

1                                   **WAGANAKISING ODAWAK STATUTE # 2021-XXX**  
2                                   **GRANDPARENT and GRANDCHILD VISITATION STATUTE**

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5   **SECTION I. PURPOSE**

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7   The purposes of this Statute are to establish a cause of action for Grandparent and Grandchild  
8   Visitation, and to set forth the criteria for granting a request for Grandparent and Grandchild  
9   Visitation.

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12   **SECTION II.           DECLARATION OF VALUES AND GRANDCHILD'S RIGHTS**

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14   **A.**     Grandchildren are the Tribe's most vital and cherished resource. The Tribe's future  
15   depends on the health and well-being of its grandchildren.  
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17   **B.**     Grandchildren have a sacred right to receive the care and guidance necessary for their  
18   spiritual, emotional, mental, and physical development by preserving their interest in the culture,  
19   history and traditions of the Tribe. Feeling pride from their identity as Odawak will help them  
20   grow into adult Tribal Citizens who are strong, healthy, and responsible.

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23   **SECTION III.           DEFINITIONS**

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25   For the purposes of this Statute only, the following words and phrases shall have the meanings  
26   delineated below. The plural encompasses the singular, and the singular encompasses the plural  
27   wherever appropriate.

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29   **A.**     “Grandchild” means a person who is less than eighteen (18) years of age, has not been  
30   emancipated by a court of competent jurisdiction, and is either (1) a Tribal citizen or (2) eligible  
31   for citizenship in the Tribe under Article V, Subsection A of the LTBB Constitution.  
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33   **B.**     “Grandparent” means the parent of the grandchild’s father or mother, who is a Tribal  
34   citizen.  
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1 C. "Reservation" means all lands within the boundaries of the reservations for Little  
2 Traverse as set out in Article I, paragraphs third and fourth of the Treaty of 1855, 11 Stat. 621,  
3 plus any lands set out in Articles Second and Third of the Treaty of March 28, 1836, 7 Stat. 491,  
4 in the event that the 1836 reservation is determined to include lands which are not included  
5 within the 1855 reservation, plus any lands outside of those boundaries which are now or in the  
6 future declared to be Little Traverse reservation by the Department of the Interior or an act of  
7 Congress.

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9 D. "Tribal Citizen" means a person is who an enrolled member of the Little Traverse Bay  
10 Bands of Odawa Indians.

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12 E. "Tribal Court" means the Tribal Court of the Little Traverse Bay Bands of Odawa  
13 Indians.

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15 F. "Tribe", "Tribal" or "LTBB" means the Little Traverse Bay Bands of Odawa Indians.

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18 **SECTION IV. JURISDICTION**

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20 A. Tribal Court shall have jurisdiction if the action involves a grandchild, who resides within  
21 the Tribe's jurisdiction, and the petition is filed by a grandparent, who resides within the Tribe's  
22 jurisdiction, requesting a court order for Grandparent and Grandchild Visitation within the  
23 Tribe's Reservation.

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25 B. Jurisdiction once exercised by the Court is continuing and exclusive unless terminated by  
26 the Court. Full faith and credit shall apply to the Court's order for Grandparent and Grandchild  
27 Visitation.

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30 **SECTION V. CAUSE OF ACTION**

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32 A. A cause of action is created when a grandparent seeks Grandparent and Grandchild  
33 Visitation involving a grandchild under one (1) or more of the following circumstances:

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35 1. An action for divorce, separate maintenance, or annulment involving the  
36 grandchild's parents is pending before the court.

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- 2       **2.**     The grandchild's parents are divorced, separated under a judgment of separate  
3 maintenance, or have had their marriage annulled.
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- 5       **3.**     The grandchild's parent who is a grandchild of the grandparents is deceased.
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- 7       **4.**     The grandchild's parents have never been married, they are not residing in the  
8 same household, and paternity has been established by the completion of an  
9 acknowledgment of parentage, or by a determination by a court of competent  
10 jurisdiction that the individual is the father of the grandchild.
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- 12       **5.**     The legal custody of the grandchild has been given to a person other than the  
13 grandchild's parent, or the grandchild is placed outside of and does not reside in the  
14 home of a parent, with the exception of a placement of a grandchild for adoption which  
15 terminates the right of a grandparent to commence an action for Grandparent and  
16 Grandchild Visitation.
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- 18 **B.**     A court shall not permit a parent of a father who has never been married to the  
19 grandchild's mother to seek an order for Grandparent and Grandchild Visitation, unless the  
20 father has completed an acknowledgment of parentage, or the father has been determined to be  
21 the father by a court of competent jurisdiction.
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- 23 **C.**     The court shall not permit the parent of a putative father to seek an order for  
24 Grandparent and Grandchild Visitation unless the putative father has provided substantial and  
25 regular support or care in accordance with the putative father's ability to provide the support or  
26 care.
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- 28 **D.**     Adoption of a grandchild by a stepparent, does not terminate the right of the parent of a  
29 deceased parent of the grandchild to commence an action for Grandparent and Grandchild  
30 Visitation with that grandchild.

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33 **SECTION VI.        FILING OF PETITION**

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35 **A.**     A grandparent seeking a Grandparent and Grandchild Visitation order shall commence  
36 an action for Grandparent and Grandchild Visitation, by filing a petition with Tribal Court.

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**B.** The petition for Grandparent and Grandchild Visitation shall be accompanied by an affidavit setting forth facts supporting the requested order.

**C.** The grandparent shall give notice of the filing to each person who has legal custody of the grandchild.

**D.** A party having legal custody may file an opposing affidavit.

**E.** By the Court on its own motion, the Court may utilize alternative dispute resolution or Peacekeeping, or may hold a hearing. At the hearing, parties submitting affidavits shall be allowed an opportunity to be heard.

**F.** The grandparent must show that they have established custodial environment for the grandchild.

**G.** In order to give deference to the decisions of fit parents, it is that a fit parent's decision to deny Grandparent and Grandchild Visitation does not create a substantial risk of harm to the grandchild's spiritual, emotional, mental, physical development, and preserve interest in the culture, history and traditions of the Tribe. To rebut the presumption, a grandparent filing a petition must prove by a preponderance of the evidence that the parent's decision to deny Grandparent and Grandchild Visitation creates a substantial risk of harm to the grandchild's spiritual, emotional, mental, physical development and preserve interest in the culture, history and traditions of the Tribe. If the grandparent does not overcome the presumption, the court shall dismiss the petition.

**H.** If both fit parents sign an affidavit stating that they oppose an order for grandparenting time, the court shall dismiss petition seeking an order for Grandparent and Grandchild Visitation. This does not apply if one (1) of the fit parents is a stepparent who adopted a grandchild and the grandparent seeking the order is the natural or adoptive parent of a parent of the grandchild who is deceased ~~or whose parental rights have been terminated.~~

**I.** If the court finds that a grandparent has met the standard for rebutting the presumption of preponderance of the evidence, the court shall consider whether it is in the best interests of the grandchild to enter an order for Grandparent and Grandchild Visitation. If the court finds by a preponderance of the evidence that it is in the best interests of the grandchild to enter a

1 Grandparent and Grandchild Visitation order, the court shall enter an order providing for  
2 reasonable grandparenting time of the grandchild by the grandparent by general or specific  
3 terms and conditions, including supervised or unsupervised visitation.  
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5 **J.** In determining the best interests of the grandchild, the court shall consider all of the  
6 following:  
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8 **1.** The love, affection, and other emotional ties existing between the grandparent  
9 and the grandchild.  
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11 **2.** The length and quality of the prior relationship between the grandchild and the  
12 grandparent, the role performed by the grandparent, and the existing emotional ties of  
13 the grandchild to the grandparent.  
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15 **3.** The grandparent's moral fitness.  
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17 **4.** The grandparent's mental and physical health.  
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19 **5.** The grandchild's reasonable preference, if the court considers the grandchild to  
20 be of sufficient age to express a preference.  
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22 **6.** The effect on the grandchild of hostility between the grandparent and the parent  
23 of the grandchild.  
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25 **7.** The willingness of the grandparent, except in the case of abuse or neglect, to  
26 encourage a close relationship between the grandchild and the parent or parents of the  
27 grandchild.  
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29 **8.** Any history of physical, emotional, or sexual abuse or neglect of any grandchild  
30 by the grandparent.  
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32 **9.** Whether the parent's decision to deny, or lack of an offer of, grandparenting time  
33 is related to the grandchild's well-being or is for some other unrelated reason.  
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1           **10.** To preserve the opportunity for the grandchild to learn about their culture and  
2 heritage, and to become productive adult members of the Tribe, by experiencing their  
3 culture on an ongoing basis.

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5           **11.** Any other factor relevant to the physical and psychological well-being of the  
6 grandchild.

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9           **SECTION VII. PROHIBITIONS**

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11           **A.** A grandparent may not file a petition more than once every two (2) years; ~~absent a~~  
12 ~~showing of good cause in this court or any court of competent jurisdiction, unless— the~~  
13 ~~grandparent can show good cause.~~ If the court finds there is good cause to allow a grandparent  
14 to file more than one (1) petition in a two (2)-year period, the court shall allow the filing and  
15 shall consider the petition, ~~otherwise the court will automatically dismiss the petition.~~

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17           **B.** A Grandparent and Grandchild Visitation order does not create parental rights in the  
18 individual or individuals to whom Grandparent and Grandchild Visitation are granted. The entry  
19 of a Grandparent and Grandchild Visitation order does not prevent a court of competent  
20 jurisdiction from acting upon the custody of the grandchild, the parental rights of the grandchild,  
21 or the adoption of the grandchild.

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24           **SECTION VIII. MODIFICATION OR TERMINATION**

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26           **A.** A court shall not modify or terminate a Grandparent and Grandchild Visitation order  
27 unless it finds by a preponderance of the evidence, on the basis of facts that have arisen since  
28 entry of the Grandparent and Grandchild Visitation order or were unknown to the court at the  
29 time it entered that order, that a change has occurred in the circumstances of the grandchild or  
30 his or her custodian and that a modification or termination of the existing order is necessary to  
31 avoid creating a substantial risk of harm to the grandchild's spiritual, emotional, mental,  
32 physical development and preserve interest in the culture, history and traditions of the Tribe.

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34           **B.** The court modifying or terminating a Grandparent and Grandchild Visitation order shall  
35 include specific findings of fact in its order in support of its decision.

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**SECTION IX. COURT RECORD**

The Court shall make a record of its analysis and findings including the reasons for granting or denying a Grandparent and Grandchild Visitation petition.

**SECTION X. SEVERABILITY**

If any section, subsection, paragraph, sentence, phrase or portion of this Statute is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

**SECTION XI. EFFECTIVE DATE**

Effective upon signature of the Executive or thirty (30) days from Tribal Council approval whichever comes first or if the Executive vetoes the legislation, then upon Tribal Council override of the veto.

**CERTIFICATION**