

ONEIDA NATION PUBLIC MEETING NOTICE

Thursday, April 2, 2020, 12:15 pm

Norbert Hill Center-Business Committee Conference Room
N7210 Seminary Road, Oneida, Wisconsin

Find Public Meeting Materials at

[Oneida-nsn.gov/government/register/public meetings](http://Oneida-nsn.gov/government/register/public%20meetings)

Send Public Comments to

LOC@oneidanation.org

Ask Questions here

LOC@oneidanation.org

920-869-4312



CURFEW LAW AMENDMENTS

The purpose of this law is to protect the health, safety, and welfare of persons and property within the Reservation by regulating the activities of minors on the Reservation during certain hours, while imposing certain obligations and responsibilities upon the parents, guardians, and/or legal custodians of a minor for the control and supervision of that minor.

The Curfew law amendments will:

1. Remove an incorrect reference to the Nation's territorial jurisdiction as the Nation's territorial jurisdiction is provided by the Constitution and Bylaws of the Oneida Nation and the Nation's Judiciary law; and
2. Remove a duplicative provision regarding personal jurisdiction as personal jurisdiction is already provided by the Nation's Judiciary law.

PUBLIC COMMENTS PERIOD CLOSES THURSDAY, APRIL 9, 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
This law is not needed in the community.	I do not like the curfew hours included in the law.	Curfew beginning at 10:00 p.m. is too early, curfew should start at 11:00 p.m. instead.



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we'll put our arms across to stop them

AMENDMENTS TO CURFEW LAW LEGISLATIVE ANALYSIS

SECTION 1. EXECUTIVE SUMMARY

REQUESTER: Legislative Reference Office	SPONSOR: Jennifer Webster	DRAFTER: Clorissa N. Santiago	ANALYST: Brandon Wisneski
Intent of the Amendments	Technical corrections to remove inaccurate or duplicative references to the Nation's territorial and personal jurisdiction.		
Purpose	To protect the health, safety, and welfare of persons and property within the Reservation by regulating the activities of minors on the Reservation during certain hours, while imposing certain obligations and responsibilities upon the parents, guardians, and/or legal custodians of a minor for the control and supervision of that minor [3 O.C. 308.1-1].		
Affected Entities	Oneida Police Department and Oneida Judiciary.		
Related Legislation	Judiciary law.		
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

- A. The Curfew law was first adopted by the Oneida Business Committee on October 9, 2019.
- B. Upon a review of the Nation's Code of Laws, the Oneida Law Office and Legislative Operating Committee (LOC) identified references to the Nation's jurisdiction that were either inaccurate or duplicative. In consultation with the Oneida Law Office, the LOC proposes technical amendments to the Curfew law to remove these inaccurate or unnecessary references. The intent of these changes is not to alter how the Curfew law is currently being enforced, but to ensure that all references to jurisdiction in the Nation's Code of Laws are accurate.

SECTION 3. CONSULTATION AND OUTREACH

- A. Representatives from the following departments or entities participated in the development of this law and legislative analysis: Oneida Law Office.
- B. The following laws were reviewed in the drafting of this analysis: Judiciary law, Domestic Animals law, Oneida Nation Gaming Ordinance, Tribal Environmental Response law, Judiciary Rules of Evidence.

SECTION 4. PROCESS

- A. The amendments to this law have followed the process set forth in the Legislative Procedures Act (LPA).
- B. The LOC added the amendments to the Active Files List on February 5, 2020.

SECTION 5. CONTENTS OF THE LEGISLATION

A. Deletion of Territorial Jurisdiction Section. These amendments delete an incorrect reference to the Nation's territorial jurisdiction for this law. The Curfew law incorrectly states that the territorial jurisdiction of this law is limited to land owned by the Nation or individual trust and/or fee land of a member of the Nation.

- *Territorial Jurisdiction.* The Nation's territorial jurisdiction is properly defined in the Constitution and Bylaws of the Oneida Nation and the Nation's Judiciary law (see below).
- *Conclusion.* Since the reference included in the Curfew law is inaccurate, unnecessary and already located in the Nation's Constitution and Judiciary law, it has been deleted for clarity.

Table 1. Comparison: Territorial Jurisdiction as Referenced in Constitution and Laws of the Nation.

<i>Deleted Language in Current Curfew law</i>	<i>Language in Constitution of the Oneida Nation</i>	<i>Language in Judiciary law</i>
This law extends <u>within the Reservation to all land owned by the Nation and individual trust and/or fee land of a member of the Nation</u> [3 O.C. 308.4-3].	The jurisdiction of the Oneida Nation shall extend <u>to the territory within the present confines of the Oneida Reservation</u> and to such other lands as may be hereafter added thereto within or without said boundary lines under any law of the United States, except as otherwise provided by law [Article 1 – Territory]	"The territorial jurisdiction of the Trial Court shall extend to the Reservation and all lands held in trust by the United States for the benefit of the Tribe within the State of Wisconsin." [8 O.C. 801.5-3].

B. Deletion of Personal Jurisdiction Section. These amendments also delete references to the Nation's personal jurisdiction from this law. The personal jurisdiction of the Nation is already provided for in the Nation's Judiciary law.

- *Personal Jurisdiction.* The Judiciary law already clarifies that the Nation has personal jurisdiction over members of the Oneida Nation, members of other federally-recognized Indian tribes, and any "non-Indians" who have consented to the jurisdiction of the Nation (examples include a contract or lease agreement.)
- *Conclusion.* Since the Nation's personal jurisdiction is already provided for in the Judiciary law, it has been deleted from this law for clarity.

Table 2. Comparison: Personal Jurisdiction in laws of the Nation.

<i>Deleted Language in Current Curfew law</i>	<i>Language in Judiciary law</i>
<i>Personal Jurisdiction.</i> This law applies to: (a) All members of the Nation; the Nation's entities and corporations; and members of other federally-recognized tribes; (b) Individuals and businesses leasing, occupying or otherwise using fee land owned by the Nation or by individual members of the Nation; and/or lands held	<i>Personal Jurisdiction</i> (a) Indians. The Trial Court shall have jurisdiction over all Indians. 8 O.C. 801 – Page 5 (b) Non-Indians. The Trial Court shall have jurisdiction over non-Indians who have consented to the jurisdiction of the Tribe or Trial Court or as otherwise consistent with federal law. (1) Consent to Jurisdiction. For purposes of subsection 801.5-4(b)

<p>in trust on behalf of the Nation or individual members of the Nation; and</p> <p>(c) Individuals who have consented to the jurisdiction of the Nation or as otherwise consistent with federal law. An individual shall be considered to have consented to the jurisdiction of the Nation:</p> <p>(1) By entering into a consensual relationship with the Nation, or with the Nation's entities, corporations, or members of the Nation, including but not limited to contracts or other agreements; or</p> <p>(2) By other facts which manifest an intent to consent to the authority of the Nation, including failure to raise an objection to the exercise of personal jurisdiction in a timely manner. [3 O.C. 304.4-1].</p>	<p>above, a person shall have consented to the jurisdiction of the Trial Court by:</p> <p>(A) entering into a consensual relationship with the Tribe, Tribal entities, Tribal corporations, or Tribal members, including but not limited to contracts or other agreements; or</p> <p>(B) other facts which the Trial Court determines manifest an intent to consent to the authority of the Tribe or the jurisdiction of the Trial Court, including failure to raise an objection to the exercise of personal jurisdiction in a timely manner. [8 O.C. 801.5-4].</p>
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SECTION 6. EXISTING LEGISLATION

A. *References to Territorial Jurisdiction in Other Oneida laws.* The following laws also include references to the Nation's territorial jurisdiction.

- Domestic Animals [3 O.C. 304.4-2]
 - *Conclusion.* The reference to territorial jurisdiction in the Domestic Animals law is also incorrect and will need to be updated or deleted. The LOC has added the Domestic Animals law to Active Files List for amendments.
- Judiciary [8 O.C. 801.5-3]
 - *Conclusion.* The reference to territorial jurisdiction in the Judiciary law is correct and no amendments are necessary.
- Oneida Nation Gaming Ordinance (ONGO) [5 O.C. 501.3-1]
 - *Conclusion.* The reference to territorial jurisdiction in ONGO is correct and no amendments are necessary.
- Tribal Environmental Response [4 O.C. 401.4-2]
 - *Conclusion.* The reference to territorial jurisdiction in the Tribal Environmental Response law is correct and no amendments are necessary.
- Judiciary Rules of Evidence [8 O.C. 804.5-2(a)].
 - *Conclusion.* The reference to territorial jurisdiction in the Judiciary Rules of Evidence is correct and no amendments are necessary.

SECTION 7. OTHER CONSIDERATIONS

A. *Fiscal Impact.* A fiscal impact statement has not yet been requested.

- Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except emergency legislation [1 O.C. 109.6-1].

- 71 ▪ A fiscal impact statement shall be submitted by agencies as directed by the Legislative Operating
72 Committee and may be prepared by any agency who may receive funding if the legislation is
73 enacted; who may administer a program if the legislation is enacted; who may have financial
74 information concerning the subject matter of the legislation; or by the Finance Office, upon request
75 of the Legislative Operating Committee [*1 O.C. 109.6-1(a) and (b)*].

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Title 3. Health and Public Safety - Chapter 308**T<yethin<tshaw^=late> Kayanl^sla>***We'll put our arms across to stop them***CURFEW**

308.1. Purpose and Policy

308.2. Adoption, Amendment, Repeal

308.3. Definitions

308.4. Jurisdiction

308.5. Curfew

308.6. Enforcement of Curfew Violations

308.7. Penalties of Curfew Violations

308.1. Purpose and Policy

308.1-1. *Purpose.* The purpose of this law is to protect the health, safety, and welfare of persons and property within the Reservation by regulating the activities of minors on the Reservation during certain hours, while imposing certain obligations and responsibilities upon the parents, guardians, and/or legal custodians of a minor for the control and supervision of that minor.

308.1-2. *Policy.* It is the policy of the Nation 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.

308.2. Adoption, Amendment, Repeal

308.2-1. This law was adopted by the Oneida Business Committee by resolution BC-10-09-19-F₁ and amended by resolution BC- - - - -.

308.2-2. 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.

308.2-3. 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.

308.2-4. 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.

308.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

308.3. Definitions

308.3-1. 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) "Court of Appeals" means the branch of the Nation's Judiciary delegated the authority of final appeal within the Nation's Judiciary, as authorized by Oneida General Tribal Council resolution GTC-03-19-17-A .

(b) "Family Court" means the branch of the Nation's Judiciary delegated the authority to administer the judicial authorities and responsibilities of the Nation related to the family and/or children, as authorized by Oneida General Tribal Council resolution GTC-03-19-17-A.

(c) "Guardian" means the person, department, and/or agency appointed the duty and authority of guardianship of a child by a Court for the purpose of managing and caring for the child. A guardian has the right to make major decisions affecting a child including education, religious and cultural upbringing, the right to consent to marriage, to enlistment

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

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

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

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

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

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

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

(g) “Nation” means the Oneida Nation.

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

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

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

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

308.4. Jurisdiction

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

~~308.4 2. *Personal Jurisdiction.* This law applies to:~~

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

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

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

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

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

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

308.5. Curfew

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.

308.5-2. *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.

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. Enforcement of Curfew Violations

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

- (a) A minor who is suspected of violating curfew may be stopped by an Oneida Police Department officer. No person shall assault, obstruct or flee from any Oneida Police Department officer enforcing or attempting to enforce the provisions of this law.
- (b) The Oneida Police Department officer shall ask the minor's name, age, and reason for violating curfew. The minor shall provide the Oneida Police Department officer identification if available. No person shall falsely represent his or her name or age to an Oneida Police Department officer.
- (c) If the Oneida Police Department officer reasonably believes based on the totality of the circumstances that a violation of curfew has occurred and not one of the exemptions in section 308.5-3 apply, the Oneida Police Department officer may take custody of the minor for the purpose of returning such minor to the care and custody of a parent, guardian, or legal custodian.
- (d) Once the Oneida Police Department officer has taken the minor into his or her custody, the minor shall provide the Oneida Police Department officer with contact information for his or her parent, guardian, or legal custodian. The Oneida Police Department officer shall contact the minor's parent, guardian, or legal custodian to come and pick up the minor and take the minor into his or her care and custody. If the minor's parent, guardian, or legal

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

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

308.6-2. *Warning.* The first time a minor is held in custody by an Oneida Police Department officer for a curfew violation the Oneida Police Department 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.

308.6-3. *Issuance of a Citation.* Any subsequent time a minor is held in custody by an Oneida Police Department officer for a curfew violation the Oneida Police Department 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.

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

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

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 or any other collection process available to the Family Court.

(4) 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.

(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.

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

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

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.

End.

Adopted – BC-10-09-19-F

Amended – BC- - - -

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

308.1. Purpose and Policy
308.2. Adoption, Amendment, Repeal
308.3. Definitions
308.4. Jurisdiction

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

308.1. Purpose and Policy

308.1-1. *Purpose.* The purpose of this law is to protect the health, safety, and welfare of persons and property within the Reservation by regulating the activities of minors on the Reservation during certain hours, while imposing certain obligations and responsibilities upon the parents, guardians, and/or legal custodians of a minor for the control and supervision of that minor.

308.1-2. *Policy.* It is the policy of the Nation 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.

308.2. Adoption, Amendment, Repeal

308.2-1. This law was adopted by the Oneida Business Committee by resolution BC-10-09-19-F, and amended by resolution BC-__-__-__-__.

308.2-2. 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.

308.2-3. 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.

308.2-4. 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.

308.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

308.3. Definitions

308.3-1. 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) “Court of Appeals” means the branch of the Nation's Judiciary delegated the authority of final appeal within the Nation's Judiciary, as authorized by Oneida General Tribal Council resolution GTC-03-19-17-A .

(b) “Family Court” means the branch of the Nation's Judiciary delegated the authority to administer the judicial authorities and responsibilities of the Nation related to the family and/or children, as authorized by Oneida General Tribal Council resolution GTC-03-19-17-A.

(c) “Guardian” means the person, department, and/or agency appointed the duty and authority of guardianship of a child by a Court for the purpose of managing and caring for the child. A guardian has the right to make major decisions affecting a child including education, religious and cultural upbringing, the right to consent to marriage, to enlistment

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

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

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

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

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

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

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

(g) “Nation” means the Oneida Nation.

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

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

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

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

308.4. Jurisdiction

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

308.5. Curfew

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.

308.5-2. *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.

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. Enforcement of Curfew Violations

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

- (a) A minor who is suspected of violating curfew may be stopped by an Oneida Police Department officer. No person shall assault, obstruct or flee from any Oneida Police Department officer enforcing or attempting to enforce the provisions of this law.
- (b) The Oneida Police Department officer shall ask the minor's name, age, and reason for violating curfew. The minor shall provide the Oneida Police Department officer identification if available. No person shall falsely represent his or her name or age to an Oneida Police Department officer.
- (c) If the Oneida Police Department officer reasonably believes based on the totality of the circumstances that a violation of curfew has occurred and not one of the exemptions in section 308.5-3 apply, the Oneida Police Department officer may take custody of the minor for the purpose of returning such minor to the care and custody of a parent, guardian, or legal custodian.
- (d) Once the Oneida Police Department officer has taken the minor into his or her custody, the minor shall provide the Oneida Police Department officer with contact information for his or her parent, guardian, or legal custodian. The Oneida Police Department officer shall contact the minor's parent, guardian, or legal custodian to come and pick up the minor and take the minor into his or her care and custody. If the minor's parent, guardian, or legal custodian is unable to pick the minor up, then the Oneida Police Department officer may bring the minor home to release the minor to the custody and care of the minor's parent, guardian, or legal custodian.
- (e) If the Oneida Police Department officer is unable to contact the minor's parent, guardian, or legal custodian after reasonable efforts are made, the Oneida Police Department officer shall attempt to locate an adult relative or other responsible adult willing and able to accept the care and custody of the minor, and may release the minor into the care and custody of such person.

308.6-2. *Warning.* The first time a minor is held in custody by an Oneida Police Department officer for a curfew violation the Oneida Police Department 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.

308.6-3. *Issuance of a Citation.* Any subsequent time a minor is held in custody by an Oneida Police Department officer for a curfew violation the Oneida Police Department 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.

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

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

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 or any other collection process available to the Family Court.

(4) 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.

(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.

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

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

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.

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End.

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Adopted – BC-10-09-19-F

Amended – BC-__-__-__-__