

**Oneida Tribe of Indians of Wisconsin
Legislative Reference Office**

Lynn A. Franzmeier, Staff Attorney
Taniquelle J. Thurner, Legislative Analyst
Candice E. Skenandore, Legislative Analyst



P.O. Box 365
Oneida, WI 54155
(920) 869-4376
(800) 236-2214

<https://oneida-nsn.gov/Laws>

Memorandum

TO: Legislative Operating Committee
FROM: Jo Anne House, Chief Counsel
Candice E. Skenandore, Legislative Analyst
DATE: May 6, 2015
RE: Marriage Law Amendments

On April 2, 2015, a public meeting was held regarding amendments to the Marriage Law (Law). The Law would amend the definition of marriage to reflect that a marriage results in the creating of a legal status of spouses, as opposed to a legal status of husband and wife. In addition, the Law will remove the requirement that two adults of the “opposite sex” can marry. Also, if the parties themselves are the officiating person, they can mutually declare each other as spouses as opposed to husband and wife. Lastly, the Family Court Judge requested that Family Court will no longer establish guidelines for registering traditional tribal practitioners or spiritual or religious leaders who qualify as officiating persons in order to avoid confusion that the Family Court determines who qualifies as a traditional tribal practitioner or spiritual or religious leader.

This memorandum is submitted as a review of the written comments received during the public meeting process; there were no oral comments received at the public meeting itself. The public meeting draft with comments, as well as the comments received, have been attached for your review.

Comment 1. Comment on Enforcement Responsibilities

Tonya Webster: I don’t feel the Licensing Department should be the one to enforce the Penalty area (see below) within the Oneida Marriage Ordinance. Both Brown County Marriage Licensing and Madison Vital Statistics do not perform this. Both have separate areas who do the actual enforcing. Both Brown County and Madison said this should be done by some sort of legal area. The only way we would be able to prove fraud is if the applicants admitted to it. Also, the enforcement area is being removed from the Motor Vehicle Ordinance. Therefore, I think it would be best if this area is removed or reworded to have a legal department enforce the penalties.

Response

The comment is referring to sections 71.7-1 and 71.7-2:

71.7. Penalties

71.7-1. A person who knowingly violates this Law may be penalized as follows:

- (a) Any person who swears to a false statement to obtain a marriage license or to help another obtain a marriage license shall be fined no less than five hundred dollars (\$500.00).

(b) Any person who is not an officiating person who solemnizes a marriage ceremony shall be fined no less than one hundred dollars (\$100.00).

(c) The parties to a marriage and/or the officiating person(s) of a marriage conducted without a valid marriage license or without the presence of two (2) competent adult witnesses shall be fined no less than one hundred dollars (\$100.00).

(d) Any person who goes to another jurisdiction to avoid this Law and contracts a marriage prohibited under this Law shall be fined no less than five hundred dollars (\$500.00).

(e) Any person who violates any other provision of this Law shall be fined no less than one hundred dollars (\$100.00).

71.7-2. The Department shall be the responsible entity for the enforcement of this section. All fines issued shall be paid within thirty (30) days of the issuance of the fine. Any person issued a fine under this Law may contest the fine by filing an appeal with the Court prior to the deadline to pay the fine. The filing of an appeal shall stay the requirement to pay the fine. The notice of penalty issued shall inform the person penalized of the process to file his or her appeal.

The Tribe does not have a separate department for these actions; to create such a department may not be cost effective. Instead, the Tribe generally relies on the department to review the applications and marriage licensing activities and where violations occur to take necessary enforcement actions. The Oneida Law Office has legal counsel available to assist in reviewing enforcement correspondence/forms and assist in filing enforcement actions.

The enforcement of this ordinance does not require the department to investigate or find violations. It would be a part of the normal course of business, or where sufficient evidence is brought to the department's attention. This is similar to the language in section 51.9 of the Motor Vehicle law. It is not recommended that this section be changed.

Conclusion

After review of the public meeting comments by the LOC, this item can be deferred to the LRO to prepare for OBC consideration.