

## **1. General form of Oneida Nation Tribal Government**

The Oneida Nation of New York a/k/a the Oneida Indian Nation (Nation) is a federally recognized sovereign Indian nation (see 79 Fed. Reg. 4748, 4751, 01/14/15) with approximately 1,000 enrolled members, most of whom reside on or near the Nation's ancestral homelands in central New York State. The Nation is submitting this grant application for funding in Purpose Areas 1 and 4 to: 1) proactively address the most serious tribal law enforcement needs of the Nation; 2) ensure the proper infrastructure and facilities are in place to implement the Nation's tribal justice strategies; 3) increase the capacity of the Nation to prevent, solve, and adjudicate crime; and 4) implement or enhance the Nation's multi-disciplinary strategies and partnerships to address specific Oneida community populations within the tribal justice system.

The Nation is governed by the Men's Council (Council). Council meets monthly and is comprised of up to three members from each of the Nation's Clans (Wolf, Turtle and Bear). Each Clan may select Clan Mothers who participate in Council meetings. The Clans select one or more Nation Representative(s) from Council to represent the Nation in governmental and business affairs. Ray Halbritter has served as a Nation Representative since 1975 and has been delegated the authority to represent the Nation in government-to-government relations and to bind the Nation in all Nation matters.

The people and leadership of the Nation have identified three principal long-range goals: 1) to help Nation members achieve their highest potential in education, physical and mental health, and economic development, 2) to implement the legal and administrative structure necessary for the stability and protection of Nation sovereignty, treaty rights, and government-to-government relationships, and 3) to acquire, develop, and secure resources to achieve economic and social empowerment and self-sufficiency. In furtherance of these goals, health and social

services programs are provided for Nation members, including health insurance, retirement benefits, subsidized housing, legal services, an Indian Health Services (IHS) supported health center with community-based primary, dental, and behavioral health providers, an accredited Early Learning Center (for children age 6 weeks to 12 years), student scholarships, and an Elder's Program with a daily meal program, trips, and activities.

To support these programs and services, the Nation owns and operates a number of business enterprises, including Turning Stone Resort Casino, a chain of gas stations and convenience stores, and full service marinas. Unlike many other tribes, the Nation does not make pro-rata distribution of its gaming revenue to its members. Instead, the Nation uses Nation tax revenue (i.e., Nation sales and occupancy tax) and direct revenue from its enterprises to support programs and services for its members in order to enhance tribal and individual self-sufficiency and independence. These programs and services have been created, developed, and modified in response to changing member needs as determined by community needs assessments, regular program reports, analyses of client/user data, and first-person stories shared with Member Benefits staff, Council Members, and Clan Mothers.

To provide for the safety and security of approximately 1,000 Nation members, more than 4,600 year-round and 200 seasonal employees, and an estimated 12,000 daily visitors, the Nation administers fire and emergency services, codes enforcement, a tribal court system (see **Section 2, Courts** below), and a federally-recognized police department that is accredited by the Commission on Accreditation of Law Enforcement Agencies (CALEA). While the Oneida Nation Police Department (ONPD) asserts jurisdiction over all Nation lands, it currently does not have jurisdiction over non-Native Americans who commit criminal activity under New York

State law. However, pursuant to a pending Oneida Deputization Agreement (see **Section 2, Law enforcement**), ONPD officers will soon be empowered to make arrests for violations of state law occurring on Nation-owned lands located within Oneida County, including arrests of non-Native Americans. This agreement will increase demands on the tribal justice system.

## **2. Overview of Oneida Nation tribal justice system**

### **Prevention or intervention initiatives for members at risk of involvement or already involved in**

**the justice system (youth or adult)**: The Nation operates a number of Bureau of Indian Affairs (BIA), IHS, and Nation-supported community-based programs for youth, including: awards for school attendance and academic achievement; after school, school break, and summer day camp programs (ages 5-12); and a summer employment program (ages 13-17). The Nation's Youth Development Program provides opportunities for youth to engage in traditional and non-traditional social and cultural activities, service-learning experiences, and youth leadership training. These early intervention programs are aimed at reducing risk behaviors. As further discussed under *Tribal Reentry Programs* below, Nation Court judges have developed individualized programs for defendants in lieu of incarceration and/or probation to facilitate Tribal re-entry into society. The Nation also provides college scholarships, incentive awards for completion of degrees, and a range of employment opportunities for Oneida members of all ages.

**Law enforcement**: The mission of the ONPD is to protect life, safety, and property; promote and maintain order; prevent crime; and enforce applicable laws and ordinances on Nation lands. The ONPD was the first tribal police force in the United States to receive CALEA accreditation and has continually maintained that accreditation since 1998. The ONPD headquarters is located on the Nation's Reservation near NYS Thruway Exit 34 in Canastota, NY. Although Nation leadership has authorized a sworn force strength of 37 officers, it is only able to fund 32 sworn

positions at this time (including 5 investigators and one senior investigator). The ONPD also includes 8 non-sworn employees (6 full-time and 2 0.50 FTEs). The ONPD Uniformed Patrol Division is responsible for calls for service, offenses against persons or property, traffic accidents involving injuries to persons or property, risk management incidents and investigations, communication center deployment, accreditation management, NDEX administration, special events management, vehicle and equipment allocation and inspections, and facilities management. The most frequently reported incidents are classified as larceny, including shoplifting and theft. The ONPD Bureau of Investigations is responsible for unit caseload, crime scene investigation, pre-employment investigation, evidence/property management, e-justice system administration, sex offender registry management, executive protection, case preparation and tracking, DNA collection, video/audio recording of interviews and interrogations, and electronic fingerprinting.

ONPD investigators participate on the Community Narcotics Enforcement Team (C-NET), which is managed by the New York State Police. Two ONPD investigators are members of the Border Enforcement Security Task Force (BEST), which addresses drug and cigarette smuggling and human trafficking cases. Other collaborations include: New York State Intelligence Center, which monitors crime- and terrorism-related activities in the United States; Office of the Madison County Sheriff “Yellow Dot” program, which provides emergency responders with vital information on medical issues for the Village of White Pines residents on Nation land; and a methamphetamine drug task force with federal, state, and local law enforcement personnel.

ONPD officers assert jurisdiction over all of the Nation’s lands. On these lands, ONPD officers arrest and charge Native Americans for violations of Nation law and, pursuant to their

BIA Special Law Enforcement Commission (see *Federal law enforcement* below), arrest persons for violations of federal law, processing such persons in accordance with applicable federal law and practice. For all other violations of law (non-federal) by non-Native Americans on Nation lands, ONPD officers detain persons violating the law and transport them to appropriate municipal, county, or state law enforcement authorities or call such other law enforcement authorities to take custody of detained individuals.

Prior to 2011, the New York State Police (NYSP) had primary responsibility for day-to-day law enforcement at Turning Stone Resort Casino. In 2011, New York State and the Nation agreed that, under the Nation-State Gaming Compact, NYSP would no longer have this responsibility and ONPD assumed responsibility for all direct, on-site law enforcement at the resort. This change furthered the Nation's goals of self-sufficiency and self-governance, and provided for complete around-the-clock coverage at a reduced cost to the Nation, but also strained the Nation's law enforcement resources.

On March 4, 2014, a federal judge approved a historic Settlement Agreement between the Nation, the State of New York, and the Counties of Madison and Oneida, which resolved decades-long disputes concerning (among other things) gaming, land, and tax issues. With respect to law enforcement, the Settlement Agreement provides that Oneida County shall enter into a deputization agreement with the Nation (the Oneida Deputization Agreement), pursuant to which officers of the ONPD will be deputized and empowered to make arrests for violations of New York State law occurring on Nation-owned lands within Oneida County, including arrests of non-Native Americans. Execution of the Oneida Deputization Agreement is pending.

**Federal law enforcement:** The Nation is party to a Deputation Agreement with the BIA. Under

this agreement, Nation police officers have Special Law Enforcement Commissions (SLECs) that empower them to make arrests for violation of a range of federal laws. These SLECs are made pursuant to 28 U.S.C. §§ 2803, 25 C.F.R. Part 12, and 69 Federal Regulation 6321, and support the sovereignty of tribes by allowing tribal law enforcement to enforce federal law, to investigate federal crimes, and to protect the rights of people in Indian Country against crimes perpetrated by non-Indians against tribal members. Without such commissions, tribal law enforcement in many jurisdictions is limited to restraining non-Native American perpetrators until a county, state, or federal officer arrives—and it is common for tribes to have difficulty getting local or state law enforcement to respond to crimes on the reservations. Federal courts recognize the importance of these BIA SLECs and restrict the right of state and local governments, even off the Reservation, to enforce laws that discriminate against tribal police officers holding SLECs. Upon execution of the Oneida Deputization Agreement (described above under *Law enforcement*), deputized officers of the ONPD will have greater jurisdiction over non-Native Americans on Nation lands located in Oneida County.

The ONPD was the first tribal law enforcement agency to partner with, and have access to, the DOJ National Crime Information Center (NCIC) database. The ONPD has access to the FBI's NDEX system, a criminal justice information-sharing system that provides nationwide connectivity to local, state, tribal, and federal systems; works with the Department of Homeland Security's Texas Fusion Center in El Paso, TX to exchange and evaluate data received from the license plate reader system on Nation property; and maintains a partnership with the Department of Homeland Security Rural Policing Institute, which provides training opportunities to law enforcement personnel throughout the Northeastern United States. The ONPD works with the

Drug Enforcement Agency (DEA) to host yearly Drug Take Back Days at Turning Stone Resort Casino, and with the U.S. Secret Service on investigations of counterfeit currencies received in Indian Country. With the implementation of the Settlement Agreement and the execution of the Oneida Deputization Agreement, ONPD looks forward to establishing and maintaining partnerships, similar to the federal partnerships described above, at the State and local level.

**Courts:** In the 1990s, the Nation established a judicial system to address civil disputes and criminal matters involving Nation members and incidents on Nation lands. This system includes the Nation Court, written codes and rules (penal code, rules of criminal procedure, rules of civil procedures, etc.), an Office of Probation, a Nation prosecutor, trial judge, appellate judge, two magistrate judges, and free indigent defense counsel in criminal matters brought before the Nation Court. In May, 1997, the Oneida Nation Court (trial and appellate) was established to hear civil cases involving both non-Native Americans and Native Americans as well as criminal cases involving Native Americans within the Nation's reacquired Reservation lands. The Nation Court judges are the Hon. Richard Simons, formerly the chief justice of the New York State Court of Appeals and the Hon. Robert Hurlbutt, formerly a justice of the New York State Court of Appeals. The Nation has two magistrate judges who handle arraignments and other supporting functions. The Nation's prosecutor is Julian Modesti. He represents the Nation in prosecuting crimes on Nation land and regularly works with the U.S. Attorney's Office and the local district attorney offices to assist/refer prosecution of offenses on Nation land over which the Nation Court lacks jurisdiction or that are more appropriately prosecuted in state or federal court.

The Nation also established a Claims Commission with two claims commissioners who handle and decide tort claims filed against the Nation. All decisions of the Claims Commission

are appealable to Nation Court. The Nation also provides/appoints free legal counsel for indigent criminal defendants appearing in Nation Court. The Nation's codes, rules, and ordinances are available on the Nation website at: <http://theoneidanation.com/codesandordinances/>.

The Nation, including its General Counsel and tribal court judges, has been an active participant in the New York Tribal Courts Committee, which for several years has been working toward a solution to address the myriad of issues and sensitivities associated with recognition of tribal orders and judgments by New York State courts (and reciprocal recognition of New York state court orders and judgments by tribal courts). In 2011, the New York Tribal Courts Committee recommended for inclusion in the New York State Unified System's 2012 legislative agenda "mutual recognition, based on established principles of comity, of judgments of the State courts and courts of the Nations." While this recommendation remains subject to continuing discussion, the acceptance and implementation of mutual recognition of certain judgments and orders between New York State courts and tribal courts would pave the way for additional case load and opportunities for the Nation Court.

The Nation's tribal court system could serve as a model for tribal courts. Yet, the current court facilities do not support this model because the Nation does not have a courthouse that reflects the dignity of the court system. Since the establishment of the Nation court in 1997, the Nation has used a converted former residential home as a justice center. The judges' chamber is an office shared with the probation officer, there is no office for the prosecutor, and no space for crime victim services. The courtroom is a conference room that has been reconfigured to provide for a judicial bench, a court clerk area, and prosecution and defense tables. It does not have a witness stand, jury box, or a gallery. The equipment in the court—including the computer system

and recording devices—is inadequate. There is a lack of space for files and necessary court documents and exhibits. Although full jury trials are infrequent at this time, when jury trials do occur they have to be conducted at the dining facility of the Children’s and Elders’ Center due to the lack of adequate space in the designated courtroom. The building in which court is conducted is locked, but there are no other security measures in place for the space.

Even with the recent reconfiguration, this “court” does not meet the most basic standards for a proper courtroom in regards to safety, access for the disabled, appearance, or space. As such, it presents safety concerns for all those involved in court proceedings, including victims or witnesses who testify, as all participants are mere feet away from each other. It also reduces the authority of the court as the current court hearings and trials are perceived by some defendants (and their attorneys) merely as discussions or as “suggestions” from the court due to the informal environment. The justice system’s physical and logistical setup lacks in distinction.

**Alternative dispute resolution:** Under the Nation’s Peacemaker Court program, a Nation member trained in dispute resolution and appointed by Nation leadership works with the parties involved to resolve issues related to nonviolent disputes. Cases that *cannot* be heard in Peacemaker Court include domestic violence-related crimes and/or sexual assaults.

**Corrections, including juvenile detention facilities:** The Nation does not own or maintain a tribal jail, detention, or correctional facility for juvenile or adult offenders, and does not have a holding cell. Defendants brought to Nation Court enter into the court building through the main entrance and are placed in an office with defense counsel to wait for their hearing; there is no holding area or police lockup for persons under arrest or awaiting transport. The Nation has a contract with Cambria County Correctional Facility located in Ebensburg, PA to house adult

offenders ordered to be held or sentenced to incarceration by the Oneida Nation Court. The Nation Court also administers a Probation Department. Because the Court currently handles only violations, misdemeanors, and lower-class felonies, the caseload is managed by a part-time probation officer. This officer confers with offenders, family members, and legal representatives, and gathers other information needed for pre-hearing/pre-sentencing investigations and rehabilitation planning. The probation officer works with court officials to administer court decisions, counsels juvenile and adult offenders regarding the conditions of the probation, makes referrals to community resources to aid in rehabilitation, monitors and evaluates the offender's progress, prepares reports, and secures remedial court action, if necessary.

**Services for victims and survivors of crime:** The personnel involved in the Nation justice system work with the Oneida Nation Health Center its Behavioral Health Services unit and other community providers to provide services to victims and survivors, including: social services; individual, couples, family, and group counseling for mental health and substance abuse issues; behavioral health assessment, diagnosis, and treatment planning; and ongoing psychotherapy. Emergency health, crisis, and shelter services are delivered by Liberty Resources in Madison County, the local domestic and sexual violence program. In 2013, the Nation received DOJ Office of Violence Against Women funding to support a victims' services coordinator position to develop a community-coordinated, victim-centered response to violence against women.

**Tribal reentry programs:** The Nation does not operate an official tribal reentry program at this time. However, with some success, the judges have developed programs for defendants in lieu of incarceration and/or probation to facilitate re-entry into society, including monthly check-ins with the court clerk. In one instance, a defendant provided with this alternative was able to rent

an apartment and enroll in college. Services such as job training, counseling, and GED completion are provided through referrals to and by the Nation's Government Programs and Services Office.

**Sex offender registry obligations:** Under the Adam Walsh Act, the Nation opted to become a Registration Jurisdiction under the Sex Offender Registration and Notification Act (SORNA), and is working with the DOJ to become the Registration Jurisdiction for Nation lands. The ONPD has access to NCIC and submits information to the National Sex Offender Registry and the State of New York Division of Criminal Justice Services. The Nation maintains an online Oneida Indian Nation Sex Offender Registry, which anyone can access. Individuals can sign up for community notification by entering an address; if a sex offender registers near that address, email notification will be sent to the individual.

**3. Describe the significant tribal justice, community safety, juvenile delinquency, and victimization issues (e.g., child abuse, elder abuse, domestic violence, sexual assault, sex trafficking, dating violence, and stalking) facing the tribal nation and explain why these issues are the most pressing.**

Reports of domestic violence and sexual assault continue to be startlingly low despite anecdotal evidence that it is, in fact, occurring. Culturally, domestic violence is seen as a family issue and not discussed in the criminal sense. Victims may be sharing their experiences with therapists but, due to confidentiality and HIPPA, these reports do not go any further. It is estimated that 80% of sexual violence against Indian women is committed by non-Indians.<sup>1</sup> However, until the signing of the Violence Against Women Act in 2013, tribal courts had no jurisdiction over these cases. The Nation meets all of the requirements under the Violence Against Women Act that give the Nation court jurisdiction under that Act, including over non-

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<sup>1</sup> United Nations Human Rights Council (April 2010) *The Situation of Indigenous People in the United States of America*. [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-47-Add1\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-47-Add1_en.pdf) 3/8/2013

Native Americans committing offenses on Nation land. Further, since 2013, with the assistance of CTAS funding, the Nation has been implementing and developing training focused on addressing violence against women for criminal justice personnel, service providers, and medical personnel. The Nation expects to see an increase in cases under the Violence Against Women Act as a result of this increased jurisdiction, education and training. As noted above (Section 2, *Courts*), although the Nation's court system provides an exemplary model, the facility used by the Nation as a courthouse is a converted former residence that lacks most of the usual amenities of a traditional court, including privacy. Defendants often have to speak with their counsel in the reception area, which creates confidentiality concerns, particularly for victims of domestic or sexual abuse. There are no private spaces for victims to meet with advocates or to access other support services, which means victims are less likely to access these services.

In addition to criminal justice issues, there are other pressures impacting the Nation's justice system. The Nation is expanding. Commercial activity conducted on Nation lands is set to significantly increase in the very near future. The Settlement Agreement with New York State and Oneida and Madison Counties has helped to make this expansion possible by settling decades of litigation and creating an atmosphere of certainty for the Nation and potential business partners. The Nation has expanded its gaming activities to other locations on its Reservation and has recently announced plans to open an additional gaming facility in Chittenango, New York on Nation land that is approximately 20 miles away from the current Turning Stone Resort Casino, which will create approximately 250 additional jobs. In November 2014, the Nation unveiled plans for a new expansion project at its Turning Stone Resort Casino that includes a luxury retail outlet (approximately 60 stores) and entertainment complex. The

complex will be owned and operated by an independent third party with the Nation as landlord for the facility. The parties expect to break ground in 2015 and open the complex in 2016. It is anticipated that 1,100 jobs will be created through this project. The Nation anticipates that this increased activity on Nation Lands will put increased demands on the Nation's justice system, including the ONPD and the courts, as the potential for criminal acts and civil disputes increases along with increased facilities and visitors.

Despite the opportunities these projects provide the Nation and its members, increased gaming competition in the Northeast has resulted in increased pressure on tribal revenues (since gaming represents a majority of the Nation's business revenues). In addition to longstanding casino gambling available in neighboring New Jersey, the Nation faces competition from gaming facilities that have been developed and authorized in Connecticut, Massachusetts, and Pennsylvania. With the 2013 approval of commercial gaming in New York State, and the recommendation by the New York Gaming Commission's siting board for three gaming facilities in New York, including two within approximately 100 miles of the Nation's Turning Stone Resort Casino, competition is coming closer to home for the Nation. In addition to a lackluster economy over the past several years and the increased expenses associated with governmental programs (i.e., health care), the prospect of increased competition further cutting into revenues has required the Nation to carefully review and prioritize its programs and budget. Without outside funding, the Nation will be unable to pursue the activities proposed in this application.

**4. Describe current and future plans to comprehensively address the tribe's public safety, criminal and juvenile justice, or victimization issues.**

To address the issues outlined above in Section 3, the Nation and the ONPD are currently working on two significant projects. In 2013, the Nation was awarded CTAS funding under

Purpose Area #5 to develop a community-coordinated, victim-centered response to violence against women. A position for a Violence Against Women coordinator was created within the ONPD. That person has attended training and is working to develop protocols, create crime victim services, and develop and implement a tribal public awareness campaign. In 2014, the Nation received CTAS funding under Purpose Area #3 to support the fulltime participation of two ONPD investigators in the Border Enforcement Security Task Force (BEST) that was created to better protect and regulate the New York/Canadian border. As part of the task force, the ONPD investigators work their own Oneida cases, using intelligence, surveillance tools, and other resources provided by BEST or BEST partner agencies and, in turn, provide ONPD data and expertise to BEST team members. The ONPD BEST investigators have worked on drug and cigarette smuggling and human trafficking cases. Participation in BEST has enabled the ONPD to access and use information that would not otherwise be available to investigate the activities of suspected Nation members in drug-related activities. This not only helps to reduce the drug-related crime on Nation lands, but serves to strengthen Nation sovereignty through increased self-governance and self-sufficiency.

To address the inadequacy of its current court facilities, the Nation is applying for funding under Purpose Area #4 to renovate the existing court structure, turning it into a multipurpose justice center with a proper courtroom, judges' chambers, private consultation rooms for lawyer/client meetings and other confidential meetings, and an ONPD office to include a work space for patrol officers, a holding cell, and an office for the OVW program coordinator. The center will be located at the Nation's seat of government and in the same area as other community services, buildings, and member residences. By having the court, police, and

probation all in one place, the renovated justice center will create greater visibility and accessibility between the police and Nation members, resulting in more effective and efficient law enforcement. Further, a proper, identifiable justice center will improve the administration of justice, enhance the dignity of the court, and improve the ability of the Nation to address criminal justice in a more holistic and comprehensive manner as directed by Nation leadership.

To address the challenges associated with the expansion of activities on Nation land, including the opening of a new gaming facility in 2015 located in Chittenango, the Nation is applying for funding under Purpose Area #1 for the hiring of three new entry-level positions so the ONPD can absorb the increased responsibilities associated with new facilities as well as those associated with enhanced jurisdiction through the cross-deputization agreement with Oneida County.

**5. Discuss any additional information about your tribe that would be important in the understanding and evaluating your application.**

Nation lands are comprised of an approximately 300,000-acre Reservation that was created and recognized by the 1794 Treaty of Canandaigua, which was entered into between the Nation and the fledgling United States of America. References to the Nation include all lands possessed by the Nation and/or held in trust by the U.S. Government for the benefit of the Nation within the Oneida Reservation. Over the course of the past decades, the Nation reacquired approximately 17,350 non-continuous acres of its Reservation land located within a 350.6 square-mile area of the Counties of Oneida (137.5 sq. miles) and Madison (213.1 sq. miles), located in central New York State. In August 2014, 13,004 acres were transferred to the U.S. Government to be held in trust for the benefit of the Nation. (See map of Nation lands in attachments.)