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

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

Comment 1 – Curfew Hours:

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

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

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

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

A good mind. A good heart. A strong fire.

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

Response

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

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

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

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

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

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

LOC Consideration

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

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

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

Comment 2 – Police Discretion:

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

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

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

(c) engaged in interstate travel;

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

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

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

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

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

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

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

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

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

Response

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

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

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

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

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

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

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

LOC Consideration

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

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

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

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

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

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

Response

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

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

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

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

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

LOC Consideration

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

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

Comment 4 – Community Service:

308.7. Penalties of Curfew Violations

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

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

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

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

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

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

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

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

Response

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

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

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

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

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

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

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

LOC Consideration

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

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

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

Comment 5 – Alternative to Fines or Community Service:

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

Response

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

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

1. The Law should remain as currently drafted and not address the Family Court's authority to stay the enforcement of a penalty for a curfew violation.
2. The Law should be amended to allow the Family Court to stay the enforcement of a penalty for a curfew violation. If the Legislative Operating Committee makes this decision, then the following revision should be made to the Law:
   308.7-2. *Staying a Curfew Penalty.* The Family Court may stay the enforcement of a penalty issued as a result of a curfew violation for a period of time to be determined by the Family Court. If the individual maintains compliance with the law during the time period in which the penalty is stayed, then the Family Court may dismiss the citation. If the individual commits another violation of the law during the time period in which the penalty is stayed, then the penalty shall go into effect.

LOC Consideration

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

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

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

Comment 6 – Jurisdiction of the Family Court:

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

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

308.7. Penalties of Curfew Violations

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

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

Response

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

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

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

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

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

LOC Consideration

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

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

Comment 7 – Family Counseling:

308.7. Penalties of Curfew Violations

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

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

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

Response

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

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

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

LOC Consideration

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

Comment 8 – Per Capita Attachment:

308.7. Penalties of Curfew Violations

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

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

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

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

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

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

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

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

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

Response

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

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

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

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

LOC Consideration

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

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

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

Comment 9 – Exemptions to Curfew:

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

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

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

Response

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

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

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

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

LOC Consideration

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

Comment 10 – Collection of Fines:

308.7. Penalties of Curfew Violations

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

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

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

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

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

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

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

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

Response

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

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

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

LOC Consideration

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

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