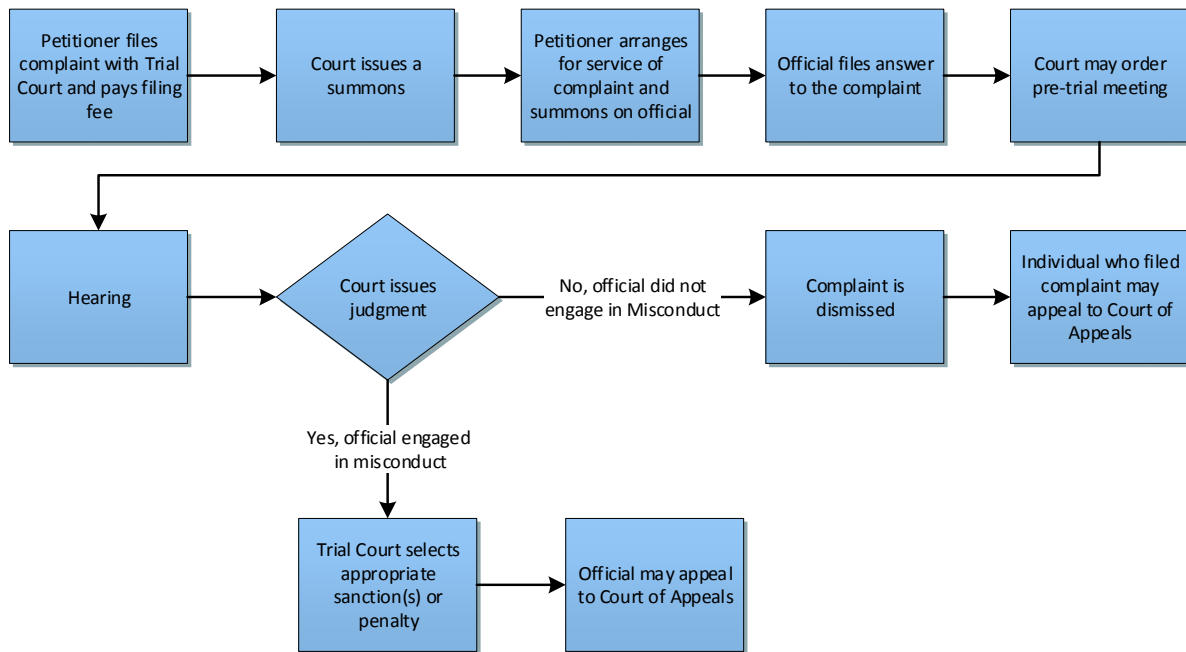
124 ▪ *Who Can File a Complaint?* Under this law, any enrolled member of the Nation or employee of the
125 Nation age 18 years or older can file a complaint, so long as they have knowledge or reason to
126 believe that an official has committed misconduct. Entities of the Nation, such as a board,
127 committee or commission, can also file complaints against elected officials.

128 ▪ *When to File Complaint?* The complaint must be filed within 90 days of when the alleged
129 misconduct occurred or was discovered [120.5-1 & 5-2].

- 130 ▪ *Contents of the Complaint.* Complaints must include the following information [120.5-3]:
- 131 ○ Information about the official, including the official’s name and the entity they serve on.
- 132 ○ Information about the alleged misconduct, including date, time, location and specific
- 133 details.
- 134 ○ The specific law, policy, rule or bylaw that the official violated.
- 135 ○ Information about any witnesses or others with knowledge of the violation.
- 136 ○ Contact information of the individual filing the complaint.
- 137 ○ Supporting documents and any other information required by the Rules of Civil Procedure
- 138 [8 O.C. 803.5-1].
- 139 ▪ *Where to File Complaints?* Complaints against elected officials are filed with the Trial Court, with
- 140 is located within the Oneida Judiciary [120.5-4].
- 141 ▪ *Retaliation.* Retaliation against someone who files a complaint or cooperates with a misconduct
- 142 investigation is not allowed [120.5-5].
- 143 **C. *Complaint Procedure.*** Complaints against elected officials, including members of the Oneida Business
- 144 Committee, will be heard by the Nation’s Trial Court [120.6-1]. The law outlines the process for how
- 145 the Judiciary will hear the complaint:
- 146 ▪ *Right to an Attorney or Advocate.* Any official who has been accused of misconduct has the right
- 147 to be represented by an attorney or an advocate, at their own expense [120.6-2].
- 148 ○ *Legal Resource Center.* The Legal Resource Center Law established an office to provide
- 149 legal advice and representation to Tribal members and employees in cases before the
- 150 Judiciary.
- 151 ▪ *Burden of Proof.* The burden of proof for allegations made under this law is “clear and convincing
- 152 evidence” [120.6-3]. This is the same standard the Nation uses in misconduct cases against judges
- 153 in the Oneida Judiciary [8 O.C. 801.12-6(c)].
- 154 ○ This means that the person filing the complaint must provide evidence “indicating that the
- 155 [allegation] to be proved is highly probably or reasonably certain” [Black’s Law
- 156 Dictionary]. This is a greater burden than “preponderance of the evidence,” the standard
- 157 in most civil trials, but less than evidence “beyond a reasonable doubt,” which is used for
- 158 criminal trials.
- 159 ▪ *Confidentiality.* All complaints against officials of the nation will be handled confidentially, with
- 160 hearings and proceedings regarding the complaint closed to the public. Records of the hearings will
- 161 be kept confidential. However, the final decision of the Judiciary and any sanctions and penalties
- 162 imposed against an official will be public information [120.6-4].
- 163 ○ *Judiciary Law.* The Judiciary Law states that proceedings of the court are open to the public
- 164 except for peacemaking, mediation, proceedings where the judge has safety or
- 165 confidentiality concerns, or “if expressly prohibited by law” [8 O.C. 801.4-4].
- 166 **D. *Hearings Under Rules of Civil Procedure.*** All hearings under this law must follow the Judiciary Rules
- 167 of Civil Procedure. The following is a brief overview of how a civil case is processed by the Trial Court
- 168 using the Rules of Civil Procedure. For more detailed information regarding the trial court process, see
- 169 the Judiciary Rules of Civil of Civil Procedure in the Nation’s Code of Laws.
- 170 ▪ *Petitioner Files a Complaint with the Trial Court and Pays Filing Fee.* The Trial Court has a
- 171 standard complaint form with instructions to fill out the complaint.
- 172 ○ *Complaint.* At the time this analysis was drafted, the Rules of Civil Procedure require the
- 173 complaint to include the full name and address of the plaintiff and defendant, why the

- 174 defendant is being sued, facts supporting each claim, why the trial court has jurisdiction,
175 specifically what relief is sought from the defendant, and a summons [*Oneida Judiciary*
176 *Rules of Civil Procedure 803.5-1*].
- 177 ○ *Filing Fee.* The Oneida Judiciary Trial Court currently charges a \$50 filing fee to file a
178 general civil case. However, individuals may request a fee waiver from the court for the
179 following reasons: unemployed, health/medical, or below poverty level.
 - 180 ○ *Summons:* A summons is a document ordering a defendant to appear before a judge. The
181 Trial Court has a standard summons form.
 - 182 ■ *Complaint and Summons are served on Official.* The complaint and summons must be delivered to
183 the elected official within 30 days after the complaint is filed. In addition, for complaints against
184 officials, notice must also be served to the Secretary’s office. The petitioner must provide proof to
185 the Court that the complaint and summons were delivered to the defendant within 10 days of
186 delivery. If proof of service is not completed, then the case will be dismissed [*Rules of Civil*
187 *Procedure 8 O.C. 803.5*].
 - 188 ■ *Official Files an Answer.* The official responds to the complaint by filing an answer. The official
189 can either admit to or deny the allegations made in the complaint and provide defenses to each
190 claim made in the complaint [*Rules of Civil Procedure 8 O.C. 803.7*].
 - 191 ■ *Pre-Trial Meeting.* A pre-trial meeting may be scheduled between the judge, petitioner and
192 defendant. The purpose for this meeting could include preparing for the trial, creating a plan
193 regarding discovery, or facilitating a settlement, such as peacemaking [*Rules of Civil Procedure*
194 *803.12*].
 - 195 ■ *Hearing.* Hearings are conducted in accordance with the Rules of Civil Procedure, which may
196 include opening statements, presentation of the parties’ cases, rebuttals and closing statements
197 [*Rules of Civil Procedure 8 O.C. 803.38*].
 - 198 ■ *Judgment.* If the Trial Court determines, by clear and convincing evidence, that there is enough
199 evidence to substantiate the allegations of misconduct by the official, then the Trial Court will
200 impose any sanctions and penalties that they deem appropriate. If the Trial Court does not find
201 there is clear and convincing evidence to support the allegations, the complaint will be dismissed
202 [*120.6-5*].
 - 203 ■ *Appeals.* Both the official accused of misconduct and the individual who filed the complaint have
204 the right to appeal the decision of the Trial Court to the Court of Appeals. The appeal must be filed
205 with the Court of Appeals in accordance with the Rules of Appellate Procedure [*120.6-6*].
 - 206 ○ *Timeline for Appeal.* Appeals of judgments of the Trial Court must be filed with the Court
207 of Appeals within 30 days after the judgment was rendered [*8 O.C 805.5-2(a)*].
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218 **Chart 2. Complaint Process Against Elected Officials – Overview of Rules of Civil Procedure.**
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222 **E. Sanctions and Penalties.** This law includes a list of sanctions and penalties that may be imposed on
223 an official for misconduct in office. The Trial Court is responsible for imposing sanctions on an elected
224 official. Officials may receive one or more of the following penalties. The Trial Court will select
225 whichever penalty it deems appropriate [120.7].

- 226 ■ **Conditional Penalties.** Sanctions and penalties may be imposed on a conditional basis. For
227 example, an official could be ordered to make a public apology and attend mandatory training, or
228 otherwise face suspension [120.7-4].
- 229 ■ **Failure to Comply.** If an official fails to comply with a sanction or penalty imposed against them,
230 that official can face additional sanctions as a result of additional misconduct complaints under this
231 law. An example would be an official failing to pay a fine, failing to attend mandatory training or
232 violating the terms of their suspension [120.7-6].

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Chart 3. List of Potential Sanctions and Penalties

- **Verbal Reprimand**
- **Public Apology**
- **Written Reprimand**
- **Suspension**
- **Restitution**
- **Fines**
- **Loss of Stipend**
- **Mandatory Training**
- **Removal, in accordance with Removal Law**

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- 277
- **Verbal Reprimand.** During a BC or GTC meeting, the Nation’s chairperson will read a statement describing the official’s misconduct. The chairperson will also state that the official’s behavior was unacceptable and direct the official not to engage in misconduct again [120.7-2(a)].
 - **Public Apology.** An official may be ordered to make a public apology at a BC or GTC meeting. The apology must include a description of the misconduct, a statement that the actions were wrong, a description of the harm caused by the misconduct, and a “clear and unambiguous” apology [120.7-2(b)].
 - **Written Reprimand.** The Judiciary Trial Court may publish a written reprimand in the Nation’s official media outlets. The Nation’s official media outlets are the Oneida Nation website and the Kalihwisaks newspaper [BC Resolution #03-22-17-B]. The written reprimand will include the same information as a verbal reprimand [120.7-2(c)].
 - **Suspension.** The Trial Court may suspend part-time officials for up to two (2) meetings. Full-time officials, such as members of the Business Committee or Gaming Commission, may be suspended for up to fifteen (15) business days. During a suspension, the official cannot attend meetings, trainings, or conferences. The official also cannot vote or perform work for the entity. In addition, the official cannot earn any stipends, salary or mileage during the suspension [120.7-2(d)].
 - **Multiple Suspensions on One Entity.** If multiple officials on the same entity are suspended at the same time, the suspensions must be imposed on a staggered basis so that the business of the Nation is not interrupted. For example, if multiple members of the Business Committee are suspended, each member will be suspended one at a time on a staggered basis [120.7-2(d)(3)].
 - **Restitution.** An official can be ordered to pay restitution, which means paying back any improperly received benefit, such as returning funds or paying to replace damaged property. The point of restitution is to make someone whole. [120.7-2(e)].
 - **Fines.** An official can be ordered to pay a fine for each act of misconduct. Unlike restitution, a fine is a punishment. The maximum amount of each fine is \$2500 [120.7-2(f)].
 - **Fine Process.** All fines will be paid to the trial court and deposited into the Nation’s General Fund. Officials must pay their fine within 90 days after the fine is issued or upheld on final appeal. If the fine is not paid on time, the Nation may collect the money through garnishment or the official’s per capita payment.
 - **Community Service Alternative.** An official can complete community service to make up all or part of their fine. The rate earned for community service will be the Nation’s minimum wage, which is currently \$10.10 per hour. The Nation currently allows community service for fines issued in the Hunting, Fishing and Trapping Law [Hunting Fishing and Trapping 4 O.C. 406.10-5(a)].
 - **Loss of Stipend.** An official may lose their stipend for up to two (2) meetings. Members of elected boards may receive up to two (2) meeting stipends per month, so this could amount to the loss of one month’s stipends for a member of a board that meets twice monthly [Boards, Committees and Commissions law 1 O.C. 105.13-3(b)].
 - **Mandatory Training.** An official can be ordered to complete a mandatory training program to address their behavior. Examples include anger management or sexual harassment training [120.7-2(h)].

- 278 ▪ **Removal.** The Trial Court can recommend that the removal process be initiated for an official in
279 accordance with the Removal Law. However, this would only be a recommendation. The Removal
280 Law provides a strict process that must be followed to remove elected officials [120.7-2(i)].
- 281 ○ *Removal Law Process.* In order to remove an elected official, an eligible voter must file a
282 petition with the Secretary signed by at least 30% of the vote cast in the previous general
283 election. For example, the number of votes cast in the 2017 general election was 1612, so
284 the number of signatures needed to initiate removal is approximately 484. Then, the
285 Judiciary conducts a preliminary review to determine whether there is sufficient grounds
286 for removal. If so, the Judiciary holds a hearing. If the Judiciary determines that sufficient
287 grounds for removal has been proven, the findings are forwarded to the Nation's
288 Chairperson, who schedules a GTC meeting. At the GTC meeting, an elected official may
289 be removed from office after a 2/3 vote [Removal Law 1 O.C. 104].
- 290 **F. Factors in Determining Appropriate Sanction and/or Penalty.** The Trial Court may consider the
291 following when deciding which sanction or penalty to apply [120.7-3].
- 292 ▪ How severe the misconduct was, whether it was intentional, and how likely the official is to repeat
293 the misconduct.
- 294 ▪ The damage to the finances or reputation of the Nation, the entity, or any person or organization.
- 295 ▪ Whether the official has expressed remorse and is willing to take steps to correct the harm done.
- 296 ▪ Whether any prior complaints have been filed against the official. For example, whether this is the
297 first complaint against the official or represents a pattern of behavior.
- 298 **G. Civil Liability and Criminal Prosecution.** In addition to the sanctions and penalties in this law, an
299 official who commits misconduct may also experience other consequences. These include [120.7-5]:
- 300 ▪ Removal from office in accordance with the Removal law.
- 301 ▪ Criminal prosecution, if the official violated a criminal law. For example, criminal charges for theft
302 or violent acts.
- 303 ▪ Civil liability, in accordance with any applicable law of any jurisdiction. For example, a lawsuit for
304 damages.
- 305 ▪ Any other penalties listed in another law of the Oneida Nation.
- 306 ○ For example, a violation of the Computer Resources Ordinance may result in loss of access
307 to the Nation's computer resources [Computer Resources Ordinance 2 O.C. 215.9-1].
- 308 **H. Effect of Resignation by an Official.** If an official resigns from office after a complaint has been filed,
309 that complaint will still be investigated and sanctions and penalties may still be pursued. Resigning
310 from office does not end or prevent an investigation [120.8].
- 311 **I. Record of Conduct in Office.** A record of conduct for each official will be maintained by the BC
312 Support Office, which will include copies of complaints filed against the official, outcome of the
313 complaints, and any sanctions and penalties the official received. This record will be maintained for at
314 least seven (7) years [120.9].
- 315 ▪ *Public Access to Record of Conduct.* The record of conduct maintained by the BC Support Office
316 will only be made available for review to the Trial Court. The purpose of the record of conduct is
317 so that the Trial Court can review previous complaints against the official when determining a
318 potential sanction or penalty [120.6-4(b)].
- 319 ▪ *Public Access to BC & Trial Court Decisions.* However, the decisions of the Trial Court regarding
320 a complaint against an elected official and any sanctions and penalties imposed against an official
321 will be public information [120.6-4(c)].

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

- 323 **A. *References to the Other Laws of the Nation:*** The following laws of the Nation are referenced in this
324 law. This law does not conflict with any of the referenced laws.
- 325 ▪ *Rules of Civil Procedure.* Complaints against an official shall be filed in accordance with the
326 Nation’s Trial Court in accordance with the Rules of Civil Procedure [120.5-4].
 - 327 ▪ *Rules of Appellate Procedure.* Appeals of the Trial Court’s decision shall be filed pursuant to the
328 Nation’s Rules of Appellate Procedure.
 - 329 ▪ *Garnishment Law.* If an official is ordered to pay a fine in accordance with this law and does not
330 pay according to the deadline, the Trial Court may seek to collect that fine through the Nation’s
331 garnishment process [120.7-2(f)(2)].
 - 332 ▪ *Per Capita Law.* If an official is ordered to pay a fine in accordance with this law and does not pay
333 according to the deadline, the Trial Court may seek to collect that fine through the Nation’s per
334 capita attachment process [120.7-2(f)(2)].
- 335

336 **SECTION 7. EFFECTS ON EXISTING RIGHTS, PRIVILEGES, OR OBLIGATIONS**

- 337 **A. *Due Process.*** Officials accused of misconduct have the right to be represented by an attorney or
338 advocate. Officials also have the right to submit a written response to the complaint, and an opportunity to
339 appear at the investigatory hearing to answer the allegations, provide witness testimony, documents and
340 evidence on their behalf. Complaints against officials must be proven by clear and convincing evidence.
- 341

342 **SECTION 8. OTHER CONSIDERATIONS**

- 343 **A. *Complaints against Judiciary.*** The Judiciary Law already contains a process for reprimand,
344 suspension and removal of judges for willful misconduct in office. The complaint and hearing
345 procedure for complaints against judges can be found in the Judiciary law [Judiciary law 8 O.C.
346 801.12]. Therefore, the Judiciary is not included in this law.
- 347 **B. *Judiciary Conflicts of Interest.*** The Oneida Tribal Judiciary Canons of Judicial Conduct requires a
348 Judge to withdraw from any matter where the Judge has or could be perceived to have a conflict of
349 interest. Violating the Oneida Tribal Judiciary Canons of Judicial Conduct would be grounds for
350 reprimand under the Nation’s Judiciary law [Judiciary Canons of Judicial Conduct 8 O.C. 802.2-2].
- 351 **C. *Complaints Against Appointed Officials.*** This law applies to elected officials only. Appointed officials
352 are appointed by the Oneida Business Committee in accordance with the Boards, Committees and
353 Commissions law and serve at BC’s discretion. If an appointed official commits misconduct, the that
354 official’s board, committee or commission or a member of the BC may recommend termination of
355 appointment. A member of an appointed entity may have their appointment terminated by a 2/3 majority
356 vote of the Oneida Business Committee [Boards, Committees and Commissions 1 O.C. 105.7-4].
- 357 **D. *Code of Ethics.*** Most other tribal, municipal and state governments place sanctions and penalties within
358 their Code of Ethics law. This makes sense, as the Code of Ethics and Sanctions and Penalties are
359 closely related. The Code of Ethics is currently on the LOC’s Active Files List for potential
360 amendments. Updating the Code of Ethics would provide additional guidance to elected officials,
361 individuals filing complaints, and the Judiciary when they begin hearing complaints under this law.
- 362 **E. *Comparison to Other Nations.*** Research of other tribal nations and municipalities indicate that there
363 are many different processes for sanctions and penalties of public officials. There is no uniform standard

364 used by all tribal governments. Examples of other sanctions and penalties processes are provided for
 365 information:

366
 367

Chart 4. Sanctions and Penalties Process of other Tribal Nations

Tribe	Where Complaints Are Filed	Who Investigates or Hears the Complaint	Who Decides the Sanction or Penalty
Siletz	Tribal Council*	Ad Hoc Committee or Special Advisor appointed by Tribal Council*	Tribal Council*
Ho Chunk	Judiciary	Judiciary	President
Rosebud Sioux	Ethics Commission, appointed by Tribal Council*	Ethics Commission, appointed by Tribal Council*	Tribal Council*
Skokomish	Ethics Officer, appointed by Tribal Council*	Ethics Officer, appointed by Tribal Council*	Chairman

368 *Note that “Tribal Council” refers to an elected body similar to the Oneida Business Committee.
 369

370 **F. Number of Potential Complaints.** Since the Nation currently has no formal sanctions and penalties
 371 process, it is not possible to predict the number of complaints that may be filed against elected officials.

- 372 ▪ *Conclusion:* Given the uncertainty regarding the number of potential complaints, the Judiciary
 373 should be prepared to potentially process a large number of complaints upon passage of this
 374 law.

375 **G. Impact of Suspension on Full-Time Officials.** Members of the Oneida Business Committee and
 376 Oneida Gaming Commission are full-time elected officials. Therefore, suspension of these officials
 377 would impact salaries, benefits such as health insurance, and access to workplaces. The Human
 378 Resources Department reports that they have a suspension procedure in place for employees of the
 379 Nation, and that this procedure could be applied or modified for suspension of full-time officials.

- 380 ▪ *Conclusion:* Since notifications of suspension go to the BC Support Office, it is suggested that
 381 the BC Support Office work with HRD to develop a process should suspensions of full-time
 382 BC members or Gaming Commissioners occur.

383 **H. Rules of Civil Procedure.** Complaints filed in the Judiciary Trial Court must follow the Judiciary Rules
 384 of Civil Procedure. At the time this analysis was drafted, the Judiciary Rules of Civil Procedure is on
 385 the LOC’s Active Files List and may be amended in the future.

386 **I. Fiscal Impact.** Please refer to the fiscal impact statement for any fiscal impacts.

- 387 ▪ Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except
 388 emergency legislation [*Legislative Procedures Act 1 O.C. 109.6-1*].
- 389 ▪ A fiscal impact statement shall be submitted by agencies as directed by the Legislative Operating
 390 Committee and may be prepared by any agency who may receive funding if the legislation is
 391 enacted; who may administer a program if the legislation is enacted; who may have financial
 392 information concerning the subject matter of the legislation; or by the Finance Office, upon request
 393 of the Legislative Operating Committee [*Legislative Procedures Act 1 O.C. 109.6-1(a and b)*].

394

Title 1. Government and Finances - Chapter 120

SANCTIONS AND PENALTIES

Kalihwahnila-t&= Okhale> Atatihwa>thlew@htu Kayanl^sla

Giving strength to the issues and Forgive oneself for the issue at hand Laws

SANCTIONS AND PENALTIES FOR ELECTED OFFICIALS

~~120.1. Purpose and Policy~~

~~120.2. Adoption, Amendment, Repeal~~

~~120.3. Definitions~~

~~120.4. Misconduct~~ 120.1. Purpose and Policy

120.2. Adoption, Amendment, Repeal

120.3. Definitions

120.4. Misconduct

120.5. Filing of a Complaint

120.6. Complaint Procedure

120.7. Sanctions and Penalties

120.8. Effect of Resignation by an Official

120.9. Record of Conduct in Office

~~120.5. Filing of a Complaint~~

~~120.6. Complaint Alleged Against an Appointed Official~~

~~120.7. Complaint Alleged Against an Elected Official~~

~~120.8. Sanctions and Penalties~~

~~120.9. Effect of Resignation by an Official~~

~~120.10. Record of Conduct in Office~~

1

2 **120.1. Purpose and Policy**

3 120.1-1. *Purpose*. The purpose of this law is to establish a consistent set of sanctions and penalties
4 that may be imposed upon elected ~~and appointed~~ officials of the Nation for misconduct in office
5 for the purpose of providing an opportunity for the official to take corrective action to address the
6 misconduct and promote accountability and improved performance of the official.

7 (a) This law applies to members of the Oneida Business Committee.

8 (b) This law does not apply to judges of the Oneida Nation Judiciary.

9 (c) This law does not apply to members of corporate entities of the Nation.

10 120.1-2. *Policy*. It is the policy of the Nation to ensure that elected ~~and appointed~~ officials who
11 commit misconduct while in office be subject to appropriate sanctions and penalties; and to ensure
12 that there is a fair process in place that enables officials to fairly respond to allegations of
13 misconduct.

14 120.1-3. It is the intent of the Nation that all elected ~~and appointed~~ officials strive to exhibit and
15 uphold the Nation's core values of The Good Mind as expressed by On<yote>a=ka, which includes:

16 (a) Kahletsyal&sla. The heart felt encouragement of the best in each of us.

17 (b) Kanolukhw@sla. Compassion, caring, identity, and joy of being.

18 (c) Ka>nikuhli=y%. The openness of the good spirit and mind.

19 (d) Ka>tshatst^sla. The strength of belief and vision as a People.

20 (e) Kalihwi=y%. The use of the good words about ourselves, our Nation, and our future.

21 (f) Twahwahts\$lay<. All of us are family.

22 (g) Yukwats\$stay<. Our fire, our spirit within each one of us.

23

24 **120.2. Adoption, Amendment, Repeal**

25 120.2-1. This law was adopted by the General Tribal Council by resolution GTC-__-__-__-__.

26 120.2-2. This law may be amended or repealed by the General Tribal Council pursuant to the
27 procedures set out in the Legislative Procedures Act.

28 120.2-3. Should a provision of this law or the application thereof to any person or circumstances
29 be held as invalid, such invalidity shall not affect other provisions of this law which are considered
30 to have legal force without the invalid portions.

31 120.2-4. In the event of a conflict between a provision of this law and a provision of another law,
32 the provisions of this law shall control.

33 120.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

34

35 **120.3. Definitions**

36 120.3-1. This section shall govern the definitions of words and phrases used within this law. All
37 words not defined herein shall be used in their ordinary and everyday sense.

38 ~~(a) “Affirmative defense” means a fact or set of facts other than those alleged by the~~
39 ~~complainant which, if proven by the official, defeats or mitigates the consequences of the~~
40 ~~official’s otherwise unlawful conduct.~~

41 ~~(b) “Answer” means a formal written statement addressing the dispute on the merits~~
42 ~~and presents any defenses and counterclaims.~~

43 ~~(e)~~(a) “Business Committee Support Office” means the office that provides administrative
44 support for the Oneida Business Committee and various other governmental operations.

45 ~~(d)~~b) “Business day” means Monday through Friday 8:00 a.m. – 4:30 p.m., excluding
46 holidays recognized by the Nation.

47 ~~(e)~~c) “Clear and convincing evidence” means that it is substantially more likely than not
48 that the facts presented are true.

49 ~~(f)~~d) “Complainant” means an individual who has made a complaint.

50 ~~(g)~~e) “Constitution” means the Constitution and By-Laws of the Oneida Nation.

51 ~~(h)~~f) “Court of Appeals” means the Court of Appeals of the Oneida Nation Judiciary.

52 ~~(i)~~g) “Entity” means a board, committee, commission, office, ~~unincorporated agency,~~ or
53 other group of the Nation an individual may be ~~appointed or~~ elected to serve a position on,
54 including the Oneida Business Committee.

55 ~~(j) “Frivolous” means a complaint without any reasonable basis or merit, that cannot be~~
56 ~~supported by a good faith argument. Most often frivolous complaints are intended to~~
57 ~~merely harass, delay, or embarrass the opposition.~~

58 ~~(k)~~(h) “Misconduct” means wrongful, improper or unlawful conduct or behavior.

59 ~~(l)~~i) “Nation” means the Oneida Nation.

60 ~~(m)~~j) “Official” means any person who is elected ~~or appointed~~ to serve a position for the
61 Nation, including, but not limited to, a position on a board, committee, commission, or
62 office of the Nation, including the Oneida Business Committee.

63 ~~(n)~~k) “Restitution” means compensation to an individual or entity for an injury, damage or
64 loss.

65 ~~(o)~~l) “Stipend” means the amount paid by the Oneida Nation to elected individuals serving
66 on boards, committees and commissions of the Nation to offset the expenses of being a
67 member on the board, committee or commission.

68 ~~(p)~~m) “Substantiate” means to find that the complaint or allegation in the complaint is valid
69 because there is clear and convincing evidence.

70 ~~(q)~~n) “Trial Court” means the Trial Court of the Oneida Nation Judiciary, which is the
71 judicial system that was established by Oneida General Tribal Council resolution GTC-01-
72 07-13-B, and then later authorized to administer the judicial authorities and responsibilities
73 of the Nation by Oneida General Tribal Council resolution GTC-03-19-17-A.

74

75 **120.4. Misconduct**

76 120.4-1. It shall be the obligation of every official to behave in a manner that promotes the highest
77 ethical and moral standard. High moral and ethical standards amongst officials of the Nation is
78 essential to the conduct of government.

79 120.4-2. An official may be subject to sanctions and penalties for behaving in a manner which
80 constitutes misconduct. Misconduct includes:

- 81 (a) a violation of the Constitution or any of the Nation’s laws, policies, or rules;
- 82 (b) a violation of the bylaws, standard operating procedures or other internal operating
83 documents that govern the entity upon which the official serves;
- 84 (c) a conviction of a felony, or any crime in any jurisdiction that would be classified as a
85 felony under federal law or Wisconsin law; and
- 86 (d) any other activity that is incompatible with the high moral and ethical standards that
87 are expected of the Nation’s officials.

88
89 **120.5. Filing of a Complaint**

90 120.5-1. *Who May File.* Any individual at least eighteen (18) years of age or older, ~~or~~ who is an
91 enrolled member of the Nation or an employee of the Nation, or an entity, who in good faith, has
92 knowledge or reason to believe that an official has committed misconduct, may file a written
93 complaint.

94 120.5-2. *When to File.* A complaint may be filed as long as the alleged misconduct has occurred,
95 or was discovered to have occurred, within the previous ninety (90) days.

96 120.5-3. *Contents of the Complaint.* The complaint alleging misconduct by an official shall
97 include the following information:

- 98 (a) The name(s) of the official alleged to have committed the misconduct;
- 99 (b) The entity or entities upon which the official serves;
- 100 (c) The specific date(s), time(s), and location(s) of the alleged misconduct;
- 101 (d) The specific details of the official’s misconduct;
- 102 (e) The specific provision of law, policy, rule, or bylaw of the Nation allegedly violated
103 by the official;
- 104 (f) Names of any witnesses of the alleged misconduct, or individuals who may have
105 knowledge pertinent to the alleged misconduct;
- 106 (g) The contact information for the person filing the complaint, which at minimum shall
107 include the person’s name, address, and telephone number;
- 108 (h) A notarized sworn statement attesting that the information provided in and with the
109 complaint is true, accurate, and complete to the best of the complainant’s knowledge;
- 110 (i) Any supporting documentation; and
- 111 (j) Any other information required by the Nation’s Rules of Civil Procedure ~~if the~~
112 complaint is alleging misconduct of an elected official.

113 120.5-4. *Where to File.*

114 ~~(a) Appointed Official.~~ Complaints against an ~~appointed official shall be filed with the~~
115 ~~Business Committee Support Office.~~

116 ~~(b) Elected Official.~~ Complaints against an ~~elected~~ official shall be filed with the Nation’s Trial
117 Court pursuant to the Nation’s Rules of Civil Procedure.

118 120.5-5. *Retaliation Prohibited.* Retaliation against any individual who makes a complaint or party
119 or witness to a complaint is prohibited. This protection shall also be afforded to any person offering
120 testimony or evidence or complying with directives authorized under this law. Retaliation shall
121 include any form of adverse or punitive action by, or caused by, any official.

122 (a) If an individual alleges that retaliatory action has been threatened or taken based on the
 123 individual's complaint, or cooperation with directives authorized under this law, the
 124 individual may file a complaint for the retaliatory action in accordance with section 120.5
 125 of this law.

127 **120.5-6. Complaint Procedure**

128 120.6-1. Jurisdiction of the Trial Court. The Trial Court shall have jurisdiction to hear complaints
 129 of alleged misconduct of officials.

130 120.6-2. Any official who is the subject of a complaint has the right to be represented by an
 131 attorney or advocate, at his or her own expense, for any actions or proceedings related to the
 132 complaint.

133 120.5-76-3. Burden of Proof. In a civil action against an official for misconduct, the complainant
 134 has the burden of proving by clear and convincing evidence that the official engaged in
 135 misconduct.

136 120.6-4. Confidentiality. All complaints alleged against an official of the Nation shall be handled
 137 in a confidential manner.

138 (a) All hearings and/or proceedings related to a complaint shall be closed to the general
 139 public.

140 (b) All records of hearings and/or proceedings shall not be subject to public review or
 141 inspection. An official's record of conduct shall only be made available for review ~~to the~~
 142 ~~Oneida Business Committee and~~by the Trial Court.

143 (c) *Exception.* A decision of the Trial Court ~~or the Oneida Business Committee~~ regarding
 144 a complaint alleged against an official, and any sanctions and/or penalties that are imposed
 145 against an official, shall be public information.

146 ~~120.6-Complaints Alleged Against an Appointed Official~~

147 ~~-5. Determination~~ ~~120.6-1. Due to the fact that an appointed official serves at the discretion of~~
 148 ~~the Oneida Business Committee, all complaints alleged against an appointed official shall be~~
 149 ~~handled by the Oneida Business Committee.~~

150 ~~120.6-2. Receipt of Complaint. Upon receiving a complaint, the Business Committee Support~~
 151 ~~Office shall:~~

152 (a) ~~immediately forward copies of the complaint, including any supporting documentation,~~
 153 ~~to:~~

154 (1) ~~all members of the Oneida Business Committee for review; and~~

155 (2) ~~the individual who is the subject of the complaint.~~

156 (b) ~~place the complaint on the executive session portion of the agenda of a regular or~~
 157 ~~special meeting of the Oneida Business Committee for an initial review which shall occur~~
 158 ~~within thirty (30) business days after the initial receipt of a complaint.~~

159 ~~120.6-3. Mediation. The complainant or the official who is the subject of the complaint shall have~~
 160 ~~up to five (5) business days after the initial receipt of the complaint to contact the Business~~
 161 ~~Committee Support Office and request mediation.~~

162 (a) ~~If both the complainant and the official who is the subject of the complaint agree to~~
 163 ~~mediation, then the Business Committee Support Office shall schedule a mediation~~
 164 ~~between the parties. The intent of this mediation meeting is to resolve the complaint prior~~
 165 ~~to commencing an initial review.~~

167 ~~(b) The Business Committee Support Office shall utilize a trained mediator to facilitate~~
168 ~~the mediation meeting. Every mediator shall have at least twenty five (25) hours of~~
169 ~~mediation training or at least three (3) years of experience in dispute resolution.~~

170 ~~(c) The mediation shall occur before the investigatory hearing is scheduled to take place.~~

171 ~~(d) If a resolution is reached during mediation, the Oneida Business Committee shall be~~
172 ~~informed of the resolution before the initial review and the complaint shall be formally~~
173 ~~dismissed during the initial review.~~

174 ~~(e) If the matter is not resolved through mediation, the initial review shall occur as~~
175 ~~prescribed by this law.~~

176 ~~120.6 4. Answer to the Complaint.~~ The individual who is the subject of the complaint shall have
177 ~~ten (10) business days after receiving his or her copy of the complaint, to submit to the Business~~
178 ~~Committee Support Office a written answer setting forth any admission, denial, affirmative~~
179 ~~defense, or other relevant information upon which the official intends to rely during proceedings~~
180 ~~related to the complaint.~~

181 ~~(a) The Business Committee Support Office shall immediately forward the answer and~~
182 ~~any supporting documentation to all members of the Oneida Business Committee upon~~
183 ~~receipt from the individual who is the subject of the complaint.~~

184 ~~120.6 5. Conflict of Interest.~~ An Oneida Business Committee member that has a conflict of
185 ~~interest in a complaint brought before the Oneida Business Committee, shall immediately recuse~~
186 ~~himself or herself and shall not participate in any portion of the complaint process.~~

187 ~~(a) Failure of an Oneida Business Committee member to recuse themselves due to a~~
188 ~~conflict of interest shall constitute grounds for sanctions and/or penalties.~~

189 ~~120.6 6. Initial Review.~~ The Oneida Business Committee shall perform an initial review of an
190 ~~allegation of misconduct on the part of an official. The purpose of the initial review shall be to~~
191 ~~determine whether the allegation made within the complaint has merit.~~

192 ~~(a) During the initial review the Oneida Business Committee shall review the complaint~~
193 ~~and the written answer; as well as any supporting documentation.~~

194 ~~(b) In order to determine if a complaint has merit, the Oneida Business Committee will~~
195 ~~discuss if whether assuming the facts alleged are true, said facts would support a~~
196 ~~determination of misconduct.~~

197 ~~(c) The Oneida Business Committee shall determine, by majority vote, whether the~~
198 ~~complaint has merit.~~

199 ~~(1) Upon a finding that the complaint has merit, the Oneida Business Committee~~
200 ~~shall schedule an investigatory hearing to consider the specific allegations~~
201 ~~identified in the complaint.~~

202 ~~(A) The investigatory hearing shall occur within thirty (30) business days~~
203 ~~after the initial review has concluded and shall take place during the~~
204 ~~executive session portion of the agenda of a regular or special meeting of~~
205 ~~the Oneida Business Committee.~~

206 ~~(2) Upon finding that a complaint has no merit, the Oneida Business Committee~~
207 ~~shall dismiss the complaint. The Oneida Business Committee shall send notice that~~
208 ~~the complaint was dismissed to the complainant and the official who is the subject~~
209 ~~of the complaint within five (5) business days.~~

210 ~~(A) If the Oneida Business Committee dismisses the complaint based on a~~
211 ~~determination that the complaint was frivolous, false, or made with a~~
212 ~~malicious intent, the complainant may be subject to:~~

213 ~~(i) a fine not to exceed five hundred dollars (\$500);~~

214 ~~(ii) prohibition from filing another complaint for a period of time~~
215 ~~not to exceed one (1) year; and/or~~

216 ~~(iii) a civil suit in the Nation's Trial Court brought by the official~~
217 ~~accused by the frivolous, false or malicious allegation.~~

218 ~~120.6-7. Notice of the Investigatory Hearing. The Business Committee Support Office shall~~
219 ~~provide the complainant, the official who is the subject of the complaint, and any other individual~~
220 ~~compelled to attend the hearing with written notice of the date and the time of the investigatory~~
221 ~~hearing at least ten (10) business days before the investigatory hearing.~~

222 ~~120.6-8. Investigatory Hearing. The purpose of the investigatory hearing is for the Oneida~~
223 ~~Business Committee to determine if there is enough evidence to substantiate the allegations of~~
224 ~~misconduct by clear and convincing evidence.~~

225 ~~(a) When conducting an investigatory hearing, the Oneida Business Committee shall have~~
226 ~~the broadest grant of authority to compel any person or organization within the Nation to:~~

227 ~~(1) appear at the hearing to provide testimony under oath and/or information~~
228 ~~relevant to the allegations against the official; and/or~~

229 ~~(2) produce physical evidence that is relevant to the allegations.~~

230 ~~(b) The Oneida Business Committee shall provide an opportunity for the official who is~~
231 ~~the subject of the complaint to answer all allegations and to provide witness testimony,~~
232 ~~documents, and other evidence on his or her own behalf.~~

233 ~~(c) The Oneida Business Committee shall also provide the complainant the opportunity to~~
234 ~~answer questions, provide witness testimony or additional information, and/or to otherwise~~
235 ~~speak on his or her own behalf.~~

236 ~~(d) The hearing shall be informal and conducted as the interests of justice so require, and~~
237 ~~shall be recorded by the Business Committee Support Office.~~

238 ~~120.6-9. Deliberation of the Oneida Business Committee. At the conclusion of the investigatory~~
239 ~~hearing, the Oneida Business Committee shall excuse everyone from executive session for the~~
240 ~~deliberation of the Oneida Business Committee. Prior to making a final determination as to~~
241 ~~whether to substantiate the complaint, the Oneida Business Committee shall:~~

242 ~~(a) consider all evidence and information provided, and shall have a full and complete~~
243 ~~discussion of all aspects of the complaint and answer; and~~

244 ~~(b) have a full and complete discussion of all potential sanctions and penalties that may be~~
245 ~~imposed, if appropriate.~~

246 ~~120.6-10. Determination by the Oneida Business Committee. After the investigatory hearing has~~
247 ~~concluded and the Oneida Business Committee has deliberated, the Oneida Business Committee~~
248 ~~shall in open session of a regular or special Oneida Business Committee meeting, by majority vote,~~
249 ~~declare whether the Oneida Business Committee has determined there is enough evidence to~~
250 ~~substantiate the allegations of misconduct by clear and convincing evidence.~~

251 ~~(a) If the Oneida Business Committee finds that there is clear and convincing evidence that~~
252 ~~the official engaged in misconduct, the Oneida Business Committee shall, by majority vote,~~
253 ~~determine and impose appropriate sanctions and/or penalties.~~

254 ~~(b) If the Oneida Business Committee does not find that there is clear and convincing~~
255 ~~evidence to support the allegations that the official engaged in misconduct, the complaint~~
256 ~~shall be dismissed.~~

257 ~~(c) Within ten (10) business days after the investigatory hearing, the Oneida Business~~
258 ~~Committee shall issue a written decision and provide copies of the decision to:~~

259 ~~(1) the complainant,~~

260 ~~(2) the official who is the subject of the complaint, and~~

~~(3) the Business Committee Support Office, for recordkeeping.~~

~~120.6-11. Appeal. The complainant and the official who is the subject of the complaint shall both have the right to appeal the Oneida Business Committee's decision to the Court of Appeals pursuant to the Nation's Rules of Appellate Procedure. The appeal shall be limited to review of the record, and the Oneida Business Committee's decision may only be overturned if the Court of Appeals determines that:~~

~~(a) The findings or penalties imposed were clearly erroneous, unsupported by the record, or made on unreasonable grounds or without any proper consideration of circumstances;~~

~~or~~

~~(b) Procedural irregularities occurred which prevented a fair and impartial hearing.~~

120.7. Complaints Alleged Against an Elected Official

~~120.7-1. The Trial Court shall have jurisdiction to hear complaints of alleged misconduct of elected officials. Complaints of alleged misconduct shall be filed with the Trial Court pursuant to the Nation's Rules of Civil Procedure.~~

~~120.7-2. In a civil action against an elected official for misconduct, the complainant has the burden of proving by clear and convincing evidence that the official engaged in misconduct.~~

~~120.7-3. In making a final determination, the Trial Court shall determine if there is enough evidence to substantiate the allegations of misconduct by the official by clear and convincing evidence.~~

~~(a) If the Trial Court finds that there is clear and convincing evidence that the official engaged in misconduct, the Trial Court shall determine and impose any sanctions and/or penalties deemed appropriate in accordance with this law.~~

~~(b) If the Trial Court does not find that there is clear and convincing evidence to support the allegations that the official engaged in misconduct, the complaint shall be dismissed.~~

~~120.7-4-6-6. Appeal. The complainant and the official who is the subject of the complaint shall both have the right to appeal the Trial Court's decision to the Court of Appeals pursuant to the Nation's Rules of Appellate Procedure. The appeal shall be limited to review of the record, and the Trial Court's decision may only be overturned if the Court of Appeals determines that:~~

~~(a) The findings or penalties imposed were clearly erroneous, unsupported by the record, or made on unreasonable grounds or without any proper consideration of circumstances;~~

~~or~~

~~(b) Procedural irregularities occurred which prevented a fair and impartial hearing.~~

~~120.6-7-5. The Trial Court shall provide the Business Committee Support Office a copy of the complaint and the determination of the Trial Court for the official's record of conduct in office.~~

120.8-7. Sanctions and Penalties

~~120.8-7-1. A sanction or penalty, or any combination of sanctions and/or penalties, may be imposed upon the Nation's officials for misconduct in office, in accordance with this law.~~

~~120.8-7-2. Sanctions and penalties may include:~~

~~(a) Verbal Reprimand. A verbal reprimand may be imposed on the official.~~

~~(1) The Oneida Business Committee or Trial Court shall submit written notices to both the official and to the Business Committee Support Office of the specific date, time and location of the verbal reprimand. The verbal reprimand shall occur at an Oneida Business Committee meeting and/or a General Tribal Council meeting.~~

306 (2) To impose the verbal reprimand, the presiding Oneida Business Committee
307 Chairperson, or another Oneida Business Committee member if the verbal
308 reprimand is imposed against the presiding Oneida Business Committee
309 Chairperson, shall read a statement that identifies:

310 (A) ~~The Oneida Business Committee or~~ Trial Court’s findings regarding the
311 specific actions or inaction taken by the official that were found to be
312 misconduct;

313 (B) The reasons why the official’s actions or inactions amounted to
314 misconduct;

315 (C) A statement identifying that the misconduct violates the high standards
316 of behavior expected of the Nation’s officials and is not acceptable; and

317 (D) A direction to the official to refrain from engaging in future misconduct.

318 (b) *Public Apology*. The official may be ordered to make a public apology. ~~The Oneida~~
319 ~~Business Committee or~~ The Trial Court shall submit written notices to both the official and
320 to the Business Committee Support Office of the specific date, time and location of the
321 public apology. The public apology shall occur at an Oneida Business Committee meeting
322 and/or a General Tribal Council meeting. The public apology shall:

323 (1) identify the specific misconduct committed by the official;

324 (2) recognize that the official’s actions or inactions were wrong;

325 (3) identify the effects of the official’s misconduct; and

326 (4) include a clear and unambiguous apology from the official.

327 (c) *Written Reprimand*. A written reprimand may be imposed on the official by publication
328 on the Nation’s official media outlets, as determined by the Oneida Business Committee.
329 ~~The Oneida Business Committee or the~~ The Trial Court may publish a written reprimand
330 which includes the information required for the verbal reprimand as stated in section
331 120.87-2(a)(2)(A)-(D).

332 (d) *Suspension*. An official may be suspended from performing his or her duties as an
333 official for a period of time not to exceed two (2) meetings, or fifteen (15) business days if
334 the official serves in a full-time capacity.

335 (1) During a suspension, the official shall not:

336 (A) attend meetings, trainings or any other event as part of the entity;

337 (B) attend conferences or other events on behalf of, or as a representative
338 of, the entity;

339 (C) vote or participate in any activities of the entity;

340 (D) perform work on behalf of the entity; or

341 (E) be eligible for any compensation, including regular pay, stipends, or
342 mileage reimbursement.

343 (2) When an official is suspended, the ~~Oneida Business Committee or~~ Trial Court
344 shall submit written notices to both the official and to the Business Committee
345 Support Office of the specific start and end date of the suspension.

346 (3) If a suspension is imposed on multiple officials of the same entity at one time,
347 the ~~Oneida Business Committee or the~~ Trial Court shall impose the suspensions of
348 the officials on a staggered basis to avoid an interruption of the official business
349 and function of the entity.

350 (e) *Restitution*. An official may be ordered to pay restitution, which may include the
351 repayment of any improperly received benefit, or any other payment which is intended to
352 make another whole after suffering losses as a result of the official’s misconduct.

353 (f) *Fines*. An official may be ordered to pay a fine not to exceed two thousand and five
354 hundred dollars (\$2,500).

355 (1) Fines shall be paid to the Trial Court.

356 (2) Fines shall be paid within ninety (90) days after the order is issued or upheld
357 on final appeal, whichever is later. ~~Cash shall not be accepted for payment of fines.~~
358 If the fine is not paid by this deadline, the Trial Court may seek to collect the money
359 owed through the Nation’s garnishment and/or per capita attachment process.

360 (3) Money received from fines shall be deposited into the General Fund.

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

363 (g) *Loss of Stipend*. An official may be ordered to forfeit a stipend for his or her service
364 on an entity not to exceed two (2) meetings.

365 (h) *Mandatory Participation in Training*. An official may be ordered to participate in and
366 complete a training class or program that will assist the official in addressing and
367 improving his or her behaviors and/or actions.

368 (1) The mandated training class or program may address a variety of topics
369 including, but not limited to, anger management, sexual harassment, or other
370 sensitivity training.

371 ~~(i) *Termination of Appointment*. An appointed official may have his or her appointment
372 terminated by the Oneida Business Committee in accordance with the Nation’s laws and/or
373 policies governing boards, committees, and commissions.~~

374 ~~(i)~~ (i) *Removal*. The Trial Court may recommend that the process for removing an elected
375 official as contained in the Nation’s laws and/or policies governing removal be initiated.

376 120.87-3. *Factors in Determining an Appropriate Sanction and/or Penalty*. When determining
377 the appropriate sanction or sanctions to impose, the ~~Oneida Business Committee or the~~ Trial Court
378 may consider all factors it deems relevant, including but not limited to:

379 (a) the seriousness or severity of the misconduct;

380 (b) whether the conduct was intentional or not;

381 (c) the likelihood of repetition;

382 (d) the extent of probable damage to the finances or reputation of the Nation, the
383 complainant, the entity, or to any other person or organization;

384 (e) whether the official or his or her family personally profited, financially or otherwise,
385 from the prohibited conduct;

386 (f) the official’s remorse, or

387 (g) the official’s willingness and ability to take steps to mitigate the harm caused by the
388 violation, and

389 (h) any prior complaints filed, including any previous sanctions and penalties imposed
390 upon the official while serving on an entity.

391 120.87-4. The ~~Oneida Business Committee and/or the~~ Trial Court may impose a sanction and/or
392 penalty on a conditional basis, whereas compliance with a specific sanction and/or penalty shall
393 prevent the imposition of a more stringent or burdensome sanction and/or penalty.

394 120.87-5. The imposition of sanctions and/or penalties in accordance with this law does not
395 exempt an official from individual liability for the underlying misconduct, and does not limit any
396 penalties that may be imposed in accordance with other applicable laws. In addition to any
397 sanctions and penalties that may be imposed in accordance with this law, officials who commit
398 misconduct in office may be subject to other consequences; including but not limited to:

- 399 (a) removal in accordance with the Nation’s laws and/or policies governing removal, ~~if an~~
400 ~~elected official;~~
401 (b) ~~termination of appointment by the Oneida Business Committee, if an appointed official;~~
402 ~~(e)~~ criminal prosecution, for misconduct that also violates applicable criminal law;
403 ~~(d)~~ civil liability, in accordance with the applicable law of any jurisdiction; and/or
404 ~~(e)~~ penalties for specific misconduct as authorized by any other law of the Nation.

405 120.87-6. An official who does not comply with a sanction and/or penalty that has been imposed
406 against him or her by ~~either the Oneida Business Committee or the~~ Trial Court may be subject to
407 the following:

- 408 (a) additional sanctions and/or penalties that result from a complaint of misconduct filed
409 in accordance with this Law based on the non-compliance;
410 ~~(b) termination of appointment by the Oneida Business Committee in accordance with the~~
411 ~~Nation’s laws and policies governing boards, committees, and commissions, if the official~~
412 ~~was appointed to his or her position; and/or~~
413 ~~(e)~~ (b) removal in accordance with the Nation’s laws and policies governing removal, ~~if the~~
414 ~~official was elected to his or her position.~~

415
416 **120.98. Effect of Resignation by an Official**

417 120.98-1. The resignation of an official after a complaint has been filed against the official shall
418 not affect the status of the hearing and determination by ~~either the Oneida Business Committee~~
419 ~~or the~~ Trial Court.

420 120.98-2. An official who resigns may still be subject to sanctions and/or penalties at the discretion
421 of the ~~Oneida Business Committee or~~ Trial Court.

422
423 **120.10.9. Record of Conduct in Office**

424 120.109-1. The Business Committee Support Office shall maintain a record of conduct in office
425 for each official.

426 120.109-2. The record of conduct in office maintained for each official shall include, at a
427 minimum:

- 428 (a) a copy of each complaint filed against the official;
429 (b) recording and/or transcript from any hearings and/or proceedings;
430 (c) the outcome of the complaint, and
431 (d) any sanctions or penalties imposed upon an official.

432 120.109-3. The record of conduct in office for each official shall be maintained for a period of no
433 less than seven (7) years.

434
435 *End.*

436
437 _____
438 Adopted – GTC-__-__-__-__

Title 1. Government and Finances - Chapter 120
Kalihwahnila-t&= Okhale> Atatlihwa>thlew@htu Kayanl^sla
Giving strength to the issues and Forgiving oneself for the issue at hand Laws
SANCTIONS AND PENALTIES FOR ELECTED OFFICIALS

120.1. Purpose and Policy
120.2. Adoption, Amendment, Repeal
120.3. Definitions
120.4. Misconduct
120.5. Filing of a Complaint

120.6. Complaint Procedure
120.7. Sanctions and Penalties
120.8. Effect of Resignation by an Official
120.9. Record of Conduct in Office

1
2 **120.1. Purpose and Policy**
3 120.1-1. *Purpose.* The purpose of this law is to establish a consistent set of sanctions and penalties
4 that may be imposed upon elected officials of the Nation for misconduct in office for the purpose
5 of providing an opportunity for the official to take corrective action to address the misconduct and
6 promote accountability and improved performance of the official.

- 7 (a) This law applies to members of the Oneida Business Committee.
8 (b) This law does not apply to judges of the Oneida Nation Judiciary.
9 (c) This law does not apply to members of corporate entities of the Nation.

10 120.1-2. *Policy.* It is the policy of the Nation to ensure that elected officials who commit
11 misconduct while in office be subject to appropriate sanctions and penalties; and to ensure that
12 there is a fair process in place that enables officials to fairly respond to allegations of misconduct.

13 120.1-3. It is the intent of the Nation that all elected officials strive to exhibit and uphold the
14 Nation’s core values of The Good Mind as expressed by On<yote>a=ka, which includes:

- 15 (a) Kahletsyal&sla. The heart felt encouragement of the best in each of us.
16 (b) Kanolukhw@sla. Compassion, caring, identity, and joy of being.
17 (c) Ka>nikuhli=y%. The openness of the good spirit and mind.
18 (d) Ka>tshatst^sla. The strength of belief and vision as a People.
19 (e) Kalihwi=y%. The use of the good words about ourselves, our Nation, and our future.
20 (f) Twahwahts\$lay<. All of us are family.
21 (g) Yukwats\$stay<. Our fire, our spirit within each one of us.
22

23 **120.2. Adoption, Amendment, Repeal**

24 120.2-1. This law was adopted by the General Tribal Council by resolution GTC-__-__-__-__.

25 120.2-2. This law may be amended or repealed by the General Tribal Council pursuant to the
26 procedures set out in the Legislative Procedures Act.

27 120.2-3. Should a provision of this law or the application thereof to any person or circumstances
28 be held as invalid, such invalidity shall not affect other provisions of this law which are considered
29 to have legal force without the invalid portions.

30 120.2-4. In the event of a conflict between a provision of this law and a provision of another law,
31 the provisions of this law shall control.

32 120.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.
33

34 **120.3. Definitions**

35 120.3-1. This section shall govern the definitions of words and phrases used within this law. All
36 words not defined herein shall be used in their ordinary and everyday sense.

- 37 (a) “Business Committee Support Office” means the office that provides administrative
38 support for the Oneida Business Committee and various other governmental operations.
39 (b) “Business day” means Monday through Friday 8:00 a.m. – 4:30 p.m., excluding
40 holidays recognized by the Nation.
41 (c) “Clear and convincing evidence” means that it is substantially more likely than not that
42 the facts presented are true.
43 (d) “Complainant” means an individual who has made a complaint.
44 (e) “Constitution” means the Constitution and By-Laws of the Oneida Nation.
45 (f) “Court of Appeals” means the Court of Appeals of the Oneida Nation Judiciary.
46 (g) “Entity” means a board, committee, commission, office, or other group of the Nation
47 an individual may be elected to serve a position on, including the Oneida Business
48 Committee.
49 (h) “Misconduct” means wrongful, improper or unlawful conduct or behavior.
50 (i) “Nation” means the Oneida Nation.
51 (j) “Official” means any person who is elected to serve a position for the Nation, including,
52 but not limited to, a position on a board, committee, commission, or office of the Nation,
53 including the Oneida Business Committee.
54 (k) “Restitution” means compensation to an individual or entity for an injury, damage or
55 loss.
56 (l) “Stipend” means the amount paid by the Oneida Nation to elected individuals serving
57 on boards, committees and commissions of the Nation to offset the expenses of being a
58 member on the board, committee or commission.
59 (m) “Substantiate” means to find that the complaint or allegation in the complaint is valid
60 because there is clear and convincing evidence.
61 (n) “Trial Court” means the Trial Court of the Oneida Nation Judiciary, which is the
62 judicial system that was established by Oneida General Tribal Council resolution GTC-01-
63 07-13-B, and then later authorized to administer the judicial authorities and responsibilities
64 of the Nation by Oneida General Tribal Council resolution GTC-03-19-17-A.
65

66 **120.4. Misconduct**

67 120.4-1. It shall be the obligation of every official to behave in a manner that promotes the highest
68 ethical and moral standard. High moral and ethical standards amongst officials of the Nation is
69 essential to the conduct of government.

70 120.4-2. An official may be subject to sanctions and penalties for behaving in a manner which
71 constitutes misconduct. Misconduct includes:

- 72 (a) a violation of the Constitution or any of the Nation’s laws, policies, or rules;
73 (b) a violation of the bylaws, standard operating procedures or other internal operating
74 documents that govern the entity upon which the official serves;
75 (c) a conviction of a felony, or any crime in any jurisdiction that would be classified as a
76 felony under federal law or Wisconsin law; and
77 (d) any other activity that is incompatible with the high moral and ethical standards that
78 are expected of the Nation’s officials.
79

80 **120.5. Filing of a Complaint**

81 120.5-1. *Who May File.* Any individual at least eighteen (18) years of age or older who is an
82 enrolled member of the Nation or an employee of the Nation, or an entity, who in good faith, has

83 knowledge or reason to believe that an official has committed misconduct, may file a written
84 complaint.

85 120.5-2. *When to File.* A complaint may be filed as long as the alleged misconduct has occurred,
86 or was discovered to have occurred, within the previous ninety (90) days.

87 120.5-3. *Contents of the Complaint.* The complaint alleging misconduct by an official shall
88 include the following information:

- 89 (a) The name(s) of the official alleged to have committed the misconduct;
- 90 (b) The entity or entities upon which the official serves;
- 91 (c) The specific date(s), time(s), and location(s) of the alleged misconduct;
- 92 (d) The specific details of the official’s misconduct;
- 93 (e) The specific provision of law, policy, rule, or bylaw of the Nation allegedly violated
94 by the official;
- 95 (f) Names of any witnesses of the alleged misconduct, or individuals who may have
96 knowledge pertinent to the alleged misconduct;
- 97 (g) The contact information for the person filing the complaint, which at minimum shall
98 include the person’s name, address, and telephone number;
- 99 (h) A notarized sworn statement attesting that the information provided in and with the
100 complaint is true, accurate, and complete to the best of the complainant’s knowledge;
- 101 (i) Any supporting documentation; and
- 102 (j) Any other information required by the Nation’s Rules of Civil Procedure.

103 120.5-4. *Where to File.* Complaints against an official shall be filed with the Nation’s Trial Court
104 pursuant to the Nation’s Rules of Civil Procedure.

105 120.5-5. *Retaliation Prohibited.* Retaliation against any individual who makes a complaint or party
106 or witness to a complaint is prohibited. This protection shall also be afforded to any person offering
107 testimony or evidence or complying with directives authorized under this law. Retaliation shall
108 include any form of adverse or punitive action by, or caused by, any official.

- 109 (a) If an individual alleges that retaliatory action has been threatened or taken based on the
110 individual’s complaint, or cooperation with directives authorized under this law, the
111 individual may file a complaint for the retaliatory action in accordance with section 120.5
112 of this law.

113
114 **120.6. Complaint Procedure**

115 120.6-1. *Jurisdiction of the Trial Court.* The Trial Court shall have jurisdiction to hear complaints
116 of alleged misconduct of officials.

117 120.6-2. Any official who is the subject of a complaint has the right to be represented by an
118 attorney or advocate, at his or her own expense, for any actions or proceedings related to the
119 complaint.

120 120.6-3. *Burden of Proof.* In a civil action against an official for misconduct, the complainant has
121 the burden of proving by clear and convincing evidence that the official engaged in misconduct.

122 120.6-4. *Confidentiality.* All complaints alleged against an official of the Nation shall be handled
123 in a confidential manner.

- 124 (a) All hearings and/or proceedings related to a complaint shall be closed to the general
125 public.
- 126 (b) All records of hearings and/or proceedings shall not be subject to public review or
127 inspection. An official’s record of conduct shall only be made available for review by the
128 Trial Court.

129 (c) *Exception.* A decision of the Trial Court regarding a complaint alleged against an
130 official, and any sanctions and/or penalties that are imposed against an official, shall be
131 public information.

132 120.6-5. *Determination of the Trial Court.* In making a final determination, the Trial Court shall
133 determine if there is enough evidence to substantiate the allegations of misconduct by the official
134 by clear and convincing evidence.

135 (a) If the Trial Court finds that there is clear and convincing evidence that the official
136 engaged in misconduct, the Trial Court shall determine and impose any sanctions and/or
137 penalties deemed appropriate in accordance with this law.

138 (b) If the Trial Court does not find that there is clear and convincing evidence to support
139 the allegations that the official engaged in misconduct, the complaint shall be dismissed.

140 120.6-6. *Appeal.* The complainant and the official who is the subject of the complaint shall both
141 have the right to appeal the Trial Court’s decision to the Court of Appeals pursuant to the Nation’s
142 Rules of Appellate Procedure. The appeal shall be limited to review of the record, and the Trial
143 Court’s decision may only be overturned if the Court of Appeals determines that:

144 (a) The findings or penalties imposed were clearly erroneous, unsupported by the record,
145 or made on unreasonable grounds or without any proper consideration of circumstances;
146 or

147 (b) Procedural irregularities occurred which prevented a fair and impartial hearing.

148 120.6-7. The Trial Court shall provide the Business Committee Support Office a copy of the
149 complaint and the determination of the Trial Court for the official’s record of conduct in office.

150

151 **120.7. Sanctions and Penalties**

152 120.7-1. A sanction or penalty, or any combination of sanctions and/or penalties, may be imposed
153 upon the Nation’s officials for misconduct in office, in accordance with this law.

154 120.7-2. Sanctions and penalties may include:

155 (a) *Verbal Reprimand.* A verbal reprimand may be imposed on the official.

156 (1) The Trial Court shall submit written notices to both the official and to the
157 Business Committee Support Office of the specific date, time and location of the
158 verbal reprimand. The verbal reprimand shall occur at an Oneida Business
159 Committee meeting and/or a General Tribal Council meeting.

160 (2) To impose the verbal reprimand, the presiding Oneida Business Committee
161 Chairperson, or another Oneida Business Committee member if the verbal
162 reprimand is imposed against the presiding Oneida Business Committee
163 Chairperson, shall read a statement that identifies:

164 (A) The Trial Court’s findings regarding the specific actions or inaction
165 taken by the official that were found to be misconduct;

166 (B) The reasons why the official’s actions or inactions amounted to
167 misconduct;

168 (C) A statement identifying that the misconduct violates the high standards
169 of behavior expected of the Nation’s officials and is not acceptable; and

170 (D) A direction to the official to refrain from engaging in future misconduct.

171 (b) *Public Apology.* The official may be ordered to make a public apology. The Trial
172 Court shall submit written notices to both the official and to the Business Committee
173 Support Office of the specific date, time and location of the public apology. The public
174 apology shall occur at an Oneida Business Committee meeting and/or a General Tribal
175 Council meeting. The public apology shall:

- 176 (1) identify the specific misconduct committed by the official;
177 (2) recognize that the official’s actions or inactions were wrong;
178 (3) identify the effects of the official’s misconduct; and
179 (4) include a clear and unambiguous apology from the official.
- 180 (c) *Written Reprimand*. A written reprimand may be imposed on the official by publication
181 on the Nation’s official media outlets, as determined by the Oneida Business Committee.
182 The Trial Court may publish a written reprimand which includes the information required
183 for the verbal reprimand as stated in section 120.7-2(a)(2)(A)-(D).
- 184 (d) *Suspension*. An official may be suspended from performing his or her duties as an
185 official for a period of time not to exceed two (2) meetings, or fifteen (15) business days if
186 the official serves in a full-time capacity.
- 187 (1) During a suspension, the official shall not:
- 188 (A) attend meetings, trainings or any other event as part of the entity;
189 (B) attend conferences or other events on behalf of, or as a representative
190 of, the entity;
191 (C) vote or participate in any activities of the entity;
192 (D) perform work on behalf of the entity; or
193 (E) be eligible for any compensation, including regular pay, stipends, or
194 mileage reimbursement.
- 195 (2) When an official is suspended, the Trial Court shall submit written notices to
196 both the official and to the Business Committee Support Office of the specific start
197 and end date of the suspension.
- 198 (3) If a suspension is imposed on multiple officials of the same entity at one time,
199 the Trial Court shall impose the suspensions of the officials on a staggered basis to
200 avoid an interruption of the official business and function of the entity.
- 201 (e) *Restitution*. An official may be ordered to pay restitution, which may include the
202 repayment of any improperly received benefit, or any other payment which is intended to
203 make another whole after suffering losses as a result of the official’s misconduct.
- 204 (f) *Fines*. An official may be ordered to pay a fine not to exceed two thousand and five
205 hundred dollars (\$2,500).
- 206 (1) Fines shall be paid to the Trial Court.
207 (2) Fines shall be paid within ninety (90) days after the order is issued or upheld
208 on final appeal, whichever is later. If the fine is not paid by this deadline, the Trial
209 Court may seek to collect the money owed through the Nation’s garnishment and/or
210 per capita attachment process.
211 (3) Money received from fines shall be deposited into the General Fund.
212 (4) Community service may be substituted for part or all of any fine at the minimum
213 wage rate of the Nation for each hour of community service.
- 214 (g) *Loss of Stipend*. An official may be ordered to forfeit a stipend for his or her service
215 on an entity not to exceed two (2) meetings.
- 216 (h) *Mandatory Participation in Training*. An official may be ordered to participate in and
217 complete a training class or program that will assist the official in addressing and
218 improving his or her behaviors and/or actions.
- 219 (1) The mandated training class or program may address a variety of topics
220 including, but not limited to, anger management, sexual harassment, or other
221 sensitivity training.

222 (i) *Removal*. The Trial Court may recommend that the process for removing an elected
223 official as contained in the Nation’s laws and/or policies governing removal be initiated.

224 120.7-3. *Factors in Determining an Appropriate Sanction and/or Penalty*. When determining the
225 appropriate sanction or sanctions to impose, the Trial Court may consider all factors it deems
226 relevant, including but not limited to:

- 227 (a) the seriousness or severity of the misconduct;
- 228 (b) whether the conduct was intentional or not;
- 229 (c) the likelihood of repetition;
- 230 (d) the extent of probable damage to the finances or reputation of the Nation, the
231 complainant, the entity, or to any other person or organization;
- 232 (e) whether the official or his or her family personally profited, financially or otherwise,
233 from the prohibited conduct;
- 234 (f) the official’s remorse, or
- 235 (g) the official’s willingness and ability to take steps to mitigate the harm caused by the
236 violation, and
- 237 (h) any prior complaints filed, including any previous sanctions and penalties imposed
238 upon the official while serving on an entity.

239 120.7-4. The Trial Court may impose a sanction and/or penalty on a conditional basis, whereas
240 compliance with a specific sanction and/or penalty shall prevent the imposition of a more stringent
241 or burdensome sanction and/or penalty.

242 120.7-5. The imposition of sanctions and/or penalties in accordance with this law does not exempt
243 an official from individual liability for the underlying misconduct, and does not limit any penalties
244 that may be imposed in accordance with other applicable laws. In addition to any sanctions and
245 penalties that may be imposed in accordance with this law, officials who commit misconduct in
246 office may be subject to other consequences; including but not limited to:

- 247 (a) removal in accordance with the Nation’s laws and/or policies governing removal;
- 248 (b) criminal prosecution, for misconduct that also violates applicable criminal law;
- 249 (c) civil liability, in accordance with the applicable law of any jurisdiction; and/or
- 250 (d) penalties for specific misconduct as authorized by any other law of the Nation.

251 120.7-6. An official who does not comply with a sanction and/or penalty that has been imposed
252 against him or her by the Trial Court may be subject to the following:

- 253 (a) additional sanctions and/or penalties that result from a complaint of misconduct filed
254 in accordance with this Law based on the non-compliance;
- 255 (b) removal in accordance with the Nation’s laws and policies governing removal.

257 **120.8. Effect of Resignation by an Official**

258 120.8-1. The resignation of an official after a complaint has been filed against the official shall
259 not affect the status of the hearing and determination by the Trial Court.

260 120.8-2. An official who resigns may still be subject to sanctions and/or penalties at the discretion
261 of the Trial Court.

263 **120.9. Record of Conduct in Office**

264 120.9-1. The Business Committee Support Office shall maintain a record of conduct in office for
265 each official.

266 120.9-2. The record of conduct in office maintained for each official shall include, at a minimum:

- 267 (a) a copy of each complaint filed against the official;
- 268 (b) recording and/or transcript from any hearings and/or proceedings;

269 (c) the outcome of the complaint, and
270 (d) any sanctions or penalties imposed upon an official.
271 120.9-3. The record of conduct in office for each official shall be maintained for a period of no
272 less than seven (7) years.

273
274 *End.*

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276 _____
277 Adopted – GTC-__-__-__-__