

**ONEIDA INDIAN NATION
JUVENILE JUSTICE CODE**

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CHAPTER 1 - PURPOSE

101 SHORT TITLE

This Code shall be known as the "Juvenile Justice Code" and may be referred to herein as the "Code."

102 DEFINITIONS

Unless the context otherwise requires, as used in this Code, the term:

"Child" means any person under the age of sixteen (16) years who is not emancipated.

"Community Service" means, but is not limited to, performing services without compensation in an appropriate Oneida Indian Nation community services program or any other entity or organization as directed by the Court.

"Court" means the Oneida Nation Court and does not include the Oneida Indian Nation Appellate Court.

"Court Clerk" means the Court Clerk of the Oneida Nation Court.

"Custodian" means a person, other than a parent or guardian, to whom legal custody of the child has been given.

"Department" means the Oneida Indian Nation Family Services Department.

"Emancipated" means a person who has voluntarily abandoned the home of his parent, guardian or custodian at the time of the occurrence of the act giving rise to a proceeding.

"Emergency" means an unforeseen combination of circumstances or the resulting state that calls for immediate action. The term includes, but is not limited to, a fire, a natural disaster, or automobile accident, or any situation requiring immediate action to prevent serious bodily injury or loss of life.

"Establishment" means a privately-owned place of business within the territorial jurisdiction of the Oneida Indian Nation operated for profit, to which the public is invited, including, but not limited to, any place of amusement or entertainment and any other place open to the general

public and devoted to business, amusement or entertainment of the general public or other lawful purpose.

"Guardian" means a person having the duty and authority to provide care, shelter, and control of a child.

"He/His" means he or she, his or her, and the singular includes plural.

"Juvenile Offender" means a child who has been adjudged by the Court, pursuant to the procedures set forth in this Code, to (i) have engaged in ungovernable behavior; or (ii) have been habitually truant from school; or (iii) have otherwise refused to obey the reasonable rules and regulations of his household.

"Operator" means any individual, firm, association, partnership or corporation operating, managing, or conducting any establishment. The term includes the members or partners of an association or partnership and the officers of a corporation.

"Parent" means a natural or adoptive parent, but does not include persons whose parental rights have been legally terminated, nor does it include a putative unwed father whose paternity has not been acknowledged or established.

"Probation" means a legal status created by Court order whereby a "juvenile offender" is permitted to remain in his home under prescribed conditions and under the supervision of a person designated by the Court. A "juvenile offender" on probation is subject to return to Court for further proceedings in the event of his failure to comply with any of the prescribed conditions of probation.

"Probation Officer" means the probation officer as designated by the Oneida Indian Nation or any other appropriately experienced person who performs the duties and responsibilities of counseling.

"Prosecutor" means the Oneida Indian Nation Prosecutor.

"Public Place" means any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, highways, sidewalks, alleys, rights-of-way, playgrounds and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities, and shops. It also shall include the front or immediate area of the above, including, but not limited to, roads, sidewalks, alleys, parking lots, parks or other similar areas open to the general public.

"Remain" means to (a) linger or stay; or (b) fail to leave premises when requested to do so by a police officer or the owner, operator, or other person in control of the premises.

"Restitution" means financial or other reimbursement by the child and/or child's parents,

guardian or custodian to the victim, and is limited to easily ascertainable damages for injury to or loss of property, actual expenses incurred for medical, psychiatric and psychological treatment for injury to persons, and lost wages resulting from injury, which are a direct and proximate result of the offense. Restitution does not include reimbursement for damages for mental anguish, pain and suffering, or other intangible losses.

“Restricted Hours” means 11:00 p.m. on any day until 5:00 a.m. of the following day.

"Serious Bodily Injury" means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

“Serious Offense” means any act which if committed by an adult would constitute a felony under the Oneida Indian Nation Penal Code or any other act of a similarly serious nature.

“Summons” means a written order issued by the judge directing that a person appear before the Court at a stated time and place and answer to a charge pending against the person.

"Territorial Jurisdiction" means all lands possessed, occupied or held by or for the Oneida Indian Nation.

“Warrant” means a written order made by the judge directed to any law enforcement officer commanding the officer to arrest the person named or described in the warrant.

103 TIME LIMITATIONS

A. Proceedings under this Code must be commenced within two (2) years after the act giving rise to the proceedings is committed by a child which, if committed by an adult, would constitute a violation of Oneida Indian Nation Penal Code, but shall not include any periods in which: the child is absent from the territorial jurisdiction of the Court; the child is so concealed within the jurisdiction of the Court that process cannot be served upon the accused; or the fact of the offense is concealed.

B. All other proceedings under this Code must be commenced within six (6) months after the act which renders a child to be a juvenile offender occurs, but shall not include any periods in which: the child is absent from the territorial jurisdiction of the Court; the child is so concealed within the jurisdiction of the Court that process cannot be served upon the accused; or the fact of the offense is concealed.

CHAPTER 2 - GENERAL PROVISIONS

201 JURISDICTION

A. Except as otherwise provided by law, the Court shall have exclusive original jurisdiction in proceedings in which the child resides within the territorial jurisdiction of the Oneida Indian Nation and is alleged to be a "juvenile offender" as defined in Section 102 of this Code.

B. The Court shall have exclusive original jurisdiction over an individual who is a parent, guardian or custodian of a child alleged to be a juvenile offender in a proceeding under this Code and who resides or is found within the territorial jurisdiction of the Oneida Indian Nation.

202 NON-CRIMINAL PROCEEDING

No adjudication upon the status of any child shall be deemed criminal or be deemed a conviction of a crime.

203 RIGHTS OF THE JUVENILE OFFENDER IN PROCEEDINGS UNDER THIS CODE

A. Privilege against self-incrimination. A child alleged to be a juvenile offender shall from the time of being taken into custody be accorded and advised of the privilege against self-incrimination and from the time the child is taken into custody shall not be questioned except to determine identity, to determine the name(s) and location of the child's parent or custodian, or to conduct medical assessment or treatment for alcohol or substance abuse under this Code when the child's health and well-being are in serious jeopardy.

B. Admissibility of Evidence. In a proceeding on a petition alleging that a child is a juvenile offender:

1. an out-of-Court statement that would be inadmissible in a criminal matter in the Court shall not be received in evidence;

2. evidence illegally seized or obtained shall not be received in evidence to establish the allegations of a petition;

3. neither the fact that the child has at any time been a party in another jurisdiction to a "Child in Need of Care," "Person in Need of Supervision," child abuse or neglect proceeding, or any comparable proceeding, nor any information obtained during the pendency of such proceedings, shall be received into evidence.

C. Fingerprinting and Photographs. The child shall not be fingerprinted nor photographed for any reason arising out of any proceeding or custody pursuant to this Code.

D. Right to Retain Counsel. The child and his parent, guardian or custodian shall be advised by the Court that the child may be represented by counsel at all stages of the proceedings. If counsel is not retained for the child, or if it does not appear that counsel will be retained, the Court shall appoint counsel for the child.

204 INSPECTION OF COURT RECORDS

A. Records Open for Inspection. Records of Court proceedings shall be open to inspection by the child, parents, guardian, or custodian, attorneys and other parties in proceedings before the Court, and to any agency to which legal custody of the child has been transferred.

B. Records Not Open for Inspection. Probation records and all other reports of social and clinical studies shall not be open to inspection, except by order of the Court.

205 EXPUNGEMENT OF RECORDS

Any child who has been adjudicated as a juvenile offender, who was taken into custody on an allegation of being a juvenile offender, or who was the subject of a proceeding as an alleged juvenile offender, may petition the Court for the expungement of his record according to Court rules.

206 EXCLUSION OF CERTAIN STATEMENTS BY ALLEGED JUVENILE OFFENDER

No statements or admissions of a child made in the absence of his counsel during interrogation by a law enforcement official concerning acts alleged to have been committed by the child which would constitute a crime if committed by an adult shall be admissible in evidence against that child unless:

- (1) a parent, guardian or custodian of the child was present at such interrogation; and
- (2) the child and his parent, guardian or custodian were advised of the child's right to remain silent and that any statements made may be used against the child in a Court of law; and
- (3) the child and his parent, guardian or custodian were advised of the child's right to have an attorney present during the interrogation.

207 CONTEMPT

Any parent, custodian or guardian who fails or refuses to comply with any diversion plan, probation, or any other requirement pursuant to this Code, may be held in contempt and subject to a civil fine in an amount up to \$500 for each failure or refusal.

208 TRANSFER

A. In the interest of justice, any case which may have been originally filed in another court may, upon order of this Court and with the consent of the transferring court, be transferred from another court to this Court upon motion of the Nation Prosecutor or by consent or stipulation of the Nation Prosecutor and the alleged juvenile offender by and through the parent(s), guardian, custodian or legal counsel of the alleged juvenile offender.

B. The motion for transfer shall state the grounds for transfer and set forth the order sought.

C. The motion shall be accompanied by, if available, a certified copy of all documents filed in the other court proceeding from which the transfer is sought.

D. The Court may order a hearing upon the motion or enter any other order, upon the motion, consent or stipulation.

E. The order of the Court issued pursuant to this Section shall be final and not subject to review by any court nor appealable to the Oneida Indian Nation Appellate Court.

CHAPTER 3 - FIRST APPEARANCE / ADJUDICATION

301 DIVERSION

- A. Prior to the filing of a Petition, the Nation Prosecutor may divert any case or refer any case to the Peacemaker process of the Nation Court except when the child is accused of committing a crime which is classified as a felony under the Nation's Penal Code.
- B. At any time after the filing of a Petition and prior to disposition, the Court, in its discretion, may divert any case or refer any case to the Peacemaker process of the Nation Court except when the child is accused of committing a serious offense.
- C. The Probation Officer shall monitor and supervise the diversion progress of the child and file reports, as required, with the Nation Prosecutor and the Court. The reports shall contain a detailed explanation of relevant information concerning the child, child's family, environment, diversion plan and any progress, conduct, diversion plan compliance or non-compliance, need for further diversion, referral or treatment. The Probation Officer shall coordinate with the appropriate Nation agencies and/or departments and develop an appropriate diversion plan for the child.
- D. If at any time during the diversion period, the child or child's parents, guardian or custodian fails or refuses to comply with any requirements of the diversion plan, the Probation Officer may refer the case back to the Nation Prosecutor for further proceedings under this Code. Such referral shall be accompanied by a report prepared by the Probation Officer according to the provisions of Section 301.C.
- E. Upon successful completion of the diversion plan, the Probation Officer shall file a final report with the Nation Prosecutor or Court informing of the plan compliance and recommending dismissal of the Petition or closure of the matter.
- F. The diversion of any case shall not affect the timely or speedy disposition of the case nor shall it affect the time limitations of any offense as prescribed by Section 103.A or 103.B of this Code.

302 PLEADINGS

- A. Title of Proceedings. The proceedings shall be entitled: "In the matter of an alleged juvenile offender".
- B. Petition. The Nation Prosecutor, having knowledge of a child who appears to be an alleged juvenile offender, may file a verified petition with the Court on forms designated for this purpose.

303 SUMMONS; PERSONS UPON WHOM SERVED; FORM.

Upon the filing of a Verified Petition pursuant to section 302, the Court may direct a copy of the Petition, along with a summons, to be issued requiring the child who is alleged to be a juvenile offender and his parent, guardian or custodian to appear in Court pursuant to section 304 at a time and date set by the Court. The summons and a copy of the Petition shall be personally served upon:

- (a) the child alleged to be a juvenile offender; and
- (b) a parent, guardian or custodian of the alleged juvenile offender; and
- (c) any other person designated by the Court. In the event that the child fails to appear in Court as directed in the summons, or if the child is likely to leave the Court's jurisdiction or otherwise evades service of a summons, then the Court may issue a warrant directing that the child be brought before the Court in the manner prescribed by the Court in the warrant.

304 FIRST APPEARANCE

At his first appearance before the Court, the child alleged to be a juvenile offender and the child's parent, guardian or custodian shall be informed by the Court of the following:

- 1. the allegations against the child;
- 2. the right to an attorney;
- 3. the right to testify or remain silent and that any statement made by the child, parents, guardian or custodian may be used against the child;
- 4. the right to cross-examine witnesses;
- 5. the right to subpoena witnesses on his own behalf and to introduce evidence on his own behalf; and
- 6. the possible consequences if the allegations in the petition are found to be true.

305 ADJUDICATION HEARINGS

A. Hearings shall be held before the Court without a jury. The general public shall be excluded. The Court shall admit only such persons as have an interest in the case, including persons whom the parents or guardian wish to be present. Hearings may be continued from time to time as ordered by Court.

B. A verbatim record shall be taken of all proceedings.

C. When more than one child is named in a petition the hearings may be consolidated; or heard separately at any stage of the proceeding in the Court's discretion.

D. The name, picture, place of residence, or identity of any child, parent, guardian, custodian, or person appearing as a witness in proceedings under this Code shall not be published in any newspaper or in any other publication nor given any other publicity unless, for good cause, it is specifically permitted by order of the Court. Any person who violates the provisions of this subsection is guilty of a misdemeanor and, upon conviction, thereof, shall be punished by a civil fine of not more than Five Hundred Dollars (\$500.00).

E. The child may stipulate to the fact that he is a juvenile offender.

F. If the Court finds that the allegations of the Petition are supported by clear and convincing evidence, the Court shall order a pre-disposition report and set the matter for a disposition hearing.

G. If the Court finds that the allegations of the Petition are not supported by clear and convincing evidence the Court shall order the petition dismissed and the child discharged from any detention, restriction, conditions or terms previously ordered. His parents, guardian, or custodian shall also be discharged from any restriction, condition or term under a previous temporary order.

306 PREDISPOSITION REPORT

Once a child has been adjudicated a Juvenile Offender or stipulates to that adjudication, the Court shall order a predisposition study.

A. Predisposition Study and Report. The Court shall direct the Probation Officer to prepare a written predisposition study and report for the Court concerning the juvenile offender, the juvenile offender's family, environment, and any other matter relevant to the need for treatment or other appropriate disposition of the case. The parent(s), guardian or custodian shall execute appropriate releases as necessary.

B. Contents of Predisposition Study and Report. The report shall contain a specific plan for the juvenile offender, aimed at resolving the problems presented in the petition. The report shall contain a detailed explanation showing the necessity for the proposed plan of disposition and the benefits to the juvenile offender under the proposed plan. Preference shall be given to the dispositional alternatives that are least restrictive of the juvenile offender's freedom and are consistent with the interests of the community.

C. Medical Assessment and Treatment for Alcohol or Substance Abuse. The Court may order a medical and/or psychological assessment of the juvenile offender.

D. Submission of Reports. Evaluations, assessments, dispositional reports and other

material to be considered by the Court in a juvenile hearing shall be submitted to the Court and to the parties no later than three (3) days before the scheduled hearing date. A declaration including reasons why a report has not been completed shall be filed with the Court no later than three (3) days before the scheduled hearing date if the report will not be submitted before the deadline. The Court may in its discretion dismiss a petition if the necessary reports, evaluations or other material have not been submitted in a timely manner.

CHAPTER 4 - DISPOSITION

401 DISPOSITION PROCEEDINGS

A. Purpose and Conduct of Disposition Hearing. Disposition hearings shall be conducted by the Court separate from other proceedings. The Court shall conduct the disposition hearing to determine how to resolve a case after it has been determined at the adjudicatory hearing that the child is a juvenile offender. The Court shall make and record its dispositional order. At the disposition hearing, the child and the child's parent, guardian or custodian shall have the applicable rights set forth in this Code. The public shall be excluded from the proceedings. Only the parties, their counsel, witnesses, and persons requested by the parties or ordered by the Court shall be admitted.

B. Notice of Disposition Hearing. Notice of the disposition hearing shall be given to the child and the child's parent, guardian or custodian, the child's counsel and any other person the Court deems necessary for the hearing at least ten (10) days prior to the hearing.

C. Evidence and Reports. In the disposition hearing, the Court may consider all relevant and material evidence in determining the questions presented, including oral and written reports, and may rely on such evidence to the extent of its probative value even though not otherwise competent. The Court shall consider any predisposition report, physician's report or social study it may have ordered and afford the child, the child's parent, guardian or custodian and the child's counsel an opportunity to controvert the factual contents and conclusions of the report(s). The Court shall also consider the alternative predisposition report or recommendations prepared by the child or the child's counsel, if any.

D. Disposition Alternatives. If a child is found by the Court to be a juvenile offender or stipulates that he is a juvenile offender, the Court may make and record one or more of the following orders of disposition for the child's supervision, care and rehabilitation:

1. permit the child to remain with his parent(s), guardian, custodian, or some other suitable person subject to such conditions and limitations as the Court may prescribe;
2. place the child in the legal custody of a relative or other suitable person, or an institution approved by the Nation, subject to such conditions and limitations as the Court may prescribe;
3. order the child and, in the Court's discretion, the parents, guardian, or custodian to pay restitution and/or fines and/or perform community service;
4. place the child on probation under such conditions and limitations as the Court may prescribe.

CHAPTER 5 - MODIFICATION, REVOCATION, EXTENSION OR TERMINATION OF DISPOSITIONAL ORDERS

501 MANDATORY REVIEW OF DISPOSITION ORDER.

Dispositional orders shall be reviewed at least once every six (6) months.

502 MODIFICATION, REVOCATION, OR EXTENSION OF DISPOSITION ORDER.

After notice to all parties, the Court may hold a hearing to modify, revoke, or extend a disposition order at any time upon the motion of:

1. the child;
2. the child's parent, guardian or custodian;
3. the child's legal counsel;
4. the Probation Officer;
5. the Nation Prosecutor;
6. the institution, agency or person vested with the legal custody of the child or responsibility for protective supervision; or
7. the Court on its own motion.

503 HEARING TO MODIFY, REVOKE OR EXTEND DISPOSITION ORDER

A hearing to modify, revoke or extend the disposition order shall be conducted according to this Code.

504 APPEAL

Except as expressly prohibited by this Code, appeals shall be to the Oneida Indian Nation Appellate Court pursuant to the Oneida Indian Nation Rules of Appellate Procedure.

505 AUTOMATIC TERMINATION OF DISPOSITION ORDER

When the child reaches eighteen (18) years of age, all disposition orders shall automatically terminate; provided, however, that if a disposition order was made within one (1) year of the child's eighteenth (18th) birthday, then the disposition order shall automatically terminate after one (1) year.

CHAPTER 6 - RESTRICTED HOURS

601 PURPOSE

The purpose of this chapter of the Code is to:

- A. Protect children and other Nation members and visitors within the territorial jurisdiction of the Nation from the dangers of ungovernable behavior which occurs on sidewalks, streets, and other public places and establishments during the late night and early morning hours;
- B. Decrease the amount of ungovernable behavior engaged in by children;
- C. Promote and enhance parental control over children;
- D. Adopt and implement policies relating to children that would minimize impacts on children engaging in and traveling to or from a lawful activity or event; and
- E. Preserve the public safety and reduce acts of ungovernable behavior by children that are occurring within the territorial jurisdiction of the Nation at rates beyond the capacity of the Nation's police department to assure public safety during restricted hours.

602 VIOLATIONS

- A. It shall constitute ungovernable behavior and a violation of this chapter for a child to remain in any public place or on the premises of any establishment within the territorial jurisdiction of the Nation during restricted hours.
- B. It shall be a violation of this chapter for a parent or guardian of a child to knowingly permit, or by insufficient control allow, the child to remain in any public place or on the premises of any establishment within the territorial jurisdiction of the Nation during restricted hours.
- C. It shall be a violation of this chapter for an owner, operator, or any employee of an establishment to knowingly allow a child to remain upon the premises of the establishment during restricted hours.

603 DEFENSES

- A. It is a defense to adjudication under paragraph A of section 602 that the child was, at the time of his conduct:
 - 1. accompanied by the child's parent or guardian;
 - 2. on an errand at the direction of the child's parent or guardian, without any detour or stop;

3. engaged in an employment activity, or going to or returning home from an employment activity, without any detour or stop;
 4. involved in an emergency;
 5. on the sidewalk abutting the child's residence;
 6. attending, going to or returning home from, without any detour or stop, an official activity sponsored by the Nation, a school, religious or civic organization, by a public organization or agency, or by another similar organization or entity, which activity is supervised by adults who take responsibility for the child;
 7. engaged in the exercise of religion, freedom of speech, or the right of assembly; or
 8. married, had been married, or otherwise had been emancipated.
- B. It is a defense to adjudication under paragraph C of section 602 that the owner, operator, or employee of an establishment promptly notified the Nation's police department that a child was present on the premises of the establishment during restricted hours and refused to leave.

604 ENFORCEMENT

- A. Before taking any enforcement action under this chapter, a police officer shall ask a child who apparently has violated this chapter for his name, age, address, and reason for being in the public place or establishment.
- B. The officer shall not issue a citation or take any other action under this chapter unless the officer reasonably believes that a violation of this chapter has occurred and that, based on any response and other circumstances, no defense in section 602 is present.
- C. Upon discovering a violation of this chapter, as soon as practicable the officer shall:
1. take the child into custody;
 2. ascertain the child's identity and address; however, if the child refuses to give an officer his name and address, refuses to give the name and address of his parent or guardian, or if no parent or guardian can be located prior to the end of the applicable restricted period, or if located, no parent or guardian appears to accept custody of the child, the officer shall place the child in temporary custody until the child can be returned safely to his parent or guardian;
 3. release the child to his parent or guardian;
 4. issue a citation to the child for appearance in court for the adjudication of the charge that the child engaged in ungovernable behavior as defined in paragraph A of section 602;

5. issue a citation to any person for appearance in court for the adjudication of the charge that the person has violated either paragraph B or C of section 602.

605 EVALUATION

This chapter and the need for it shall be reviewed annually. Each year, the Nation shall review this chapter to determine the effectiveness of and the continuing need for this chapter. This review shall include consideration of the following factors:

- A. the practicality of enforcing this chapter and any problems with enforcement identified by the Nation's police department;
- B. the impact of this chapter on ungovernable behavior engaged in by children during restricted hours; and
- C. the Nation's net cost of enforcing this chapter.

606 SEVERABILITY

If any one or more sections, paragraphs or sentences of this chapter are held to be invalid, such decision shall not affect the validity of the remaining portions of this chapter and the same shall remain in full force and effect.

CHAPTER 7 - PARENTAL LIABILITY

701 GENERAL LIABILITY

The parent or custodian of a child shall be liable for damages to real or personal property caused by such child, where such child:

1. has willfully, maliciously, or unlawfully damaged, defaced or destroyed the property; or
2. has wrongfully taken, obtained or withheld the property.

702 PRIVATE RIGHT OF ACTION

The Nation or any private individual, association, organization or entity may bring an action in the Court for a judgment to recover such damages from such parent or custodian other than a governmental entity or a foster parent.

703 DEFENSES

It shall be a defense to an action brought under this Chapter that the property owner has been paid full restitution for the damages caused to his property. No parent shall be liable for damages under Section 701 of this Code if the child was a Person In Need of Supervision under Article 7 of the Family Court Act of the State of New York at the time that the damage was caused. In no event shall it be a defense that the parent or custodian has exercised reasonable care in supervising the activities of the child. In the interest of justice, however, in entering judgment the Court may consider mitigating circumstances that bear directly upon the actions of the parent or custodian in supervising such unemancipated child.