



**Waganakising Odawak**  
Little Traverse Bay Bands of Odawa Indians  
**Regina Gasco-Bentley, Tribal Chairperson**  
7500 Odawa Circle, Harbor Springs, Michigan 49740  
Phone 231-242-1418 • Fax 231-242-1411

April 6<sup>th</sup>, 2022

**RE: Executive Veto of WOS 2022-XXX Elder and Adult, or Incapacitated Adult Protection Statute**

The Executive Branch is supportive of the intent of the proposed legislation, WOS 2022-XXX Vulnerable Elder and Adult, or Incapacitated Adult Protection Statute but in its current form, the document may create inconsistencies or duplication of other existing legislation with similar verbiage and intent.

In Section I. of the Statute, the purpose indicates the repeal and replacement of WOS 2015-012 and WOS 2005-07 but neglects to address WOS 2015-017 Elder and Adult Conservatorship and Guardian Statute.

I respectfully ask that Tribal Council amend WOS 2022-XXX Elder and Adult, or Incapacitated Adult Protection Statute to include the repeal of WOS 2015-017 to ensure that there is a clear and concise understanding of the Adult Welfare Code.

Regina Gasco-Bentley, Tribal Chairperson

**WAGANAKISING ODAWAK STATUTE 2022-\_\_**  
**VULNERABLE ELDER AND ADULT, OR INCAPACITATED ADULT, PROTECTION**  
**STATUTE**

**SECTION I.           PURPOSE**

The purpose of this Statute is to protect Vulnerable Elders and Adults from abuse, neglect, or exploitation as defined by this Statute and provide for services and court action for Vulnerable Elders and Adults, and appoint guardianship and conservatorships for Incapacitated Adults, if necessary. This Statute repeals and replaces any previous Adult Welfare Code, including WOS 2015-012, WOS 2005-07.

**SECTION II.          DEFINITIONS**

A.    "Abuse" means

1.    An intentional or negligent infliction of bodily injury, unreasonable confinement, intimidation, emotional abuse or cruel punishment of a Vulnerable Elder and Adult which result in physical pain or mental anguish; or

2.    Sexual abuse is physical contact without consent of a Vulnerable Elder and Adult with the intent to derive sexual gratification by the person making contact. Consent may not be obtained by threat, coercion, intimidation or fraud.

B.    "Caretaker" means a person who is required by court of competent jurisdiction to provide services or resources to a Vulnerable Elder and Adult.

C.    "Conservator" means a person appointed by a court of competent jurisdiction who is responsible for the collection, preservation, and investment of an Incapacitated Adult's property.

D. "Department" means the Little Traverse Bay Bands of Odawa Indians Department of Human Services.

E. "Emergency" means a situation in which a Vulnerable Elder and Adult is immediately at risk of death or injury and is unable to consent to services to remove the risk.

F. "Exploitation" means the improper or unauthorized use of a Vulnerable Elder and Adult's funds, property or other resources or failure to use a Vulnerable Elder and Adult's funds, property or resources as a Vulnerable Elder and Adult's desire or for their benefit.

G. "Family" means any spouse, parent, child, stepparent, stepchild, grandparent, grandchild, or significant other person or relative with whom a Vulnerable Elder and Adult which has a familial relationship, or who resides with a Vulnerable Elder and Adult.

H. "Guardian" means a person appointed by a court of competent jurisdiction to exercise the duty and authority to provide care and control of an Incapacitated Adult, under the Tribal Court's jurisdiction.

I. "Good Faith" means an honest and reasonable belief or purpose, and the lack of intent to defraud.

J. "Incapacitated Adult" means a Vulnerable Elder or Adult, because of physical or psychological infirmities, lacks the understanding or capacity to make or communicate informed decisions or is unable to manage property and business affairs effectively and needs a guardianship and/or conservatorship.

K. "Least restrictive alternative" means whenever it is necessary to protect a Vulnerable Elder and Adult, or Incapacitated Adult, the least restrictive method of intervention shall be used to protect the freedom and independence of a Vulnerable Elder and Adult, or Incapacitated Adult; the least restrictive alternative is that environment which is the most like a Vulnerable Elder and Adult, or Incapacitated Adult's home setting and which is most capable of supporting the protected person's physical and mental health; and emotional well-being.

L. "LTBB" or "Tribe" or "Tribal" means the Little Traverse Bay Bands of Odawa Indians.



- M.** "Neglect" means the failure of someone with fiduciary or legal responsibility to provide necessary services or resources to maintain the health or safety of a Vulnerable Elder and Adult, or self-neglect caused by the inability of the adult to provide themselves with basic food, clothing, shelter and medical care due to mental incompetency or physical disability.
- N.** "Party" or "interested party" means the Vulnerable Elder and Adult's family, caretaker, and any other person that has an interest in the welfare of a Vulnerable Elder or Adult. The Court shall have the power to determine who is or is not a party or interested party in any court proceeding.
- O.** "Prosecutor" means the Little Traverse Bay Bands of Odawa Indians Prosecutor.
- P.** "Protective placement" means the placement of a Vulnerable Elder and Adult, in a hospital, nursing home, residential care facility, other suitable placement, or transfer from one facility to another with consent of that person or with appropriate legal authority.
- Q.** "Protective services" means services provided to a Vulnerable Elder and Adult, with consent or by order of appropriate legal authority which includes but is not limited to: social services, mental and physical health examinations, home and day care, legal assistance, guardianship, case management and any other services consistent with this Statute.
- R.** "Substantiated Report" means when there is probable cause of abuse after an investigation conducted by the Department. The report is sent to the Tribal Prosecutor for further steps to be taken.
- S.** "Tribe" or "Tribal" means the Little Traverse Bay Bands of Odawa Indians.
- T.** "Tribal Court" means the Little Traverse Bay Bands of Odawa Indians Tribal Court.
- U.** "Vulnerable Elder and Adult" means an Elder who is fifty-five (55) years old or older or an Adult who is eighteen (18) years old or older and is unable to protect themselves from abuse, neglect or exploitation due to mental incompetency or physical disability.
- V.** "Unsubstantiated Report" means when no probable cause exists after an investigation. These reports are filed within the Department for reference as needed.

### SECTION III. AUTHORITY

A. Pursuant to provisions of the Tribal Constitution, including Article I, B, 2. *“Promote with special care the health, educational and economic interests of all the people, especially our children and Elders, and shall protect them from social injustice and all forms of exploitation; and 4. “Establish and maintain within the limits of their economic capacity and development, effect provision for securing the right to work, to education and assistance, in cases of unemployment, old age, sickness and disablement, and in other cases of need”.*

B. Pursuant to provisions of the Tribal Constitution, including Article VI., C. *“... the Executive Branch to administer such funds, enforce this Constitution and laws passed thereunder, and implement policies and procedures enacted by the Tribal Council in accordance with Article VIII”, Article VII of the Tribal Constitution allows the Legislative Branch to approve the creation or dissolution of Executive divisions or departments to promote and protect the peace, health, safety, education and general welfare of Little Traverse Bay Bands of Odawa Indians and its members.*

### SECTION IV. JURISDICTION

A. The Little Traverse Bay Bands of Odawa Indians shall have jurisdiction over the following:

1. A Tribal Vulnerable Elder and Adult who is unable to protect themselves from suspected abuse, neglect or exploitation due to mental incapacity or physical disability and is an enrolled Citizen of Little Traverse Bay Bands of Odawa Indians who resides within the exterior boundaries of the Reservation or residing within Tribal Trust Lands;
2. Vulnerable Elder and Adult who is unable to protect themselves from suspected abuse, neglect or exploitation due to mental incapacity or physical disability who resides within Tribal Trust Lands;
3. A Tribal Vulnerable Elder and Adult, because of physical or psychological infirmities, lacks the understanding or capacity to make or communicate informed



decisions or is unable to manage property and business affairs effectively and needs a guardianship and/or conservatorship and is an enrolled Citizen of Little Traverse Bay Bands of Odawa Indians who resides within the exterior boundaries of the Reservation or resides within Tribal Trust Lands;

4. A Vulnerable Elder and Adult, because of physical or psychological infirmities, lacks the understanding or capacity to make or communicate informed decisions or is unable to manage property and business affairs effectively and needs a guardianship and/or conservatorship who resides within Tribal Trust Lands;

5. A person who is required by a court of competent jurisdiction to or has a guardianship, conservatorship, fiduciary or legal responsibility to provide services or resources and is suspected of abuse, neglect or exploitation under this Statute to a Tribal Vulnerable Elder and Adult, or Incapacitated Adult who resides within the exterior boundaries of the Reservation, or to a Vulnerable Elder and Adult, or Incapacitated Adult who resides within Tribal Trust Lands.

## **SECTION V. DUTY TO REPORT**

A. It is the reporting duty of any person who have reason to suspect that a Vulnerable Elder and Adult is abused or neglected or a Guardian and/or Conservator is abusing or neglecting an Incapacitated Adult, which shall contact the Department.

B. It is mandated by this Statute for the following to report to the Department any suspected abuse, neglect or exploitation of a Vulnerable Elder and Adult, or a Guardian and/or Conservator is abusing or neglecting an Incapacitated Adult immediately or as soon after that is reasonably possible:

1. Persons who either have been court appointed or have a legal responsibility to a Vulnerable Elder and Adult, or Incapacitated Adult;
2. Law Enforcement;
3. Tribal employee(s) who provide services to Vulnerable Elder and Adult, or Incapacitated Adult, of the following departments:

- a. Education
- b. Elders
- c. Health
- d. Housing
- e. Human Services
- f. Language

4. Elected or appointed official of the Tribe;

C. Reports of suspected Vulnerable Elder and Adult, or Incapacitated Adult's abuse are presumed to be made in good faith.

#### **SECTION VI. IMMUNITY FOR REPORTING**

A person who in good faith reports suspected abuse, neglect or exploitation as defined in this Statute is immune from any civil or criminal statute, even if the report is unsubstantiated.

#### **SECTION VII. FAILURE TO REPORT; CIVIL PENALTY**

If found responsible, after a fair hearing of the court, a person mandated to report who fails to report suspected Vulnerable Elder and Adult, or Incapacitated Adult's abuse, neglect, or exploitation as required by this Statute may be subject to a civil fine not to exceed five-thousand (\$5,000.00) dollars.

#### **SECTION VIII. RETALIATION; CIVIL PENALTY**

If a person is found to have retaliated against a reporter, they may be subject to a civil fine not to exceed five-thousand (\$5,000.00) dollars. For the purposes of this Statute, "Retaliation" shall include the following: intimidating or threatening to cause bodily harm, or causing bodily harm, or causing bodily harm to a reporter or family of a person reporting abuse; causing the reporter or

reporter's family to be terminated, suspended or reprimanded by an employer; causing property damage to real or personal property belonging to a reporter's family.

#### **SECTION IX. FALSE REPORT**

If found responsible, after a fair hearing of the court, any person who makes a report of suspected Vulnerable Elder and Adult, or Incapacitated Adult's abuse, neglect or exploitation as defined by this Statute knowing it to be false may be subject to a civil fine not to exceed five-thousand (\$5,000.00) dollars.

#### **SECTION X. HUMAN SERVICES DEPARTMENT DUTIES, RESPONSIBILITIES and AUTHORITY**

**A.** The Department shall be responsible to initiate an investigation, upon receiving a report of a Vulnerable Elder and Adult's abuse, neglect or exploitation, or a Guardian and/or Conservator is abusing or neglecting an Incapacitated Adult.

**B.** The Department shall investigate all reports. The Department shall investigate upon receipt of the report of abuse, neglect or exploitation within twenty-four (24) hours, meet face to face with the alleged victim within seventy-two (72) hours and complete the investigation with a written report within thirty (30) consecutive days based upon:

1. Personal interviews with the alleged abused, neglected or exploited Vulnerable Elder and Adult, or Incapacitated Adult, the immediate family and caretaker, suspected abuser, employees of agencies (if involved), and any other person who may have pertinent information;
2. Medical records and other evidence of abuse;
3. Assessments of a Vulnerable Elder and Adult, or Incapacitated Adult's living conditions;



4. Any other observations, assessments or documents that may aid in completing an accurate report.

C. Based on the investigation, if the Department believes that there is evidence of Vulnerable Elder and Adult, or Incapacitated Adult's abuse, neglect or exploitation, the Department will submit the report to the Prosecutor.

D. The Department shall have the authority to obtain from all Tribal Governmental Departments, Agencies and Programs information and assistance with the Department's investigations of suspected Vulnerable Elder and Adult, or Incapacitated Adult, abuse, neglect or exploitation. This shall include information sharing without the need of signed releases.

## **SECTION XI. LAW ENFORCEMENT DUTIES AND RESPONSIBILITIES**

A. Upon the request of the Department, Law Enforcement shall assist the Department in conduct of an investigation within twenty-four (24) hours, if one or more of the following conditions exist:

1. Abuse or neglect is the suspected cause of death of a Vulnerable Elder and Adult, or Incapacitated Adult;
2. A Vulnerable Elder and Adult, or Incapacitated Adult, is the victim of suspected sexual abuse or sexual exploitation;
3. Abuse or neglect resulting in severe physical injury to a Vulnerable Elder and Adult, or Incapacitated Adult, that requires medical treatment or hospitalization. For the purpose of this subsection, "severe physical injury" means brain damage, skull or bone fracture, subdural hematoma, dislocation, sprain, internal injuries, poisoning, burns, scalds, severe cuts, or any other physical injury that seriously impairs the health or physical well-being of a vulnerable Tribal Elder or Vulnerable Tribal Adult, or Incapacitated Adult.
4. Law Enforcement intervention is necessary for the protection of a Vulnerable Elder and Adult, or Incapacitated Adult, Department staff, or another person involved in the investigation; or

5. The alleged perpetrator of abuse, neglect or exploitation of a Vulnerable Elder and Adult, or Incapacitated Adult, is not a person responsible for the health or welfare of the Vulnerable Elder and Adult, or Incapacitated Adult.

B. Law Enforcement shall be responsible to determine and investigate if any other criminal acts are alleged and shall forward this information to the Prosecutor.

## **SECTION XII. PROSECUTOR'S DUTIES AND RESPONSIBILITIES**

A. The Prosecutor is authorized by this Statute to petition the Court for Emergency Protection Orders and Non-Emergency Protection Orders for protection of Vulnerable Elders and Adults from abuse, neglect or exploitation, or a Guardian and/or Conservator is abusing or neglecting an Incapacitated Adult, upon receipt of a report of investigation from the Department.

B. The Prosecutor is authorized by this Statute to represent the Tribe in matters of protection of Vulnerable Elder and Adult from abuse, neglect or exploitation, or a Guardian and/or Conservator who is abusing or neglecting an Incapacitated Adult, upon request of the Department.

## **SECTION XIII. PETITIONS AND EMERGENCY ORDERS**

A. Any concerned or interested party may file a Petition for an Emergency Protection Order (EPO) directly with the court of suspected Vulnerable Elder and Adult's abuse, neglect or exploitation, or a Guardian and/or Conservator is abusing or neglecting an Incapacitated Adult.

B. Upon filing of a Petition, the Court may issue an EPO authorizing emergency services or protective placement either ex parte or after a hearing, if there is a showing, upon clear and convincing evidence that:

1. A person is a Vulnerable Elder and Adult, or Incapacitated Adult; and
2. The Vulnerable Elder and Adult, or Incapacitated Adult, is at risk of immediate abuse, neglect or exploitation.

C. The EPO, using the least restrictive alternative, may include:

1. Specific emergency services to be provided to remediate the emergency;
2. Protective placement only if the evidence indicates that it is absolutely necessary;
3. Designation of a person or agency required to implement the order; and
4. A warrant for forcible entry by Tribal Law Enforcement, if requested and documented attempts to gain voluntary access have failed.

D. EPO's shall not exceed a maximum of seventy-two (72) hours excluding weekends and holidays, and may only be renewed for an additional seventy-two (72) hours, if there is evidence of continuing emergency.

E. The Court shall hold a hearing upon the filing of a Petition for an EPO or if an EPO was issued ex parte, within seventy-two (72) hours. At the hearing, if the Vulnerable Elder or Adult, or Incapacitated Adult, is not represented, a Guardian ad Litem shall be appointed at this time, if it has not already been done so at the time of the filing of the Petition for an EPO.

F. All parties, including attorneys, are permitted to attend the hearing for an EPO. The hearing may be done ex parte if the need arises. The sufficiency of the petition will be determined on a totality of circumstances and goes into effect upon the immediate granting of the order by the Court.

#### **SECTION XIV. EMERGENCY PLACEMENT**

A. If there is good cause to believe that an emergency exists and a Vulnerable Elder and Adult or Incapacitated Adult is at risk of immediate or irreparable harm upon personal observation or by the Department's investigation, the Department or Tribal Law Enforcement shall immediately take steps to protect the Vulnerable Elder and Adult, or Incapacitated Adult, including emergency services or protective placement. A Court Order must be obtained within twenty-four (24) hours to continue the authorization of emergency services or protective placement.



B. Anyone who acts, based on reasonably good faith, pursuant to this section shall be immune from civil and criminal suit if the suspected abuse or neglect results in an unsubstantiated report.

## SECTION XV. PETITIONS AND NON-EMERGENCY PROTECTION ORDER

A. Upon the filing of a Non-Emergency Protection Order (NEPO) petition, the Court may issue an NEPO, after a hearing that shall be held within fourteen (14) consecutive days if there is a showing, upon clear and convincing evidence

1. A person is a Vulnerable Elder and Adult, or Incapacitated Adult; and
2. The Vulnerable Elder and Adult, or Incapacitated Adult, is at risk of abuse, neglect or exploitation.

B. All parties are entitled to Notice and an opportunity to be heard on the record. All proceedings shall be open to the public, unless the Court, on its own motion or by motion of a party, determines that by the nature of the proceedings, the proceedings are to be closed.

C. Judgments. The Court shall make a written determination or decision within forty-eight (48) hours of a hearing and use the least restrictive alternative, which may include the following:

1. Appointing Guardian ad Litem for the Vulnerable Elder and Adult or Incapacitated Adult to enter other orders for the protection of the Vulnerable Elder and Adult, or Incapacitated Adults.
2. Order the Department to prepare petitions for Guardianship and/or Conservatorship if the Vulnerable Elder or Adult is believed to be an Incapacitated Adult; or order the Department for file a request for a termination of the current Guardian and/or Conservator for an Incapacitated Adult, and prepare petitions for a new appointment;
3. Removal from the place where the abuse or neglect occur(ed) including the Vulnerable Elder and Adult, or Incapacitated Adult's home;

4. Remove the abuser from the residence to prohibit further abusive acts;
  5. Requiring any party having a fiduciary duty to the Vulnerable Elder and Adult, or a Guardian and/or Conservator for Incapacitated Adult, to account for the Vulnerable Elder and Adult, or Incapacitated Adult's funds and/or property.
- D. Protective orders authority shall not exceed 180 days; Guardianship and/or conservatorship may be temporary or permanent.

**SECTION XVI. PETITION FOR FINDING OF VULNERABILITY ELDER OR ADULT as INCAPACITATED and APPOINTMENT OF GUARDIAN OR CONSERVATOR**

- A. Any concerned or interested party may file a petition for Finding of a Vulnerable Elder or Adult as an Incapacitated Adult and request an Order for Appointment of Guardian or an Order for Appointment of a Conservator.
- B. The petitioner will mail copies of the petition and notice of the hearing to all interested persons who include the following people:
1. The individual's spouse;
  2. If known, a person named as the individual's agent in a Durable Power of Attorney or Patient Advocate Designation, or other medical or legal representatives;
  3. The individual's children (or, if the individual has no children, the individual's parents); and
  4. If there is one, the individual's Guardian or Conservator appointed by a Court in another state.
- C. The Court shall appoint Guardian ad Litem to represent the alleged incapacitated person, unless the individual has his or her own attorney. The alleged incapacitated individual and these interested persons are entitled to object to the appointment of a Guardian or Conservator.

D. The Court may issue an Order for Appointment of Guardian or Appointment of a Conservator, after a hearing which shall be held, if there is a showing, upon clear and convincing evidence based a detailed description of the individual's physical or psychological infirmities by a physician or mental health professional and an explanation of how and to what extent each infirmity interferes with the individual's ability make decisions on the following:

1. The person lacks the understanding or capacity to make or communicate informed decisions, and the appointment of a guardian is necessary to provide for the individual's continuing care and supervision;
2. The person is an adult who is unable to manage property and business affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, or disappearance, and the person has property that will be wasted or dissipated unless the Appointment of a Conservator is provided, or money is needed for the individual's support, care, and welfare or for those entitled to the individual's support, and that the Appointment of a Conservator is needed to obtain or provide money;
3. Or both, and an Appointment of a Guardian and Conservator is necessary.

E. If a medical evaluation is not voluntarily provided to the Court, the Court on its own Motion may Order a medical evaluation by a physician or mental health professional.

F. The Court may also weigh any of the following as evidence:

1. Testimony from family or friends familiar with the Vulnerable Elder and Adult;
2. Medical and financial records relevant to the Vulnerable Elder and Adult or their ability to care for themselves;
3. Any other evidence the Court determines to be relevant.
4. Refusal to submit to a Court Order medical evaluation can be used by the Court as evidence of mental incapacity.



**G.** All parties are entitled to Notice and an opportunity to be heard on the record. All proceedings shall be open to the public, unless the Court, on its own motion or by motion of a party, determines that by the nature of the proceedings, the proceedings are to be closed.

**H.** For the Court to Order for Appointment of Guardian or Appointment of a Conservator, the Court shall make a written determination based on sufficient proof as presented to the court.

**I.** The Court should consider appointing the individual's agent in a Durable Power of Attorney or Patient Advocate Designation, or other medical or legal representatives of the individual.

**J.** The Judge will sign an Order of Appointment. The Guardian and/or Conservator shall sign an Acceptance of Appointment.

**K. Appointment of a Guardian.** The Court shall grant a Guardian only those powers and only for that period of time as is necessary to provide for the demonstrated need of the incapacitated individual. The Court shall design the guardianship to encourage the development of maximum self-reliance and independence in the individual. A Court Order establishing a guardianship shall specify any limitations on the Guardian's powers and any time limits on the guardianship.

**L. Powers and Duties of a Guardian.**

1. A Full Guardian is responsible for the individual's care, custody, and supervision, including ensuring that the individual has proper food and clothing, the individual lives in a place that is appropriate for him or her, the individual's medical needs are met, and the individual's property is safe. A Limited Guardian is responsible for only those duties stated in the Court Order.

2. In the absence of a valid Patient Advocate Designation, the Guardian will make the medical decisions.

3. The Guardian must visit the individual at least quarterly or as directed by the Court Order and at least once a year, the Guardian must prepare a report on the condition of the Vulnerable or Incapacitated individual and file the report with the Court. The Guardian must give copies of the report to the Vulnerable or Incapacitated individual and all interested persons as defined by the Statute.

4. If a Conservator is not appointed, the Guardian may take control of and manage the Incapacitated individual's funds and property for the benefit of the individual(s). The funds or property are used for the individual's support, care, and education. Any amount not used is saved for the individual's needs.

**M. Appointment of a Conservator.** The Court shall grant a Conservator only those powers and only for that period of time as is necessary to provide for the demonstrated need of the incapacitated individual. The Court shall design the conservatorship to encourage the development of maximum self-reliance and independence in the individual. A Court Order establishing a conservatorship shall specify any limitations on the conservator's powers and any time limits on the conservatorship.

**N. Powers and Duties of a Conservator.**

1. A Conservator may expend or distribute estate income or principal without court authorization or confirmation for the support, education, care, or benefit of the protected individual or the protected individual's dependents in accordance with the following principles:

- a. the action taken be in the best interest of the individual, exercising sound judgment and avoiding conflicts of interest;
- b. the action is reasonably necessary for the support, education, care, or benefit of the protected individual or a dependent.

2. A Conservator shall not sell or otherwise dispose of the protected individual's principal dwelling, real property, or interest in real property or mortgage, pledge, or cause a lien to be placed on any such property without approval of the Court. The Court shall only approve the sale, disposal, mortgage, or pledge of or lien against the principal dwelling, real property, or interest in real property if the court considers evidence of the value of the property and otherwise determines that the sale, disposal, mortgage, pledge, or lien is in the protected individual's best interest.

3. The Court shall require the Conservator promptly file a fiduciary bond and provide an inventory of the individual's property to the Court and deliver copies to the individual and other parties as required by the Court.

4. Conservators shall file an annual report to the Court providing an update on the condition of the protected individual and an accounting of funds collected and funds expended on behalf of the individual. The reports shall be available for review by interested parties.

5. Conservators shall schedule annual review hearings in conjunction with the filing of annual reports. Any interested party may request additional hearings.

6. Conservators do not have power to consent to medical treatment, to choose where an individual lives, or to control day-to-day activities.

#### **SECTION XVII. CONFIDENTIALITY OF REPORTER and RECORDS**

A. The identity of the reporter of suspected Vulnerable Elder and Adult or Incapacitated Adult's abuse, neglect or exploitation, under this Statute, is confidential.

B. Records of investigations concerning suspected Vulnerable Elder and Adult, or Incapacitated Adult's abuse, neglect or exploitation shall be confidential.

#### **SECTION XVIII. RIGHTS OF VULNERABLE ELDER AND ADULT, OR INCAPACITATED ADULT**

A. A Vulnerable Elder and Adult, or Incapacitated Adult shall be informed of any investigation as it begins, unless an emergency exists and shall have the ability to receive any investigation reports.

B. Elders or Adults are presumed to possess capacity until a court of competent jurisdiction determines otherwise.



C. A Vulnerable Elder and Adult, or Incapacitated Adult may refuse to allow investigators into their home without a warrant for entry.

D. The Vulnerable Elder and Adult, or Incapacitated Adult has the right to attend all proceedings pertaining to the suspected abuse, neglect or exploitation, or guardians or conservatorship unless the Court determines the Elders or adult's health is at risk in attending such proceedings based on medical reports and records.

E. The Vulnerable Elder and Adult, or Incapacitated Adult has the right to receive any documents presented to the Court at any or all court proceedings pertaining to the suspected abuse, neglect or exploitation, or guardian or conservatorship.

F. The Vulnerable Elder and Adult, or Incapacitated Adult has the right to independent medical, psychological or psychiatric evaluations at their own expense.

#### **SECTION XIX. SAVING CLAUSE**

In the event that any phrase, provision, part, paragraph, subsection or section of this Statute is found by a court of competent jurisdiction to violate the Constitution, laws, ordinances or statutes of the Little Traverse Bay Bands of Odawa Indians, such phrase, provision, part, paragraph, subsection or section shall be considered to stand alone and to be deleted from this Statute, the entirety of the balance of the Statute to remain in full and binding force and effect.

#### **SECTION XX. EFFECTIVE DATE**

Effective upon signature of the Executive or 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**

As the Tribal Council Legislative Leader and Tribal Council Secretary, we certify that this Statute was duly adopted by the Tribal Council of the Little Traverse Bay Bands of Odawa Indians at a regular meeting of the Tribal Council held on March 17, 2022 at which a quorum was present, by a vote of 7 in favor, 0 opposed, 0 abstentions, and 2 absent as recorded by this roll call:

|                  | In Favor | Opposed | Abstained | Absent |
|------------------|----------|---------|-----------|--------|
| Fred Kiogima     | X        |         |           |        |
| Tamara Kiogima   | X        |         |           |        |
| William Ortiz    | X        |         |           |        |
| Aaron Otto       | X        |         |           |        |
| Melissa Pamp     |          |         |           | X      |
| Marty Van De Car | X        |         |           |        |
| Leroy Shomin     | X        |         |           |        |
| Marcella Reyes   |          |         |           | X      |
| Emily Proctor    | X        |         |           |        |

Date: 03/17/22

*Emily Proctor*

Emily Proctor, Legislative Leader

Date: 03/17/22

*Marcella R. Reyes*

Marcella Reyes, Secretary

Received by the Executive Office on 3/18/2022 by Sakota Workman

Pursuant to Article VII, Section D, Subsection 1 of the Little Traverse Bay Bands of Odawa Indians Constitution adopted on February 1, 2005 the Executive concurs in this action of the Tribal Council.

**VETO**

Date: \_\_\_\_\_

Regina Gasco-Bentley, Tribal Chairperson

Received by the Legislative Office *[Signature]* 4.6.2022

Date