

WAGANAKISING ODAWA



TRIBAL CODE of LAW

TITLE IX. CRIMINAL LAWS; LIQUOR CONTROL

2024.2

WAGANAKISING ODAWA TRIBAL CODE of LAW

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TITLE IX. CRIMINAL LAWS; LIQUOR CONTROL

Chapter 1. Interim Criminal Code

9.101 JURISDICTION

A. Definition. The criminal jurisdiction of the Little Traverse Bay Bands of Odawa Indians (also referred to in this Code as “Bands” and/or “LTBB”) is its power to prohibit certain conduct, as a matter of public policy, within its territory.

B. Power Implemented. That power is exercised by enacting this Code and by punishing people who violate its laws.

C. Territorial Extent. The criminal jurisdiction of the Little Traverse Bay Bands of Odawa Indians shall extend to:

1. all trust land held now or in the future by the United States for the benefit of the Little Traverse Bay Bands of Odawa Indians; and
2. the activities of Band members when exercising treaty hunting and fishing rights wherever such activity occurs.

D. Persons Under LTBB Criminal Jurisdiction. The criminal jurisdiction of LTBB shall extend to:

1. all members of LTBB within the areas described in Section I(C) of this Code;
2. all other Indians present within the areas described in Section I(C)(1) of this Code; and
3. all non-Indians present within the areas described in Section I(C)(1) of this Code to the maximum extent allowed under federal law. The criminal jurisdiction

of LTBB shall only extend to adults. However, upon motion of the tribal prosecutor, the judge may, in his/her discretion, try a minor as an adult.

COMMENTS

LTBB, as a sovereign tribal entity, possesses the power to regulate conduct within its territory. The criminal jurisdiction of LTBB, its power to prohibit certain conduct within its territory and to punish those who violate its laws, has been limited by the United States Congress and the United States Supreme Court in the following ways:

- (1) The Major Crimes Act (MCA), 18 U.S.C. Section 1153, originally enacted by the U.S. Congress in 1885, gives the federal government jurisdiction over certain enumerated "major crimes" committed by one Indian against the person or property of another in Indian country. These crimes include murder, manslaughter, kidnaping, rape, statutory rape, involuntary sodomy, assault with intent to commit rape, incest, assault with intent to commit murder, assault with a deadly weapon, assault resulting in serious bodily injury, arson, burglary and robbery. The MCA has backfired to a large extent, because many of these crimes committed in Indian Country now go unpunished. The federal government has not devoted adequate resources to enforce the MCA, so federal prosecutors are reluctant to prosecute crimes that fall under the MCA. Indian tribes retain concurrent jurisdiction over these crimes. These "major crimes" are thus included in this Code to ensure that those who commit major crimes in LTBB territory are not allowed to go unpunished.
- (2) The Indian Civil Rights Act (ICRA): The ICRA, 25 USC Section 1302, was enacted by Congress in 1968. It makes many of the protections included in the United States Constitution's Bill of Rights applicable to the conduct of Indian tribes. It also limits the punishment that an Indian tribe may impose to a one (1) year jail term or to a fine of \$5,000.00, or both.
- (3) Non-Indians: Under Oliphant v Suquamish Indian Tribe 435 US 191 (1978), an Indian tribe cannot try a non-Indian in Tribal Court. This Code, therefore, states that LTBB criminal jurisdiction shall only be exercised over Band members and other Indians present within LTBB's territory.
It is no longer debatable that LTBB can exercise jurisdiction over its members when exercising treaty hunting and fishing rights, regardless of whether such activity occurs within "Indian Country."

(Source: WOS 2021-003, April 20, 2021, Section I)

(Source: WOS 2023-012, October 6, 2023, Section I(A-D))

9.102 DEFINITIONS

For purposes of this Criminal Code:

A. Indian. "Indian" means any person who is either:

1. a member of the Little Traverse Bay Bands of Odawa Indians;
2. a member of any federally-recognized Indian tribe, band, or group; or
3. any person of Indian blood who is generally considered to be an American Indian by the Little Traverse Bay Bands of Odawa Indians community.

B. Mental State: Malice. A person acts "maliciously" or "with malice" when that person consciously formulates a plan to injure the person or property of another and takes steps to carry out such plan.

C. Mental State: Intent.

1. A person acts "intentionally" or "with intent" with respect to conduct when it is that person's conscious desire to engage in certain conduct.
2. A person acts "intentionally" with respect to a result when it is that person's conscious desire that the conduct cause such result.

D. Mental State: Knowledge. A person acts "knowingly" or "with knowledge" when that person is aware of his/her actions and the probable consequences of such actions.

E. Mental State: Wanton or Reckless. A person acts "wantonly" or "recklessly" when that person is aware, or should be aware, that certain conduct will endanger the health, safety, or property of others but persists in engaging in the conduct despite the

risks.

F. Mental State: Negligent. A person acts "negligently" or "with neglect" when that person acts in a manner that endangers the safety or property of others without exercising the care that a reasonably prudent person would exercise under the same or similar circumstances.

G. Minor. A minor is any person under eighteen (18) years of age.

H. Adult, for Purposes of criminal jurisdiction an adult is any person eighteen (18) years of age or older.

I. Motor Vehicle. Motor vehicle means any car, truck, motorcycle, or other motor-operated vehicle.

COMMENTS

This Section of the Code includes definitions of five (5) different mental states. One of these mental states is an essential element of any given crime.

(Source: WOS 2021-003, April 20, 2021, Section II)

9.103 REQUIREMENTS FOR CONVICTION

A. Culpability. A person shall not be guilty of an offense unless that person acted intentionally, maliciously, knowingly, recklessly or negligently as the law requires with respect to each material element of the offense; provided that any material element of an offense that does not require a mental state may be established by proving that the person participated in the prohibited conduct regardless of his/her state of mind.

B. Proof. No person may be convicted of an offense unless each element of the offense is proved beyond a reasonable doubt.

C. Intoxication.

1. Intoxication is not a defense unless it negates an element of the offense.
2. Self-induced intoxication cannot negate the element of recklessness.

D. Statute of Limitations. No person shall be prosecuted, tried or punished for any criminal offense unless the prosecution is initiated within one (1) year after both of the following conditions have been met:

1. discovery that an offense has been committed, and
2. discovery of the identity of the person who allegedly committed the offense.

E. Multiple Counts. When the conduct of a defendant establishes the commission of more than one offense, the defendant may be prosecuted for each such offense, unless:

1. one offense consists only of an attempt to commit the other;
2. inconsistent findings of fact are required to establish commission of the offenses; or
3. the offenses differ only in that one prohibits a designated kind of conduct generally, and the other prohibits a specific instance of such conduct.

COMMENTS

This Section states that a person cannot be guilty of an offense unless that person acted with the requisite mental state, if a mental state is specified in the offense. For instance, to be convicted of battery it must be shown that a person intentionally struck another. If a person inadvertently bumps into another, he/she cannot be convicted of battery, because he/she did not act with intent.

Section **III (B)** states that in order to convict a person of an offense, each element must be proved beyond a reasonable doubt. Beyond a reasonable doubt means more than a mere likelihood. It means that the evidence as presented makes it virtually impossible for any other conclusion to be reached. Each element must be proved beyond a reasonable doubt. For instance, in order to convict a person of improper influence of an official, **VII (H)(2)**, it must be proved beyond a reasonable doubt that the person (1) threatened harm to a tribal official, and (2) did so with the intent of influencing such person's official actions.

Section **III (C)** makes clear that intoxication in itself is not a viable defense. However, under certain circumstances it may negate an element of the offense, such as intent or knowledge. However, self-induced intoxication can never negate the element of recklessness. A person can act recklessly whether or not that person is aware of what he/she is doing.

(Source: WOS 2021-003, April 20, 2021, Section III)

9.104 AFFIRMATIVE DEFENSES AND ALIBI

A. Duress. It is an affirmative defense that the defendant, engaged in the conduct charged to constitute an offense, was coerced against his/her will by the use of, or threatened use of, unlawful force against his/her person or the person of another. The coercion must be such that a person of reasonable firmness would be unable to resist.

B. Protection of Self, Property, or Other Person. The use of reasonable force toward another person is justified and is an affirmative defense, if and only if:

- 1.** the force is directed toward one who is using unlawful force, and
- 2.** the person using such force reasonably believes the use of force is necessary for his/her protection or that of a third person.
- 3.** The use of reasonable force toward another person is justified and is an affirmative defense if used to prevent the unlawful entry into the dwelling of the person asserting the defense or into the dwelling of another or to prevent the unlawful carrying away of personal property.

C. Alibi. The defense of alibi, that the accused was somewhere else when the crime was committed, shall be treated procedurally as an affirmative defense.

D. Procedures for Raising Affirmative Defenses. The procedures for raising and pleading affirmative defenses shall be specified by Court Rule.

COMMENTS

An affirmative defense does not negate an element of the crime, but raises additional circumstances that provide justification for the actions, relieving the defendant of culpability, so

that he/she is not held criminally liable. For instance, if a person raises an affirmative defense of duress when being accused of battery, that person does not deny that he/she intentionally struck another. But that person may state, for example, that he/she was coerced into doing so by threats of a third person.

Similarly, if a person raises the defense of protection of self, property, or other person, to a charge of battery, that person is not denying that he/she intentionally struck another. However, that person is stating that his/her actions were necessary to protect himself/herself or another, and therefore such actions are justified.

(Source: WOS 2021-003, April 20, 2021, Section IV)

9.105 COUNSEL

A. Right to Counsel. Any person accused of an offense under this Code may represent himself before the Tribal Court, or may be represented, at his/her own expense, by a person duly licensed to practice before the Tribal Court.

B. Persons Licensed to Practice in LTBB Courts. An Attorney admitted to practice law in any state may be licensed to practice in LTBB Courts upon:

1. payment of an annual fee, as specified by Court Rule; provided that the fee may be waived if the attorney is providing pro bono services;
2. certification to the Tribal Court that he/she has read the Court Rules; and taking of an oath to uphold the Constitution and laws of the Little Traverse Bay Bands of Odawa Indians, maintaining due respect for the Tribal Court, and employing, in his/her conduct and duties, the highest degree of ethical and moral standards with which the legal profession is charged. The Tribal Court Rules may also set out a procedure for licensing non-attorney tribal members to practice before the Tribal Court.

(Source: WOS 2021-003, April 20, 2021, Section V)

9.106 SENTENCING

A. Sentencing Considerations. The main goals of sentencing are the protection of the

public, rehabilitation, healing of the harm done, restitution for the victim, appropriate punishment, and deterrence. The factors the Court should consider in sentencing include the seriousness of the offense and any resulting injury, the offender's prior record or lack of prior record, employment, family and community status and support, desires of the victim, amount of any restitution, genuine remorse expressed by the offender, and any other factors the Court deems relevant, consistent with achieving a just and fair sentence. The Court shall consider any victim impact statement, and also generally favor restitution, community service work and healing of the harm inflicted over incarceration, but has wide discretion on the appropriate sentence for any given case.

B. Types of Sentences. The Court has the following sentence options following a conviction. A sentence may utilize two (2) or more of the following options, unless the offender has been sentenced to prison following the enactment of TLOA by the Tribe:

1. Incarceration in a local jail for not more than one (1) year, depending on the statutory maximum of the crime for which offender was convicted.
2. Fines and costs pursuant to statutory requirements.
3. Placement on probation, with appropriate terms and conditions as set by the Court.
4. Prison sentencing. Upon enactment of TLOA by the Tribe, the defendant may be sentenced to prison, or any correctional facility that meets the requirements of 25 USC 1302, for up to three (3) years. Sentences for multiple felony convictions (sentences over one (1) year) may be consecutive at the discretion of the Court, but in no case may they exceed nine (9) years total, pursuant to TLOA - 25 USC 1302.
5. Delayed/Deferred Sentencing. The Court may adjourn or delay sentencing to give the defendant an opportunity to complete a rehabilitative program or to prove they deserve leniency, but only with the agreement of the Prosecutor may the Court reduce or dismiss charges after a delayed or deferred sentence. The delay may include any conditions deemed appropriate by the Court.
6. Consecutive vs concurrent sentencing convictions. In general, concurrent sentencing is preferred. The Court has the discretion to sentence consecutively for multiple convictions. Factors which should be considered when considering consecutive sentencing include: the heinousness of the offenses, the number of past convictions of the

defendant, the number of victims, the seriousness of physical or psychological injuries or harm done, whether the defendant was on bond, probation, parole, or the subject of a protection order or other court order when the new offense(s) was committed, or other aggravated circumstances.

- C. Victim’s Impact Statement.** Prior to sentencing, the Prosecutor shall inform the victim(s) of their right to submit a written statement to the Court detailing the physical, material, and emotional damages that they suffered as a result of the offender’s actions. The victim has the right to speak at sentencing whether or not they have submitted a victim impact statement. The Court shall take into consideration any victim impact statement at sentencing.

COMMENTS

The Tribal Court Judge has considerable discretion in fashioning an appropriate sentence for a person convicted of an offense. The maximum jail term and fine is currently one year or \$5,000 or both, unless the Tribal Council enacts TLOA.

(Source: WOS 2021-003, April 20, 2021, Section VI)

9.107 OFFENSES

A. Contempt of Court and Perjury.

1. Contempt of Court.

a. Offense. Intentional and unjustifiable behavior by any person, which disrupts, obstructs, or otherwise interferes with the conduct of any proceeding of the Court, or which obstructs, or interferes with the administration of justice by the Court, including disobedience or resistance to, or interference with, any lawful summons, subpoena, process, order, rule, term of probation, sentence, decree, or command of the Court, including failure to appear for a court date, shall constitute contempt of court.

b. Contempt Committed in the Presence of the Court. When contempt of court is committed in the presence of the Court it may be punished summarily by the Court. In such case, an order shall be made reciting the facts constituting

the contempt, adjudging the person guilty of contempt, and prescribing the punishment.

c. Contempt Committed out of the Presence of the Court. When it appears to the Court that a contempt has been committed out of the presence of the Court, the Court may issue a summons to the person so charged directing him/her to appear at a time and place designated for a hearing on the matter.

d. Sentence. A person found guilty of contempt of court may be sentenced to a jail term not to exceed thirty (30) days, or to a fine not to exceed one thousand dollars (\$1,000.00), or to both. In addition, if a person is charged with contempt for jumping bail, the Court may order forfeiture of the person's bail.

2. Perjury.

a. Offense. A person who knowingly gives false testimony is guilty of perjury.

b. Offense. A person who attempts to induce, persuade or encourage someone else to give false testimony, whether or not such testimony occurred, is guilty of subornation of perjury.

c. Sentence. The penalty for perjury, or subornation of perjury, is up to twelve (12) months in jail, and/or a fine of up to five thousand dollars (\$5,000.00), unless the enhanced sentencing provisions of TLOA are enacted by Tribal Council, in which case the penalty would increase to three (3) years if the crime occurred in any felony case, or any case where the penalty is over one (1) year in jail.

B. Scheming and Planning Offenses.

1. Solicitation.

a. Offense. A person commits solicitation if, with intent that another person engages in illegal conduct, he/she code, entreats, induces or otherwise endeavors to persuade such person to engage in illegal conduct.

b. Affirmative Defense. It is an affirmative to a charge of solicitation that the defendant completely renounced his/her criminal intent before commission of the crime, and made a reasonable attempt to prevent the solicited conduct.

c. Sentence. A person convicted of solicitation shall be subject to the same

punishment as that specified in this Code for the completed offense.

2. Conspiracy.

a. Offense. A person commits conspiracy if that person agrees with one or more persons, with intent to promote or facilitate the commission of an offense, that at least one of them will engage in conduct constituting the offense, and one of the parties commits an overt act in furtherance of the agreement.

b. Affirmative Defense. It is an affirmative defense to a charge of conspiracy that the defendant completely and voluntarily renounced his/her criminal intent before commission of the crime, and made a reasonable attempt to prevent the illegal action.

c. Sentence. A person convicted of conspiracy shall be subject to the same punishment as that specified in this Code for the completed offense.

3. Attempt.

a. Offense. A person commits an attempt, with respect to any of the enumerated offenses in this Code, if that person, acting with the intent to commit the offense, takes a substantial step toward the commission of the crime, and does not retract his/her action, but is foiled by circumstances beyond his/her control.

b. Sentence. A person convicted of an attempt shall be subject to the same punishment as that specified in this Code for the completed offense.

4. Contributing to the Delinquency of a Minor.

a. Offense. Any person who aids, abets, or encourages any minor to commit an act that would be an offense under this Code, if committed by an adult, shall be guilty of contributing to the delinquency of a minor.

b. Sentence. A person convicted of contributing to the delinquency of a minor may be sentenced to a jail term not to exceed sixty (60) days, or to a fine not to exceed one thousand dollars (\$1,000.00) or to both.

5. Aiding and Abetting.

a. Offense. A person commits an offense if he/she knowingly aids or abets another person in the commission or furtherance of a crime.

b. Sentence. A person found guilty of aiding and abetting will be subject to the same sentence as provided for the underlying crime.

COMMENTS

A person cannot be found guilty of aiding and abetting if the principal offender is found not guilty of the underlying crime.

C. Offenses Against the Person.

1. Assault.

a. Offense. A person commits assault if that person, by any unlawful act, threat, or menacing conduct, causes another person to reasonably believe that the other person is in immediate danger of physical harm.

b. Sentence. A person convicted of assault may be sentenced to a jail term not to exceed ninety (90) days or to a fine not to exceed one thousand (\$1,000.00) or to both.

2. Assault with a Weapon.

a. Offense. A person commits assault with a weapon if that person, through the use, or threatened use, of a weapon, causes another person to reasonably believe that he/she is in immediate danger of physical harm.

b. Sentence. A person convicted of assault with a weapon may be sentenced to a jail term not to exceed one (1) year, or to a fine not to exceed five thousand dollars (\$5,000.00) or to both.

3. Battery.

a. Offense. A person who intentionally strikes or offensively touches the person of another commits the offense of battery.

b. Sentence. A person convicted of battery may be sentenced to a jail term not to exceed one (1) year or to a fine not to exceed five thousand dollars (\$5,000.00) or to both.

4. Sexual Assault.

a. Offense. A person commits sexual assault if that person intentionally or knowingly engages in sexual penetration or sexual contact with any person without the consent of that person. Sexual contact means any fondling or manipulating of any part of the genitals, anus, or female breast.

b. Sentence. Any person found guilty of sexual assault may be sentenced to a jail term not to exceed one (1) year or to fine not to exceed five thousand dollars

(\$5,000.00) or to both.

5. Sexual Assault of a Child.

a. Offense. A person commits sexual assault of a child if he/she intentionally or knowingly engages in sexual penetration or sexual contact with any person aged 16 years or younger, regardless of whether he/she has the consent of that person. Sexual contact means any fondling or manipulating of any part of the genitals, anus, or female breast.

b. Sentence. Any person found guilty of sexual assault of a child may be sentenced to a jail term not to exceed one (1) year or to a fine not to exceed five thousand dollars (\$5,000.00) or both.

6. Child Sexual Abuse.

a. Offense. A person commits child sexual abuse if that person engages a child in sexual activity that the child does not developmentally understand, to which he or she cannot give informed consent, or that violates the social taboos of the community. Child Sexual Abuse includes but is not limited to; all forms of intercourse, oral genital contact, fondling, exhibitionism and child pornography.

b. Sentence. Any person found guilty of Child Sexual Abuse may be sentenced to a jail term not to exceed one (1) year or to a fine not to exceed five thousand dollars (\$5,000.00) or to both.

7. Unlawful Imprisonment.

a. Offense. A person commits unlawful imprisonment if, without lawful authority, that person intentionally removes, detains, restrains, or confines the person of another without his/her consent.

b. Sentence. A person convicted of unlawful imprisonment may be sentenced to a jail term not to exceed one (1) year or to a fine not to exceed five thousand dollars (\$5,000.00) or to both.

COMMENTS

The maximum allowable sentence is prescribed for unlawful imprisonment because very serious transgressions, such as kidnaping, would fall under this offense.

8. Stalking

a. Stalking: Any person who engages in stalking is guilty of a crime punishable

by up to six (6) months in jail and/or a \$5,000 fine.

1. Stalking means a willful course of conduct involving repeated or continued harassment of another individual, that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed or molested, and that actually causes the victim to feel terrorized, frightened, intimidated, threatened harassed or molested.
2. Contact as used in this subsection may include, but is not limited to: in-person contact, communication or contact through electronic means regardless of the device used, phone calls, email, social media applications, text messaging of any kind, standard mail, and/or indirect contact of the victim through the use of third parties.
3. Harassment means repeated or continuing unwanted contact that would cause a reasonable person to feel emotional distress, and in fact caused the victim to feel emotional distress.
4. Evidence that the defendant continued the contact or communication after having been requested by the victim or a representative of the victim to refrain from any further contact or communication gives rise to a rebuttable presumption that the continuation of the course of conduct did cause the victim to feel emotional distress, harassed, frightened, threatened or intimidated.
5. If TLOA is enacted by the Tribe, then the term of incarceration for this offense shall be up to (1) year.

b. Aggravated Stalking. If any of the acts giving rise to the stalking behavior involve any of the following aggravating factors, the offense then constitutes Aggravated Stalking:

1. The defendant makes threats to kill or cause serious physical harm to the victim or a member of the victim's family or household, or to any pets of the victim;
2. The defendant was armed with a weapon at the time of the contact;
3. A Personal Protection Order or other court order, such as a condition of probation, parole or bond / pretrial release, restraining order

or injunction, which prohibited contact between the defendant and the victim was in effect at the time of any of the continued stalking behavior;

4. Defendant has a prior conviction for stalking;

5. An actual assault and/or battery occurred, causing any bodily injury to a victim.

6. Aggravated Stalking is punishable by up to one (1) year incarceration and/or a \$5,000 fine. If TLOA is enacted by the Tribe, then this offense shall be punishable by up to three (3) years' incarceration and/or a \$10,000 fine.

c. This section does not prohibit a person from being charged with, convicted of, or punished for any other violation of law committed by that person while violating or attempting to violate this section.

9. Strangulation.

a. A person who assaults another person by strangulation or suffocation is guilty of a felony punishable by up to one (1) year of incarceration and a fine of not more than \$1,000.

b. “Strangulation or suffocation” means intentionally impeding normal breathing or circulation of the blood by applying pressure on the throat or neck or by blocking the nose or mouth of another person.

c. This section does not prohibit a person from being charged with, convicted of, or punished by any other violation of law arising out of the same conduct as the violation of this section.

d. Upon enactment of the Tribal Law and Order Act (TLOA) by the Tribe, this crime will be punishable by up to three (3) years of incarceration and/or a \$5,000 fine.

10. Interfering with Electronic Communications.

a. Interfering with Electronic Communications. Any person who intentionally interferes with, prevents, obstructs or attempts to interfere with, prevent or obstruct any authorized electronic communication such as a telephone call, email, text message or any similar type of communication shall be guilty of a misdemeanor punishable by up to one (1) year incarceration and/or a \$1,000 fine.

b. This section does not prevent a person from being charged with, convicted of or punished for any other violation of law committed by that person while violating or attempting to violate this section.

D. Weapons and Explosives.

1. Carrying of a Deadly Weapon without a License.

a. Offense. A person who carries a deadly weapon without being licensed to do so by LTBB or by the State of Michigan commits an offense.

b. Sentence. A person convicted of unlawful carrying of a deadly weapon without a license may be sentenced to a jail term not to exceed sixty (60) days or to a fine not to exceed one thousand dollars (\$1,000.00) or to both. The judge may also order that the weapon be impounded.

2. Unlawful Use of a Weapon.

a. Offense. A person commits unlawful use of a weapon if that person:

i. discharges a firearm in the proximity of a building or vehicle so as to knowingly or recklessly endanger a person or property;

ii. carries a firearm while intoxicated;

iii. handles or uses a firearm or other weapon so as to knowingly or recklessly endanger the safety of another; or

iv. carries a firearm or other weapon with unlawful intent.

b. Sentence. A person convicted of unlawful use of a weapon may be sentenced to a jail term not to exceed one hundred eighty (180) days or to a fine not to exceed two thousand dollars (\$2,000.00) or to both. The judge may also order that the weapon be impounded.

3. Dangerous Use of Explosives.

a. Offense. A person commits dangerous use of explosives if, with intent to injure, intimidate or terrify another, or to damage another's property, that person maliciously explodes, attempts to explode or places any explosive anywhere within the territorial jurisdiction of the Little Traverse Bay Bands of Odawa Indians.

b. Sentence. A person convicted of dangerous use of explosives may be sentenced to a jail term not to exceed one (1) year or to pay a fine not to exceed five thousand dollars (\$5,000.00) or to both.

c. In addition to, or in lieu of, the punishments set out above, the Court may order the offender to repair any property damaged by his/her actions or to pay the costs of such repairs to the injured party.

4. Negligent Use of Explosives.

a. **Offense.** A person commits negligent use of explosives if that person negligently explodes, attempts to explode or places any explosive in such a manner as to result in injury to another or to the property of another, or by such action that increases the probability of such injury.

b. **Sentence.** A person convicted of negligent use of explosives may be sentenced to a jail term not to exceed ninety (90) days or to a fine not to exceed three thousand dollars (\$3,000.00) or to both.

c. In addition to, or in lieu of, the punishments set out above, the Court may order the offender to repair any property damaged by his/her actions or to pay the costs of such repairs to the injured party.

E. Theft and Related Crimes.

1. Theft of Property.

a. **Offense.** A person commits theft of property if, without lawful authority, that person intentionally or knowingly:

- i. controls property of another with the intent to permanently deprive the owner, or person in lawful possession, of such property;
- ii. obtains property of another by means of any material misrepresentation with intent to permanently deprive the owner, or person in lawful possession, of such property, or
- iii. comes into control of lost, mislaid or incorrectly delivered property under circumstances providing means of inquiry as to the true owner and appropriates such property to himself/herself without making reasonable efforts to notify the true owner.

b. **Sentence.** A person convicted of theft of property may be sentenced to a jail term not to exceed one hundred eighty (180) days or to a fine not to exceed five thousand dollars (\$5,000.00) or to both.

c. **Return of Property.** When a person is convicted of a theft, the Court shall confiscate the stolen property and return it to its rightful owner. If the

property has been lost or destroyed, the Court may require the offender to compensate the rightful owner for the value of the stolen property in addition to, or in lieu of, the sentence set out above.

2. Robbery.

a. Offense. A person commits robbery if that person threatens another with bodily harm, through the use of force or a weapon, in order to obtain property that is in the lawful custody of the person being threatened.

b. Sentence. A person convicted of robbery may be sentenced to a jail term not to exceed one (1) year or to pay a fine not to exceed five thousand dollars (\$5,000.00) or to both.

3. Theft of Services.

a. Offense. A person commits theft of services if, without lawful authority, that person obtains services which are available only for compensation with the intent of avoiding payment for such services.

b. Sentence. A person convicted of theft of services may be sentenced to a jail term not to exceed ninety (90) days or to a fine not to exceed two thousand dollars (\$2,000.00) or to both.

c. Payment for Services. The Court may require the offender to compensate the victim for the services wrongfully obtained in addition to, or in lieu of, the sentence set out above.

4. Unauthorized Use of a Vehicle.

a. Offense. A person commits an offense if that person intentionally or knowingly operates, or tampers with, another's automobile, motorcycle, motorboat or other motor-operated vehicle, without the consent of the owner.

b. Sentence. A person convicted of unauthorized use of a vehicle may be sentenced to a jail term not to exceed sixty (60) days or to a fine not to exceed one thousand dollars (\$1,000.00) or to both.

5. Receiving Stolen Property.

a. Offense. A person commits an offense if that person purchases, receives, conceals, or aids in concealing any property of another knowing, or having reason to know, that such property was obtained by theft or any other means declared by law to be unlawful.

b. Sentence. A person convicted of receiving stolen property may be

sentenced to a jail term not to exceed one hundred eighty (180) days or to pay a fine not to exceed five thousand dollars (\$5,000.00) or to both.

F. Burglary and Arson.

1. Burglary.

a. Offense. A person commits burglary if that person enters into a building, boat, or motor vehicle belonging to another with the intent of committing an offense therein.

b. Sentence. A person convicted of burglary may be sentenced to a jail term not to exceed one hundred eighty (180) days or to a fine not to exceed one thousand dollars (\$1,000.00) or to both.

2. Arson.

a. Offense. A person commits arson if that person knowingly sets fire to the building or property of another, or sets fire to his/her own property with the intent of collecting insurance benefits, or with the intent of negatively impacting a family member or any person who has a rightful interest in the property.

b. Sentence. A person convicted of arson may be sentenced to a jail term not to exceed one (1) year or to pay a fine not to exceed five thousand dollars (\$5,000.00) or to both.

G. Forgery and Related Crimes.

1. Forgery.

a. Offense. A person commits forgery if, with intent to defraud, that person:

- i. falsely makes, completes, or alters a written instrument; or
- ii. offers or presents a forged instrument knowing such instrument to be forged.

b. Sentence. A person who is convicted of forgery may be sentenced to a jail term not to exceed one hundred eighty (180) days or to a fine not to exceed five thousand dollars (\$5,000.00) or to both.

2. Obtaining a Signature by Deception.

a. Offense. A person commits an offense if, with intent to defraud, that person obtains the signature of another person on a written instrument by knowingly misrepresenting or omitting any material fact relevant to the

instrument or transaction.

b. Sentence. A person who is convicted of obtaining a signature by deception may be sentenced to a jail term not to exceed one hundred eighty (180) days or to a fine not to exceed four thousand dollars (\$4,000.00) or to both.

3. Criminal Impersonation.

a. Offense. A person commits criminal impersonation if that person:

- i. assumes a false identity with the intent to defraud another, or
- ii. pretends to be a representative of some person or organization with the intent to defraud.

b. Sentence. A person who is convicted of criminal impersonation may be sentenced to a jail term not to exceed one hundred eighty (180) days or to a fine not to exceed five thousand dollars (\$5,000.00) or to both.

H. Bribery and Related Crimes.

1. Bribery of Officials.

a. Offense. A person commits the offense of bribery if that person:

- i. offers, confers, or agrees to confer any benefit upon a tribal official, judge or employee with the intention of influencing such person's vote, opinion, judgement, exercise of discretion or other action in his/her official capacity, or
- ii. as a tribal official, judge, or employee solicits, accepts, or agrees to accept any benefit upon an agreement or understanding that his/her official actions may be thereby influenced.

b. Sentence. A person convicted of bribery may be sentenced to a jail term not to exceed one hundred eighty (180) days or to a fine not to exceed five thousand dollars (\$5,000.00) or to both.

2. Improper Influence of Official.

a. Offense. A person commits improper influence of an official if that person threatens harm to any tribal official, judge or employee with the intent of influencing such person's official actions.

b. Sentence. A person convicted of improper influence of an official may be sentenced to a jail term not to exceed one hundred eighty (180) days or to a fine not to exceed five thousand dollars (\$5,000.00) or to both.

3. Abuse of Office.

a. Offense. A person commits abuse of office if that person acts or purports to act in an official capacity and:

- i. subjects another to arrest, detention, search or seizure without just and lawful cause, or
- ii. maliciously denies or impedes another in the exercise or enjoyment of any right, privilege, power or immunity.

b. Sentence. A person convicted of abuse of office may be sentenced to a jail term not to exceed ninety (90) days or to a fine not to exceed three thousand dollars (\$3,000.00) or to both.

I. Obstruction of Tribal Administration.

1. Resisting or Obstructing an Officer of the Little Traverse Bay Bands of Odawa Indians or any Other Law enforcement Officer.

a. Offense. A person commits an offense if that person intentionally or knowingly assaults, batters, injures, opposes, interferes with, obstructs, impairs, hinders, or attempts to commit any of the preceding against.

- i. Any officer of the Little Traverse Bay Bands of Odawa Indians in the lawful exercise of his/her duties;
- ii. Any duly authorized person serving or attempting to serve or execute process under any rule or order of the courts of the Little Traverse Bay Bands of Odawa Indians;
- iii. Any judge or other court personnel of the Little Traverse Bay Bands of Odawa Indians, in the lawful exercise of his/her duties; or
- iv. Any other law enforcement official in the lawful exercise of his/her duties.

b. Sentence. A person convicted of obstruction of tribal administration may be sentenced to a jail term not to exceed one *year* or to a fine not to exceed five thousand dollars (\$5,000.00) or to both. If the Tribe enacts TLOA and the defendant injured the victim, the defendant may be sentenced to up to two (2) years' incarceration and/or a \$5,000 fine; if the defendant seriously injured the victim, the defendant may be sentenced to up to three (3) years' incarceration and/or a \$10,000 fine. "Seriously injured" means an injury requiring immediate

medical treatment, whether or not that treatment actually occurs, or which causes serious harm to, or substantially impairs the health or normal functioning of a part of the body.

2. Escape from Lawful Custody.

a. Offense. A person commits the offense of escape from lawful custody if that person escapes or attempts to escape from lawful custody or confinement.

b. Sentence. A person convicted of escape from lawful custody may be sentenced to a jail term not to exceed one hundred eighty (180) days or to a fine not to exceed five thousand dollars (\$5,000.00) or to both.

3. Helping a Person to Escape from Lawful Custody.

a. Offense. A person commits an offense if that person helps or attempts to help a person escape from lawful custody or confinement.

b. Sentence. A person convicted of helping a person to escape from lawful custody may be sentenced to a jail term not to exceed one hundred eighty (180) days or a fine not to exceed five thousand dollars (\$5,000.00) or to both.

4. Tampering with a Public Record.

a. Offense. A person commits tampering with a public record if that person intentionally or knowingly and without proper authority:

- i. makes or completes a written instrument which purports to be a public record or true copy thereof or alters a written instrument which is a public record or true copy thereof;
- ii. presents or uses a written instrument which is or purports to be a public record or a copy thereof, knowing that it has been falsely made, completed, or altered, with intent that it be taken as genuine;
- iii. offers for recording, registration or filing in a tribal office or agency a written statement knowing that it has been falsely made, completed or altered or that it contains a false statement or information; or
- iv. knowingly destroys, conceals, removes or otherwise impairs the availability of any public record.

b. Public records mean all official books, papers, written instruments or records created, issued, received or kept by any tribal office, branch or division.

c. Sentence. A person convicted of tampering with a public record may be sentenced to a jail term not to exceed two hundred seventy (270) days or to a fine not to exceed five thousand dollars (\$5,000.00) or to both.

5. Malicious Criminal Prosecution.

a. Offense. A person commits malicious criminal prosecution if that person maliciously causes or attempts to cause a criminal charge to be prosecuted against an innocent person, knowing such person to be innocent.

b. Sentence. A person convicted of malicious criminal prosecution may be sentenced to a jail term not to exceed one hundred eighty (180) days or to a fine not to exceed five thousand dollars (\$5,000.00) or to both.

6. Interfering with an Election.

a. Offense. A person commits an offense if that person, during the course of election held by the Little Traverse Bay Bands of Odawa Indians, knowingly:

- i. attempts to influence the vote of any person or prevent a person from voting through the use or threatened use of force or violence; or
- ii. attempts to cast more than one (1) vote in an election, or in any way interferes with the collection and counting of ballots.

b. Sentence. A person convicted of interfering with an election may be sentenced to a jail term not to exceed two hundred seventy (270) days or to a fine not to exceed five thousand dollars (\$5,000.00) or to both.

J. Criminal Damage to Property and Trespass.

1. Vandalism.

a. Offense. A person commits the offense of vandalism if that person intentionally or recklessly:

- i. defaces or damages the personal or real property of another person; or
- ii. defaces or damages the real property of the Little Traverse Bay Bands of Odawa Indians.

b. Sentence. A person convicted of vandalism may be sentenced to a jail term not to exceed one hundred eighty (180) days or to a fine not to exceed five thousand dollars (\$5,000.00) or to both.

c. **Restitution.** The judge may, in addition to, or-in lieu of, the punishments set out above, order the offender to pay the owner the repair or replacement costs of the damaged property or to perform work for the owner equal to the value of the damaged property.

2. Littering.

a. **Offense.** A person commits the offense of littering if that person throws, places, drops or disposes of any litter in a place which is not a lawful waste disposal site or receptacle for the disposal of litter.

b. **Sentence.** A person convicted of littering may be sentenced to a jail term not to exceed thirty (30) days or a fine not to exceed five hundred dollars (\$500.00) or to both.

c. The judge may, in addition to, or in lieu of, the punishments set out above, order the offender to pick up litter within tribal land, as community service, for a time not to exceed eighty (80) hours.

3. Dumping of Hazardous Material.

a. **Offense.** A person commits an offense if that person throws, places, drops or disposes of any hazardous material in a place which is not a lawful disposal site for such materials.

b. **Sentence.** A person convicted of dumping hazardous materials may be sentenced to a jail term not to exceed one (1) year or a fine not to exceed five thousand dollars (\$5,000.00) or to both. In addition, the Court may order the person to remove the materials that have been dumped or to pay for the cost of such removal.

4. Trespass.

a. **Offense.** A person commits the offense of trespass if that person knowingly enters the property or dwelling of another with reason to know that the owner would not permit him/her to do so, or refuses to depart when requested to do so, or enters upon Tribal properties and refuses to depart when requested to do so by an officer or employee of the Little Traverse Bay Bands of Odawa Indians.

b. **Sentence.** A person convicted of trespass may be sentenced to a jail term not to exceed ninety (90) days or to a fine not to exceed two thousand dollars (\$2,000.00) or to both.

K. Offenses Against the Family.

1. Court's Jurisdiction Expanded.

The court, in its discretion, may order the victim(s) or others touched by any of the offenses enumerated in this Section to undergo appropriate treatments or participate in appropriate rehabilitative program(s).

- a.** The Court, to protect children who are victims of crimes against the family or who are affected by crimes against the family, may:
 - i. find probable cause to believe that the children are minors-in-need-of-care and begin appropriate proceedings by entering a protective warrant pursuant to the Children's Code; or
 - ii. schedule an adjudicatory hearing, pursuant to the Children's Code, to determine whether the children are minors-in-need-of-care.
- b.** In cases of abuse, the Tribal Court shall have the option of ordering the abuser(s) to vacate the residence and allowing the children to remain in the residence, under the supervision of the Court or its designee.

2. Abandonment of a Child.

- a. Offense.** A parent, guardian or other person having legal custody of a child commits abandonment of a child if he/she intentionally or knowingly abandons a child under seventeen (17) years of age.
- b. Sentence.** A person convicted of abandonment of child may be sentenced to a jail term not to exceed one hundred eighty (180) days or to pay a fine not to exceed three thousand dollars (\$3,000.00) or to both.
- c.** The judge may order the offender to undergo an appropriate rehabilitative program, in lieu of, or in addition to, the sentence set out above, if it appears from the totality of the circumstances that rehabilitative services could help the offender become a responsible parent.

3. Failure to Support a Dependent.

- a. Offense.** A person commits an offense if that person knowingly and persistently fails to provide food, shelter, clothing, medical attention, financial support or other necessary care which he/she is capable of providing to his/her child or other dependent.
- b. Sentence.** A person convicted of failure to support a dependent may be sentenced to a jail term not to exceed ninety (90) days or to a fine not to exceed one

thousand dollars (\$1,000.00) or to both.

c. The judge may order the offender to undergo an appropriate rehabilitative program, in lieu of or in addition to, the sentence set out above, if it appears from the totality of the circumstances that rehabilitative services could help the offender become a responsible parent.

4. Sexual Conduct with a Foster Child or Stepchild.

a. Offense. A person commits an offense if that person knowingly engages in sexual penetration or contact with his/her foster child or stepchild who is under seventeen (17) years of age. Sexual contact means any fondling or manipulating of any part of the genitals, anus, or female breast.

b. Sentence. A person convicted of sexual conduct with a foster child or stepchild may be sentenced to a jail term not to exceed one (1) year or to a fine not to exceed five thousand dollars (\$5,000.00) or to both.

5. Incest.

a. Offense. A person commits incest if that person knowingly engages in sexual penetration or contact with another who is a member of such person's immediate family. Sexual contact means any fondling or manipulating of any part of the genitals, anus or female breast. For purposes of this Section immediate family means mother, father, son, daughter, brother or sister.

b. Sentence. A person who commits incest may be sentenced to a jail term not to exceed one (1) year or to pay a fine not to exceed five thousand dollars (\$5,000.00) or to both.

6. Child Abuse.

a. Offense. A person commits the offense of child abuse if that person intentionally, knowingly or recklessly causes physical injury to a child in his/her care or custody.

b. Sentence. A person who commits child abuse may be sentenced to a jail term not to exceed one (1) year or to a fine not to exceed five thousand dollars (\$5,000.00) or to both.

7. Spouse Abuse.

a. Offense. A person commits an offense if that person intentionally, knowingly or recklessly causes physical injury to his/her spouse.

b. The term spouse for this offense shall include:

- i. a husband or wife,
- ii. either member of a couple living together, and
- iii. either parent of a child.

c. Sentence. A person who commits spouse abuse may be sentenced to a jail term not to exceed one (1) year or to a fine not to exceed five thousand dollars (\$5,000.00) or to both.

COMMENTS

In keeping with Section **III (E)** a person should not be prosecuted for both an offense under this Section and for sexual assault, **VII (C) (4)**, because sexual conduct with a foster child or stepchild and incest are specific types of sexual assaults.

Also, a person should not be prosecuted for both child abuse and battery, or spouse abuse and battery, because these are specific types of battery. A person who abuses a child, not in his/her care or custody, should be prosecuted for battery.

L. Riot and Related Offenses.

1. Riot.

a. Offense. A person commits riot if, with five or more other persons acting together, that person intentionally, knowingly or recklessly uses force or violence, or threatens to use force or violence, which disturbs the public peace.

b. Sentence. A person convicted of riot may be sentenced to a jail term not to exceed one hundred eighty (180) days or to a fine not to exceed four thousand dollars (\$4,000.00) or to both.

2. Disorderly Conduct.

a. Offense. A person commits disorderly conduct if that person intentionally, knowingly or recklessly:

- i. engages in fighting, or provokes a fight;
- ii. makes any protracted commotion which prevents the transaction of the business of a lawful meeting, gathering or procession; makes loud and unreasonable noise; or
- iii. engages in the consumption of alcohol out of doors with two or more persons without a tribal permit.

- b. Sentence.** A person convicted of disorderly conduct may be sentenced to a jail term not to sixty (60) days or to a fine not to exceed one thousand dollars (\$1,000.00) or to both.
- 3. Obstructing a Highway or Other Public Thoroughfare.**
- a. Offense.** A person commits an offense if that person intentionally, knowingly or recklessly interferes, having no legal privilege to do so, with the use of any highway or public thoroughfare by creating an unreasonable inconvenience or hazard.
- b. Sentence.** A person who is convicted of obstructing a highway or other public thoroughfare may be sentenced to a jail term not to exceed sixty (60) days or to a fine not to exceed one thousand dollars (\$1,000.00) or to both.
- 4. Creating False Alarm.**
- a. Offense.** A person commits an offense if that person reports a bombing, fire, crime or other emergency knowing such report to be false or baseless and knowing that it will cause action by an official or voluntary agency organized to deal with emergencies;
- i. it will place a person in fear or imminent serious bodily injury; or
 - ii. it will prevent or interrupt the occupation of any building, room, place of assembly or other public place.
- b. Sentence.** A person convicted of creating false alarm may be sentenced to a jail term not to exceed ninety (90) days or to a fine not to exceed two thousand dollars (\$2,000.00) or to both.
- 5. Public Intoxication.**
- a. Offense.** A person commits public intoxication if that person appears in public in an inebriated state to the degree that he/she is unable to care for his/her own safety or is creating a public nuisance.
- b. Sentence.** A person convicted of public intoxication may be sentenced to a jail term not to exceed thirty (30) days or to a fine not to exceed five hundred dollars (\$500.00) or to both.
- c.** The judge may, in addition to or in lieu of, the punishments set out above, order the offender to participate in an alcohol treatment program.
- 6. Curfew.**
- a. Offense.** All minors must adhere to a curfew of 11:00 p.m. It shall be

unlawful for any minor to appear in public after curfew. Furthermore, it shall be unlawful for anyone to allow a minor to violate the tribal curfew.

b. Sentence. A person who is found guilty of a curfew violation may be sentenced to a jail term not to exceed thirty (30) days or to pay a fine not to exceed five hundred dollars (\$500.00) or to both.

7. Truancy.

a. Offense. It shall be unlawful for any minor under the age of sixteen (16) to be absent from school without proper permission or excuse. Furthermore, it shall be unlawful for any person to allow any minor under the age of sixteen (16) to be absent from school without proper permission or excuse.

b. Sentence. Any person found guilty of truancy may be sentenced in the Court's discretion to ensure regular school attendance.

M. Traffic Offenses.

1. Reckless Driving.

a. Offense. A person commits reckless driving if that person operates a motor vehicle in a manner that he/she knows or should know, endangers the safety or property of others, including, but not limited to, driving on the wrong side of the street, weaving, or driving at a speed in excess of that which is prudent under the conditions.

b. Sentence. A person convicted of reckless driving may be sentenced to a jail term not to exceed ninety (90) days or a fine not to exceed two thousand dollars (\$2,000.00) or to both.

2. Driving While Under the Influence of Intoxicating Liquor or Other Drug.

a. Offense. A person commits an offense if that person operates a motor vehicle within the territorial jurisdiction of the Little Traverse Bay Bands of Odawa Indians while under the influence of alcohol or other drugs.

b. Sentence. A person convicted of driving while under the influence of intoxicating liquor or other drugs may be sentenced to a jail term not to exceed one hundred eighty (180) days or to a fine not to exceed five thousand dollars (\$5,000.00) or to both.

c. Order for Treatment. The judge may, in addition to, or in lieu of the punishments set out above, order the offender to participate in an alcohol or

substance abuse treatment program.

3. Driving with an Open Alcohol Container.

a. Offense. A person commits an offense if that person operates a motor vehicle while an open container containing an alcoholic beverage is present anywhere in the passenger compartment of the vehicle.

b. Sentence. A person convicted of driving with an open alcohol container may be sentenced to a jail term not to exceed thirty (30) days or to a fine not to exceed one thousand dollars (\$1000.00) or to both.

4. Driving with a Loaded Firearm.

a. Offense. A person commits an offense if that person operates a motor vehicle with a loaded firearm present in the vehicle.

b. Sentence. A person convicted of driving with a loaded firearm may be sentenced to a jail term not to exceed ninety (90) days or to a fine not to exceed two thousand dollars (\$2,000.00) or to both.

5. Operation of Motor Vehicle without Proof of Insurance.

a. Offense. A person commits an offense if that person operates a motor vehicle without proof of insurance on his/her person or present in the vehicle.

b. Sentence. A person convicted of operation of a motor vehicle without proof of insurance may be sentenced to a jail term not to exceed sixty (60) days or to a fine not to exceed one thousand dollars (\$1,000.00). The uninsured vehicle may be impounded by LTBB until it is properly insured.

N. Criminal Homicide.

1. Offense. A person commits the offense of criminal homicide if:

a. that person intentionally causes the death of another person;

b. with intent to cause bodily injury to a person, that person causes the death of the intended victim or any other person;

c. that person voluntarily commits or participates in: the commission of, or attempts to commit, arson, robbery, burglary, kidnaping, assault, or sexual assault, and in the course of, or in furtherance of the crime that is being committed or attempted, or during flight from the scene of the crime, the death of a person is caused;

d. that person recklessly or by gross negligence causes the death of another

person, including the reckless operation of a motor vehicle; or

e. that person, through the negligent operation of a motor vehicle, causes the death of another person.

2. Sentence. A person convicted of criminal homicide may be sentenced to a jail term not to exceed one (1) year or to a fine not to exceed five thousand dollars (\$5,000.00), or to both, or to the maximum penalty allowable under federal law.

COMMENTS

A discussed above, under the Indian Civil Rights Act, a tribal court may only sentence an offender to a maximum of one (1) year in jail and/or a fine of five thousand dollars (\$5,000.00). Every effort should be made to obtain a federal prosecution in cases of criminal homicide, in addition to the tribal court prosecution. An offender can be prosecuted in both tribal and federal court without violating the United States Constitutional prohibition against double jeopardy because the tribal and federal governments are separate sovereign entities. United States v Wheeler, 435 US 313 (1978).

O. Alcohol-Related Offenses.

1. Possession or Consumption of Alcohol by a Person Under 21 Years of Age.

a. Offense. A person commits an offense if that person is under twenty-one (21) years of age and knowingly possesses or consumes any alcoholic beverage.

b. Sentence. A person convicted of possession or consumption of alcohol by a person under 21 years of age may be compelled to perform an amount of community service work and/or undergo rehabilitative treatment as deemed appropriate by the tribal judge.

c. In addition, the Court may sentence the person who commits this offense to a jail term not to exceed thirty (30) days or to a fine not to exceed one thousand dollars (\$1,000.00) or to both.

2. Furnishing Alcohol to a Person Under 21 Years of Age.

a. Offense. A person commits an offense if that person knowingly furnishes, purchases, provides or in any way procures, any alcoholic beverage for the possession or consumption by a person under twenty-one (21) years of age.

b. Sentence. A person convicted of furnishing alcohol to a person under twenty-one (21) years of age may be sentenced to a jail term not to exceed sixty

(60) days or to a fine not to exceed one thousand dollars (\$1,000.00) or to both.

3. Allowing a Person Under 21 Years of Age to Consume Alcohol.

a. Offense. A person commits an offense if that person knowingly allows a person under twenty-one (21) years of age to consume alcohol in his/her residence, vehicle, or presence.

b. Sentence. A person convicted of allowing a person under twenty-one (21) years of age to consume alcohol may be sentenced to a jail term not to exceed sixty (60) days or to a fine not to exceed one thousand dollars (\$1,000.00) or to both.

P. Controlled Substances.

1. Possession, Use, Sale, Manufacture and/or Distribution.

a. Offense. It shall be unlawful for any person to possess, use, sell, manufacture and/or distribute any controlled substance defined and/or described in the Uniform Controlled Substances Act, 21 U.S.C. Section 812, as updated, without prior authorization, with the exception of Marihuana (Marijuana) with the following prohibitions:

- i. No person shall transfer of marihuana or marihuana accessories to a person under the age of 21.
- ii. No person under the age of 21 shall possess, consume, purchase or otherwise obtain, cultivate, process, transport, or sell marihuana.
- iii. No person shall possess more than 2.5 ounces of marihuana within a person's place of residence unless the excess marihuana is stored in a container or area equipped with locks or other functioning security devices that restrict access to the contents of the container or area, except that not more than 15 grams of marihuana may be in the form of marihuana concentrate; within the person's residence, possessing, storing, and processing not more than 10 ounces of marihuana and any marihuana produced by marihuana plants cultivated on the premises and cultivating not more than 12 marihuana plants for personal use, provided that no more than 12 marihuana plants are possessed, cultivated, or processed on the premises at once.

- iv. No person shall consume marihuana while operating, navigating, or being in physical control of any motor vehicle, aircraft, snowmobile, off-road recreational vehicle, or motorboat, or smoking marihuana within the passenger area of a vehicle upon a public way.
- v. No person shall operate, navigate, or being in physical control of any motor vehicle, aircraft, snowmobile, off-road recreational vehicle, or motorboat while under the influence of marihuana.
- vi. No person shall consume marihuana in a public place or smoke marihuana where prohibited by the person who owns, occupies, or manages the property, except for purposes of this subdivision a public place does not include an area designated for consumption within a municipality that has authorized consumption in designated areas that are not accessible to persons under 21 years of age.
- vii. No person shall possess marihuana accessories or possessing or consuming marihuana on the grounds of a public or private school where children attend classes in preschool programs, kindergarten programs, or grades 1 through 12, in a school bus, or on the grounds of any correctional facility.
- viii. No person shall separation of plant resin by butane extraction or another method that utilizes a substance with a flashpoint below 100 degrees Fahrenheit in any public place, motor vehicle, or within the curtilage of any residential structure.
- ix. No person shall cultivate marihuana plants if the plants are visible from a public place without the use of binoculars, aircraft, or other optical aids or outside of an enclosed area equipped with locks or other functioning security devices that restrict access to the area.

b. Sentence. Any person convicted of this offense may be sentenced to a jail term not to exceed one year or to pay a fine not to exceed five thousand dollars (\$5,000.00) or to both.

(Source: WOS 2021-005, May 14, 2021, Section 9.701 (P, 1)(a-b))

2. Youth and Tobacco.

a. Offense. It shall be unlawful for any minor to possess, use or purchase tobacco or tobacco products. Furthermore, it shall be unlawful for any person to allow the possession, use or sale of tobacco or tobacco products to any minor.

b. Sentence. Any person found guilty of this offense may be sentenced to a jail term not to exceed ninety (90) days or to pay a fine not to exceed two thousand dollars (\$2,000.00) or to both.

c. Affirmative Defense. It shall be an affirmative defense to this offense when the alleged violation occurred in the furtherance of a recognized tribal and/or religious purpose.

Q. Animal Control.

1. Failure to Have a Dog Properly Licensed.

a. Offense. Any person who owns a dog must have the dog properly licensed under the County Animal Control Enforcement Ordinance or by the Little Traverse Bay Bands of Odawa Indians if LTBB sets up its own animal licensing system. A person commits an offense if that person fails to have his/her dog so licensed.

b. Sentence. A person who commits an offense may be sentenced to a jail term not to exceed thirty (30) days or to a fine not to exceed five hundred dollars (\$500.00) or to both.

2. Allowing a Dog to be a Public Nuisance.

a. Offense. Any person who owns, possesses or maintains a dog is responsible for such dog. A person, whose dog barks outside to an extent that a person of reasonable sensibility is disturbed by such barking, or whose dog is vicious or has propensity to be vicious, commits it's an offense.

b. Sentence. Any person convicted of allowing a dog to be a public nuisance may be sentenced to a jail term not to exceed thirty (30) days or to pay a fine not to exceed five hundred dollars (\$500.00) or to both.

c. In addition, the Court may order the destruction of the dog if necessary, to protect the public.

3. Allowing a Dog to Run at Large.

a. Offense. It shall be unlawful for any dog to run at large; provided that a dog engaged in hunting need not be leashed when under reasonable control of its owner, or possessor. The owner of a dog running at large commits an offense.

b. Sentence. Any person convicted of allowing a dog to run at large may be sentenced to a jail term not to exceed thirty (30) days or to pay a fine not to exceed one thousand dollars (\$1,000.00) or to both.

4. Animal Abuse.

a. Offense. A person commits an offense if that person intentionally beats, cruelly treats, torments, overloads or otherwise abuses any dog, livestock or poultry, or instigated any dog fight, cock fight, bull fight or other combat between animals or between animals and humans.

b. Sentence. A person convicted of animal abuse may be sentenced to a jail term not to exceed thirty (30) days or to a fine not to exceed one thousand dollars (\$1,000.00) or to both.

R. Violation of a Tribal Ordinance.

1. Offense. In addition to the offenses specified above, a person commits an offense under this Code if that person violates any criminal statute or ordinance duly enacted by the Tribal Council.

2. Sentence. A person convicted of violation of a tribal ordinance may be subject to whatever punishment is specified in the ordinance that was violated.

S. Habitual Offender.

1. Offense. Any person who is convicted under tribal law, who has previous convictions under tribal law, may be charged as a habitual offender.

2. Sentence. A person convicted of being a habitual offender may be sentenced as follows:

a. 2nd Offense: One and one half (1 1/2) times the maximum for the underlying offense not to exceed a jail term of one year or to pay a fine not to exceed five thousand dollars (\$5,000.00) or to both.

b. 3rd Offense: Two (2) times the maximum for the underlying offense not to exceed a jail term of one (1) year or to pay a fine not to exceed five thousand

dollars (\$5,000.00) or to both.

c. 4th or more offense: Not to exceed a jail term of one (1) year or to pay a fine not to exceed five thousand dollars (\$5,000.00) or to both.

T. Crimes Against Officers and Natural Resources

1. Assault of an Officer.

a. Offense. A person commits assault of an Officer if that person, by any intentional act, threat, or menacing conduct, causes the Officer to reasonably believe that he/she is in immediate danger of physical harm.

b. Sentence. A person convicted of assault of an Officer may be sentenced to a jail term not to one (1) year, or a fine not to exceed five thousand dollars (\$5,000.00) or both.

2. Assault of an Officer With a Weapon.

a. Offense. A person commits assault of an Officer with a weapon if that person, through the intentional or negligent use, or threatened use, of a weapon, causes the Officer to reasonably believe that he/she is in immediate danger of physical harm.

b. Sentence. A person convicted of assault of an Officer with a weapon may be sentenced to a jail term not to exceed one (1) year, or a fine not to exceed five thousand dollars (\$5,000.00) or both.

3. Battery of An Officer

a. Offense. A person who intentionally strikes or physically restrains or physically impedes an Officer commits the offense of battery of an Officer.

b. Sentence. A person convicted of battery of an Officer may be sentenced to a jail term not to exceed one (1) year or a fine not to exceed five thousand dollars (\$5,000.00) or both.

4. Eluding an Officer

a. Offense. A person who knowingly flees or attempts to evade an Officer after a visible or audible command to stop commits the offense of eluding an Officer. A visible or audible signal under this section may include the use of hands, voice, emergency lights or sirens.

- b. Sentence.** A person convicted of Eluding an Officer may be sentenced to a jail term not to exceed six (6) months or a fine not to exceed two thousand five hundred dollars (\$2,500.00) or both.
- 5. Larceny of Natural Resources.**
- a. Offense.** A person who, without permission of the owner, knowingly molests, disturbs or appropriates any wild plant, wild fish, wild animal or carcass thereof, which has been lawfully reduced to possession by or otherwise owned by another commits the offense of larceny of natural resources.
- b. Sentence.** A person convicted of larceny of natural resources may be sentenced to a jail term not to exceed ninety (90) days or a fine not to exceed one thousand dollars (\$1,000.00) or both.
- 6. Violation of a Natural Resource License or Permit Revocation or Suspension Order.**
- a. Offense.** A person commits an offense if he/she knowingly violates any natural resources license or permit suspension or revocation order.
- b. Sentence.** A person convicted of violation of a natural resource license or permit revocation or suspension order may be sentenced to a jail term not to exceed ninety (90) days or a fine not to exceed one thousand dollars (\$1,000.00) or both.
- 7. Impersonating an Officer.**
- a. Offense.** A person who is not an Officer who intentionally claims to be such an Officer through the use of false claims or disguise commits the offense of impersonating an Officer.
- b. Sentence.** A person convicted of impersonating an Officer may be sentenced to a jail term not to exceed six (6) months or a fine not to exceed two thousand five hundred dollars (\$2,500.00) or both.
- 8. Failure to Report Natural Resource Harvesting Injury or Death.**
- a. Offense.** A person who witnesses or encounters any life-threatening injury or death of another resulting from the actions of any person taking or attempting to take any wildlife, game, fish or furbearer, and who fails to make a reasonable attempt to report the injury or death to Tribal or other law enforcement or emergency response officials commits the offense of failing to report natural resource harvesting injury or death.

b. Sentence. A person convicted of failing to report natural resource harvesting injury or death may be sentenced to a jail term not to exceed ninety(90) days or a fine not to exceed two thousand five hundred dollars (\$2,500.00) or both.

9. Damaging or Stealing Gear.

a. Offense. A person who intentionally damages or steals any nets, stands, traps or gear belonging to another hunter, fisher or trapper commits the offense of damaging or stealing gear.

b. Sentence. A person convicted of damaging or stealing gear may be sentenced to a jail term not to exceed ninety (90) days or a fine not to exceed two thousand five hundred dollars (\$2,500.00) or both.

10. Conspiracy to Violate Natural Resource Regulation or Law.

a. Offense. A person commits conspiracy to violate natural resource regulation or law if that person agrees with one or more persons, with intent to promote or facilitate the commission of a violation, that at least one of them will engage in conduct constituting the violation, and one of the parties commits an overt act in furtherance of the agreement.

b. Sentence. A person convicted of conspiracy to violate natural resource regulation of law may be sentenced to a jail term not to exceed ninety (90) days or a fine not to exceed two thousand five hundred dollars (\$2,500.00) or both, in addition to any punishment provided for the specific violation if he/she actually carried it out.

11. Taking or Harming Threatened or Endangered Species.

a. Offense. A person who intentionally harms or harvests a threatened or endangered plant or animal species commits the offense of taking or harming a threatened or endangered species.

b. Sentence. A person convicted of taking or harming a threatened or endangered species may be sentenced to a jail term not to exceed six (6) months or a fine not to exceed five thousand dollars (\$5,000.00) or both.

12. Falsification of Identification to Procure a Tribal Natural Resource License.

a. Offense. A person who intentionally presents false identification for purposes of obtaining a natural resource license or permit that the person would

not otherwise be entitled to commit the offense of falsification of identification to procure a Tribal natural resource license.

b. Sentence. A person convicted of falsification of identification to procure a Tribal natural resource license may be sentenced to a jail term not to exceed ninety (90) days or a fine not to exceed two thousand five hundred dollars (\$2,500.00) or both.

U. Witness Intimidation:

The following conduct constitutes the crime of Witness Intimidation, and is punishable by up to one (1) year in jail and/or a five thousand-dollar (\$5,000) fine, unless the enhanced sentencing provisions of TLOA are enacted by Tribal Council, in which case the penalty would increase to three (3) years in prison, with the same maximum fine for perjury on any felony case, or crime punishable by over one (1) year in jail:

1. Threatening, intimidating, discouraging or dissuading a potential witness or victim with the intent to influence their testimony.
2. Threatening, intimidating, discouraging or dissuading a potential witness or victim from appearing at court proceedings, or complying with a subpoena in a pending or future court case.
3. Offering payment or any other inducement to a potential witness or victim with the intent of influencing their testimony.
4. Offering payment or any other inducement to a potential witness or victim with the intent of dissuading them from appearing, testifying, testifying truthfully, or complying with a subpoena in a pending or future court case.
5. Impeding, obstructing, preventing, interfering with, or attempting to impede, obstruct, prevent or interfere with the ability of a witness to attend, testify, or provide information in, or for, a pending or future court case.
6. Retaliating, threatening retaliation or attempting retaliation against a witness or victim for being a witness in a court case. “Retaliation” means to actually commit, or threaten to commit, a crime against any person, or to threaten harm, violence, or property damage against any person.

7. The Court may order any sentence under this section to be consecutive to any conviction on the underlying offense that the threats, attempted intimidation, offer of inducement, obstruction or retaliation was intended to affect.

(Source: WOS 2021-003, April 20, 2021, Section VII)

9.108 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.

(Source: WOS 2021-003, April 20, 2021, Section VIII)

Chapter 2. Sex Offense Statute

9.201 SECTION I. SHORT TITLE

This Statute may be cited as the “Sex Offense Statute” and repeals and replaces WOS 2009-009, or as amended.

(Source: WOS 2018-012, August 15, 2018, Section I)

9.202 PURPOSE

The purpose of this Statute is to set forth the Tribe’s jurisdiction and sovereign right to exercise its power to deem certain acts as criminal and prohibit sexual offenses.

(Source: WOS 2018-012, August 15, 2018, Section II)

9.203 DEFINITIONS

- A. “Breast” means any portion of the female breast below the top of the areola;
- B. “Broadcast” means to electronically transmit a visual image with the intent that it be viewed by a person or persons;
- C. “Capture” with respect to an image, means to videotape, photograph, film, record by any means, or broadcast;
- D. “Coercion”, for the purposes of this Statute, means any of the following:
 - 1. the use or threat of force against, abduction of, serious harm to, or physical restraint of an individual;
 - 2. the use of a plan, pattern, or statement with intent to cause an individual to believe that failure to perform an act will result in the use of force against, abduction of,

serious harm to, or physical restraint of an individual;

3. the abuse or threatened abuse of law or legal process;
4. controlling or threatening to control an individual's access to a controlled substance. "Controlled substance" is defined and described in the Uniform Controlled Substances Act, 21 U.S.C. Section 812, as updated, and any controlled substance defined in that Act that is mixed with or contains any of the following unless use and/or possess is defined or reclassified by federal or Tribal law;
5. the destruction of, taking of, or the threat to destroy or take an individual's identification document or other property;
6. use of debt bondage;
7. the use of an individual's physical or mental impairment, where such impairment has substantial adverse effects on the individual's cognitive or volitional functions;
8. the commission of civil or criminal fraud.

E. "Consent" means that at the time of the act of sexual intercourse or sexual contact there are actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact;

F. "Married" means one who is legally married to another, but does not include a person who is living separate and apart from his or her spouse and who has filed in an appropriate court for legal separation or for dissolution of his or her marriage;

G. "Mental incapacity" is that condition existing at the time of the offense which prevents a person from understanding the nature or consequences of the act of sexual intercourse or sexual contact whether that condition is produced by illness, defect, the influence of a substance or from some other cause;

H. “Physically helpless” means a person who is unconscious or for any other reason is physically unable to communicate unwillingness to an act;

I. “Recklessly” means with respect to a result or to a circumstance described by a statute defining an offense that a person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that disregard of such risk constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. A person who creates such a risk but is unaware of such risk solely by reason of voluntary intoxication also acts recklessly with respect to such risk;

J. “Sex” means acts of masturbation, sexual intercourse, or physical contact with a person's genitals, or the condition of human male or female genitals when in a state of sexual stimulation or arousal;

K. “Sexual act” means:

1. contact between the penis and the vulva or the penis and the anus, and for purposes of this subparagraph contact involving the penis occurs upon penetration, however slight;

2. contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus;

3. the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or

4. the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person;

L. “Sexual contact” means the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person;

M. “Significant Relationship” means a situation in which the perpetrator is:

1. A person who undertakes the responsibility, professionally or voluntarily, to provide education, health, welfare, or organized recreational activities principally for minors; or

2. A person who in the course of his or her employment supervises minors.

N. “Territorial Jurisdiction of the Little Traverse Bay Bands of Odawa Indians” means all land that is held in trust by the United States government for the benefit of the Tribe;

O. “Tribal Court” means the Little Traverse Bay Bands of Odawa Indians Tribal Court;

P. “Tribe” means the Little Traverse Bay Bands of Odawa Indians;

Q. “Under circumstances in which that individual has a reasonable expectation of privacy” means:

1. circumstances in which a reasonable person would believe that he or she could disrobe in privacy, without being concerned that an image of a private area of the individual was being captured; or

2. circumstances in which a reasonable person would believe that a private area of the individual would not be visible to the public, regardless of whether that person is in a public or private place.

(Source: WOS 2018-012, August 15, 2018, Section III)

(Source: WOS 2023-014, October 10, 2023, Section II(B)(1), Jurisdictional Adjustment Statute, See (N) in this Section)

9.204 JURISDICTION

A. Criminal jurisdiction of the Tribe extends to adult LTBB citizens and adult citizens of Federally Recognized Tribes, however, upon motion of the Tribal Prosecutor the Judge has the discretion to try a minor as an adult.

B. The Indian Civil Rights Act (ICRA), 25 U.S.C. Section 1302, was enacted by Congress in 1968. The Tribe's jurisdiction is limited to punishments that may impose up to a one (1) year jail term and a fine up to \$5,000.00.

C. TLOA, PL 111-211, was enacted by Congress in 2013. The Tribe's jurisdiction is extended to punishments that may impose up three (3) years imprisonment and a fine up to \$15,000.00, up the enactment of a Tribal Council Resolution.

(Source: WOS 2018-012, August 15, 2018, Section IV)

9.205 JUVENILE TRANSFER TO THE ADULT DIVISION OF TRIBAL COURT

A. If the juvenile is at least sixteen (16) years of age at the time of the offense, the Prosecutor shall have the option of filing the action as a juvenile offender proceeding or as an adult criminal matter. If the juvenile is between the ages of fourteen (14) and sixteen (16) and is alleged to have committed an offense, the Prosecutor may file a petition requesting the Court to transfer the juvenile to the Adult Division of the Court.

B. No juvenile under the age of fourteen (14) years of age shall be charged as an adult for violations under this Statute.

(Source: WOS 2018-012, August 15, 2018, Section V)

9.206 VICTIM'S PAST BEHAVIOR

A. In order to convict a person of any offense defined in this Statute it shall not be necessary that the testimony of the alleged victim be corroborated.

B. Evidence of the victim's past sexual behavior including but not limited to: the victim's marital history, divorce history, or general reputation for promiscuity, non-chastity, or sexual mores contrary to tribal community standards is inadmissible on the issue of credibility and is inadmissible to prove the victim's consent except as follows:

1. The perpetrator and the victim have engaged in sexual intercourse with each other in the past, and when the past behavior is material to the issue of consent, evidence concerning the past behavior between the perpetrator and the victim may be admissible on the issue of consent to the offense.

2. The Tribal Court shall hold a hearing out of the presence of the jury, if any, and the hearing shall be closed except to the necessary witnesses, the defendant, counsel, and those who have a direct interest in the case or in the work of the court.

3. Nothing in this section shall be construed to prohibit cross-examination of the victim on the issue of past sexual behavior when the Prosecution presents evidence in its case in chief tending to prove the nature of the victim's past sexual behavior, but the court may require a hearing concerning such evidence.

(Source: WOS 2018-012, August 15, 2018, Section VI)

9.207 DEFENSES TO PROSECUTION

A. In any prosecution in which lack of consent is based solely upon the victim's mental incapacity or upon the victim's being physically helpless, it is a defense which the defendant must prove by a preponderance of the evidence that at the time of the offense the defendant reasonably believed that the victim was not mentally incapacitated and/or physically helpless.

B. In any prosecution in which the offense depends on the victim's age, it is not a defense that the perpetrator did not know the victim's age, or that the perpetrator believed the victim to be

older, as the case may be; provided, that it is a defense which the defendant must prove by a preponderance of the evidence that at the time of the offense the defendant reasonably believed the alleged victim to be the age identified based upon declarations as to age by the alleged victim.

(Source: WOS 2018-012, August 15, 2018, Section VII)

9.208 *Reserved*

9.209 STATUTE OF LIMITATIONS

- A.** A prosecution for an offense under this Statute must be commenced within five (5) years after commission of the offense.
- B.** The set time period begins when the victim, if a child, turns eighteen years of age.
- C.** Time spent outside of the Tribal jurisdiction shall not be counted toward the statute of limitations to begin prosecution.

(Source: WOS 2018-012, August 15, 2018, Section IX)

9.210 OFFENSES

A. Criminal Sexual Conduct is a crime that is punishable up to the Tribe's maximum jurisdiction and is a felony. A person is guilty of criminal sexual conduct if he or she engages in sexual penetration with another person and if any of the following circumstances exists:

- 1.** That other person is under 13 years of age.
- 2.** That other person is at least 13 but less than 16 years of age and any of the following:
 - a.** The actor is a member of the same household as the victim.

- b.** The actor is related to the victim by blood or affinity to the fourth degree.
 - c.** The actor is in a position of authority over the victim and used this authority to coerce the victim to submit.
 - d.** The actor is a teacher, substitute teacher, or administrator, employee, volunteer or a contractual service provider of a school, school district, or intermediate school district in which that other person is enrolled and the actor uses his or her employee, contractual, or volunteer status to gain access to, or to establish a relationship with, that other person.
 - e.** The actor is an employee, contractual service provider, or volunteer of a child care organization, or a person licensed to operate a foster family home or a foster family group home in which that other person is a resident, and the sexual penetration occurs during the period of that other person's residency.
- 3.** Sexual penetration occurs under circumstances involving the commission of any other felony.
 - 4.** The actor is armed with a weapon or any article used or fashioned in a manner to lead the victim to reasonably believe it to be a weapon.
 - 5.** The actor causes personal injury to the victim and force or coercion is used to accomplish sexual penetration.
 - 6.** The actor causes personal injury to the victim, and the actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.
 - 7.** That other person is mentally incapable, mentally disabled, mentally incapacitated, or physically helpless, and any of the following:

8. The actor is related to the victim by blood or affinity to the fourth degree.

9. The actor is in a position of authority over the victim and used this authority to coerce the victim to submit.

A. Child Molestation is a crime that is punishable up to the Tribe's maximum jurisdiction and is a felony. A person is guilty of the offense of Child Molestation when the person has, or knowingly causes:

1. another person under the age of eighteen (18) to have, sexual contact with another who is at least twelve (12) years old but less than fourteen (14) years old and the perpetrator is at least thirty-six (36) months older than the victim.

2. another person under the age of eighteen (18) to have, sexual contact with another who is at least fourteen (14) years old but less than sixteen (16) years old and not married to the perpetrator and the perpetrator is at least forty-eight (48) months older than the victim.

3. another person under the age of eighteen (18) to have sexual contact with another who is less than twelve years old (12) and the perpetrator is at least thirty-six (36) months older than the victim.

B. Sexual Misconduct with a Child is a crime that is punishable up to the Tribe's maximum jurisdiction and is a felony. A person is guilty of the offense of Sexual Misconduct with a Child when the person has, or knowingly causes:

1. another person under the age of eighteen (18) to have, sexual contact with another person who is at least sixteen (16) years old but less than eighteen (18) years old and not married to the perpetrator, if the perpetrator is at least sixty (60) months older than the victim, is in a significant relationship to the victim, and abuses that relationship in order to engage in or cause another person under the age of eighteen (18) to engage in sexual contact with the victim; or

2. another person under the age of eighteen (18) to have, sexual intercourse with another person who is at least sixteen (16) years old but less than eighteen (18) years old and not married to the perpetrator, if the perpetrator is at least sixty (60) months older than the victim, is in a significant relationship to the victim, and abuses that relationship in order to engage in or cause another person under the age of eighteen (18) to engage in sexual intercourse with the victim.

C. Indecent Exposure is a crime that is punishable up to the Tribe’s maximum jurisdiction and is a felony. A person is guilty of the offense of Indecent Exposure if he or she knowingly or recklessly exposes his or her genitals or anus or she exposes her breast or breasts and another person is present or is reckless about whether such other person may be present and would be offended or alarmed by the act. Unless it is under circumstances in which that individual has a reasonable expectation of privacy. The provisions of this section shall apply regardless of whether the person violates the section in person or via the Internet or other electronic means.

D. Indecent Exposure to a Child is a crime that is punishable up to the Tribe’s maximum jurisdiction and is a felony. A person is guilty of the offense of Indecent Exposure if he or she knowingly and purposefully exposes his or her genitals or anus or she exposes her breast or breasts and another person under the age of fifteen (15), unless it is under circumstances in which that individual has a reasonable expectation of privacy. The provisions of this section shall apply regardless of whether the person violates the section in person or via the Internet or other electronic means.

E. Public Sexual Indecency is a crime that is punishable up to the Tribe’s maximum jurisdiction and is a felony. A person commits the offense of Public Sexual Indecency by intentionally or knowingly engaging in any of the following acts, if another person is present, and the defendant is reckless about whether such other person, as a reasonable person, would be offended or alarmed by the act:

1. An act of sexual contact.
2. An act of oral sexual contact.

3. An act of sexual intercourse.
4. An act involving contact between the person's mouth, vulva or genitals and the anus or genitals of an animal.

The provisions of this section shall apply regardless of whether the person violates the section in person or via the Internet or other electronic means.

F. Prostitution and Child Prostitution see WOS Human Trafficking Statute

G. Sexual Exposure of a Child is a crime that is punishable up to the Tribe's maximum jurisdiction and is a felony. A person is guilty of the offense of Sexual Exposure of a Child when a person knowingly:

1. exposes his or her genitals to a child less than fifteen (15) years of age under circumstances in which he or she knows that his or her conduct is likely to cause affront or alarm to the child;
2. exposes his or her genitals to a child less than (15) fifteen years of age for the purpose of arousing or gratifying the sexual desire of any person, including the child; or
3. coerces or induces a child less than fifteen (15) years of age to expose the child's genitals for the purpose of arousing or gratifying the sexual desire of any person, including the child.

The provisions of this section shall apply regardless of whether the person violates the section in person or via the Internet or other electronic means.

H. Sexual Abuse of a Child is a crime that is punishable up to the Tribe's maximum jurisdiction and is a felony. A person is guilty of the offense of Sexual Abuse of a Child when a person:

1. knowingly employs, uses, or permits the employment or use of a child in an exhibition of sexual conduct, actual or simulated;
2. knowingly capture by photographs, films, videotapes, develops or duplicates the photographs, films, or videotapes, or records a child engaging in sexual conduct, actual or simulated;
3. knowingly, by any means of communication, including electronic communication, persuades, entices, counsels, or procures a child under sixteen (16) years of age or a person the offender believes to be a child under sixteen (16) years of age to engage in sexual conduct, actual or simulated;
4. knowingly processes, develops, prints, publishes, transports, distributes, broadcasts, sells, exhibits, or advertises any visual or print medium, including a medium by use of electronic communication in which a child is engaged in sexual conduct, actual or simulated;
5. knowingly possesses any visual or print medium, including a medium by use of electronic communication in which a child is engaged in sexual conduct, actual or simulated;
6. possesses with intent to sell any visual or print medium, including a medium by use of electronic communication in which a child is engaged in sexual conduct, actual or simulated; or
7. finances any of the activities, knowing that the activity is of the nature described as Sexual Abuse of a Child.

I. Visual Representation of a Sexual Act involving a Child is a crime that is punishable up to the Tribe's maximum jurisdiction and is a felony. A person commits the offense of Visual Representation of a Sexual Act involving a Child when a person attempts, conspiracies or knowingly possesses, produces, reproduces, distributes, broadcast, receives, or has the intent to

distribute or broadcast, a visual depiction of any kind, including a drawing, cartoon, sculpture, or painting, that:

1. depicts a minor engaging in sexually explicit conduct and is obscene, or
2. depicts an image that is, or appears to be, of a minor engaging in graphic bestiality, sadistic or masochistic abuse, or sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex, and such depiction lacks serious literary, artistic, political, or scientific value.

J. Incest is a crime that is punishable up to the Tribe’s maximum jurisdiction and is a felony. A person commits the offense of Incest when a person knowingly marries a person who is biologically related to the following persons:

1. Parent and child;
2. Grandparent and grandchild;
3. Brother and sister, or half-brother and half-sister;
4. Uncle and niece, or aunt and nephew; or
5. Cousins in the first degree.

(Source: WOS 2018-012, August 15, 2018, Section X)

9.211 through 9.229 *Reserved*

9.230 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.

(Source: WOS 2018-012, August 15, 2018, Section XXX)

9.231 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.

(Source: WOS 2018-012, August 15, 2018, Section XXXI)

9.232 OTHER RELATED STATUTES

See Crimes Statute; Criminal Conduct and Protection Statute; Sex Offense Statute; Sex Offender Registration and Notification Statute; Felony Defined Statute; Domestic Violence Statute; Victim's Rights Statute; Personal Protection Orders and No Contact Orders and Violations of Protective Order; or as may be amended.

(Source: WOS 2018-012, August 15, 2018, Section XXXII)

Chapter 3. Civil Traffic

9.301 SHORT TITLE

This Statute may be cited as the “Civil Traffic Statute”, and repeals and replaces any prior law, Statute or resolution, including WOS 2006-021.

(Source: WOS 2010-011, October 14, 2010, Section I)

9.302 PURPOSE

The purpose of this Statute is to establish a Civil Traffic Statute.

(Source: WOS 2010-011, October 14, 2010, Section II)

9.303 CREATION AND AUTHORITY

The Tribal Council of the Little Traverse Bay Bands of Odawa Indians creates the Tribal Police Department as an Executive Department to protect the peace and safety of the Tribe and its Tribal Citizens and has the full authority to enforce all Sections within this Statute.

(Source: WOS 2010-011, October 14, 2010, Section III)

9.304 DEFINITIONS

Terms used in this Statute shall have the meaning given to them in this Statute except where otherwise defined, and unless the context clearly indicates otherwise:

A. “Alcoholic beverage” means any spirituous, vinous, malt or fermented liquor, liquors and compounds, whether or not medicated, proprietary, patented, and by whatever name called, containing one-half of one percent ($\frac{1}{2}$ of 1%) or more alcohol by volume, which are fit for use for beverage purposes.

- B.** “Authorized emergency vehicle” means fire, police, or ambulance of the Tribe or of any other foreign jurisdiction including federal, state or local governments including private ambulatory services.
- C.** “Bicycle” means every device propelled solely by human power upon which a person or persons may ride, having two tandem wheels either of which is sixteen inches or more in diameter, or three wheels, any one of which is more than twenty inches in diameter.
- D.** “Camper” means a structure designed to be mounted upon a motor vehicle which provides facilities for human habitation or for temporary outdoor or recreational lodging and which is five feet or more in overall length and five feet or more in height from its floor to its ceiling when fully extended, but does not include motor homes.
- E.** “Cancel” in all its forms, means invalidation indefinitely.
- F.** “Center line” means the line, marked or unmarked, parallel to and equal distance from the sides of a two-way traffic road except where otherwise indicated by painted lines or markers.
- G.** “Center of intersection” means the point of intersection of the center lines of intersecting public roads.
- H.** “Combination of vehicles” means every combination of motor vehicle and motor vehicle, motor vehicle and trailer or motor vehicle and semitrailer.
- I.** “Commercial vehicle” means any vehicle whose principal use is transporting commodities, merchandise, produce, freight, animals, or passengers for hire.
- J.** “Crosswalk” means the portion of the roadway between the intersection area and a line ten feet from the intersection, unless modified by a marked crosswalk.
- K.** “Department” means the Little Traverse Bay Bands of Odawa Indians Law Enforcement Department.

L. “Explosives” means any chemical compound or mechanical mixture commonly used or intended for the purpose of producing an explosion, and which contains any oxidizing or combustible units or other ingredients such that an ignition by fire, friction, concussion, percussion or detonation of any part of the compound mixture may generate such highly heated gases that the resultant pressures are capable of damaging nearby objects or of destroying life or limb.

M. “Farm tractor/Farm Vehicle” means every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry used primarily in agricultural pursuits on farms for the purpose of transporting machinery, equipment, implements, farm products, supplies and/or farm labor and is only incidentally operated on or moved along public roads for the purpose of going from one farm to another.

N. “Farming” means the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (except forestry or forestry operations), the raising of livestock, bees, fur-bearing animals, or poultry, and any practices performed on a farm incident to or in conjunction with farming operations.

O. “Flammable liquid” means any liquid which has a flash point of 70° Fahrenheit, or less.

P. “For hire vehicle” means any motor vehicle used for the transportation of persons for compensation, except auto stages and ride-sharing vehicles.

Q. “Foreign Government” includes state, county, municipal, or other local public board or body having authority to adopt police or public safety regulations.

R. “Governmental transit vehicle” includes every motor vehicle which is owned or operated by the Tribe or a foreign government that provides public transportation for the purpose of carrying passengers and incidental baggage and freight on a regular schedule.

S. “Hours of darkness” means the hours from one-half hour after sunset to one-half hour before sunrise, and any other time when persons or objects may not be clearly seen from five hundred feet.

T. “Intersection area” means the area included within the area in which vehicles traveling upon different roads joining at any angle may come in conflict. The junction of an alley with a street or road is not an intersection.

U. “Intersection control area” means intersection area, together with any modification of the adjacent roadway area resulting from the arc of curb corners and any marked or unmarked crosswalks adjacent to the intersection.

V. “Lane road” means a road divided into clearly marked lanes for vehicular traffic.

W. “Law Enforcement Officer/ Officer” means Little Traverse Bay Bands of Odawa Indians Tribal Law Enforcement Officer or an Officer from a foreign government who is authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

X. “Legal owner” means a person having a security interest in a vehicle according to applicable Tribal, state or federal laws, or the registered owner of a vehicle without a security interest or the lessor of a vehicle without a security interest.

Y. “Marked crosswalk” means any portion of a roadway identified for pedestrian crossing by lines or other markings.

Z. “Mobile home, manufactured home” means a structure, designed and constructed to be transportable in one or more sections, built on a permanent chassis, and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, including plumbing, heating, and electrical systems. Manufactured home does not include a modular home. A structure which met the definition of a “manufactured home” at the time of manufacture is still considered to meet this definition even if it is no longer transportable.

AA. “Moped” means a motorized device designed to travel with not more than three sixteen-inch or larger diameter wheels in contact with the ground, having fully operative pedals, and a motor that is capable of propelling the device at not more than thirty miles per hour on level ground. Any other vehicle properly licensed by an authorized state or federal authority may also be considered a moped.

BB. “Motor homes” means motor vehicles originally designed, reconstructed, or permanently altered to provide facilities for lodging and cooking or sewage disposal, and is enclosed within a solid body shell with the vehicle. A camper or like unit constructed separately and attached to a motor vehicle is not a motor home.

CC. “Motor vehicle” means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, including an automobile, motor truck, motor home, motorcycle, or any other self-propelled except devices exclusively moved by human power or used exclusively upon stationary rails or tracks and except for the purpose of titling and registration of a mobile home.

DD. “Motorcycle” means a motor vehicle designed to travel on not more than three wheels in contact with the ground, on which the driver rides astride the motor unit or power train and is designed to be steered with a handle bar. Farm tractors and mopeds are excluded. Or any motor vehicle authorized by a foreign government that is approved of and defined as a “motorcycle”.

EE. “Muffler” means a device consisting of a series of chambers, or other mechanical designs which receives exhaust gas from an internal combustion engine and is effective in reducing noise.

FF. “Multiple lane road” means any road wide enough to reasonably accommodate two or more separate lanes of traffic in the same direction, each lane not less than the maximum legal vehicle width, whether or not the lanes are marked.

GG. “Operator or Driver” means every person who drives or is in actual physical control of a vehicle.

HH. “Owner” means a person who has a lawful right of possession of a vehicle by reason of obtaining it by purchase, exchange, gift, lease, inheritance or legal action whether or not the vehicle is subject to a security interest. It means registered owner where the reference to owner may be construed as either to registered or legal owner.

II. “Park or Parking” means the standing of a vehicle, whether occupied or not, other than temporarily for the purpose of and while actually engaged in loading or unloading property or passengers.

JJ. “Passenger car” means every motor vehicle, except motorcycles, designed for carrying ten passengers or less and used for the transportation of persons.

KK. “Pedestrian” means any person who is afoot or who is using a wheelchair or a means of conveyance propelled by human power other than a bicycle.

LL. “Person” includes every natural person, firm, co-partnership, corporation, association, or organization.

MM. “Pneumatic tires” includes every tire of rubber or other resilient material designed to be inflated with compressed air to support the load.

NN. “Pole trailer” means every vehicle without power, designed to be attached to a towing vehicle by means of a reach, or pole, or by being boomed or otherwise secured to the towing vehicle, and ordinarily used for transporting long or irregular shaped loads capable of sustaining themselves as beams between the supporting connections.

OO. “Private carrier bus” means every motor vehicle having a seating capacity for eleven or more people, used regularly to transport people for any organized agricultural, religious or charitable purpose. This term does not include buses operated by common carriers.

PP. “Private road or driveway” includes every place in private ownership used for travel of vehicles by the owner or those having express or implied permission from the owner, but not by other persons.

QQ. “Registered owner” means the person whose lawful right of possession of a vehicle has most recently been recorded with a licensing department.

RR. “Rental car” means a passenger car that is used solely by a rental car business for rental to others, without a driver provided by the rental car business, for periods of not more than thirty consecutive days. A “Rental car” does not include vehicles rented or loaned to customers by automotive repair businesses while the customer's vehicle is under repair; or vehicles licensed and operated as taxicabs.

SS. “Rental car business” means a person engaging in the business of renting rental cars.

TT. “Residence district” means the area next to and including a public road not comprising a business district, when the property on the public road for a continuous distance of three hundred feet or more on either side is mostly improved with residences or residences and buildings in use for business.

UU. “Revoke” in all its forms, means the invalidation for a period of one calendar year and thereafter until reissued.

VV. “Right of way” means the right of one vehicle or pedestrian to proceed in a lawful manner in preference to another vehicle or pedestrian approaching under such circumstances of direction, speed, and proximity as to be in danger of a collision unless one gives way to the other.

WW. “Road” means the entire width between the boundary lines of every way publicly maintained when any part is open to the use of the public for vehicular travel.

XX. “Roadway” means that portion of a road improved, designed, or ordinarily used for vehicular travel, exclusive of the sidewalk or shoulder even though the sidewalk or shoulder is used by persons riding bicycles.

YY. “Safety zone” means the area or space officially set apart within a roadway for the exclusive use of pedestrians and which is protected or is marked or indicated by painted marks, signs, buttons, standards, or otherwise.

ZZ. “School bus” means every motor vehicle used regularly to transport children to and from school or in connection with school activities.

AAA. “Semitrailer” includes every vehicle without power designed and constructed so that an appreciable part of its weight and that of its load rests on and is carried by a towing vehicle, motor vehicle, or truck tractor.

BBB. “Sidewalk” means that property between the curb lines or the edge of a roadway and the adjacent property, set aside and intended for the use of pedestrians or the portion of private property parallel and next to a public road and dedicated to use by pedestrians.

CCC. “Solid tire” includes every tire of rubber or other resilient material which does not depend upon inflation with compressed air for the support of the load.

DDD. “Stand or standing” means the stopping of a vehicle, occupied or not, other than temporarily for the purpose of and while actually engaged in receiving or discharging passengers.

EEE. “Stop” when required, means complete cessation from movement.

FFF. “Stop or stopping” when prohibited, means any halting even momentarily of a vehicle, occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of an Officer or traffic control sign or signal.

GGG. “Suspend” in all its forms and unless a different period is specified, means invalidation for any period less than one calendar year and thereafter until reinstatement.

HHH. “Territorial Jurisdiction of the Little Traverse Bay Bands of Odawa Indians” means all land that is held in trust by the United States government for the benefit of the Tribe.

III. “Traffic” includes pedestrians, ridden or herded animals, vehicles, and other conveyances either singly or together, while using any public roads for purposes of travel.

JJJ. “Traffic-control devices” means all signs, signals, markings and devices not inconsistent with this Statute, placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning or guiding traffic.

KKK. “Trailer” includes every vehicle without power designed for being drawn by or used in conjunction with a motor vehicle constructed so that no appreciable part of its weight rests on or is carried by the motor vehicle.

LLL. “Tribal Council” means the Legislative Branch of the Little Traverse Bay Bands of Odawa Indians Tribe.

MMM. “Tribal Court” means the court within the Judiciary Branch of the Little Traverse Bay Bands of Odawa Indians Tribe.

NNN. “Tribe” means the Little Traverse Bay Bands of Odawa Indians Tribe.

OOO. “Used vehicle” means a vehicle which has been sold, bargained, exchanged, given away, or title transferred from the person who first took title to it from the manufacturer or first importer, dealer, or agent of the manufacturer or importer, and so used as to have become what is commonly known as “second-hand” within the ordinary meaning.

PPP. “Wheelchair conveyance” means any vehicle specially manufactured or designed for the transportation of a physically or medically impaired wheelchair-bound person. The vehicle may be a separate vehicle used in lieu of a wheelchair or a separate vehicle used for transporting the impaired person while occupying a wheelchair. The vehicle shall be equipped with a propulsion device capable of propelling the vehicle. The Chief of Police may approve and define as a wheelchair conveyance, a vehicle that fails to meet these specific criteria but is essentially similar in performance and application to vehicles that do meet these specific criteria.

(Source: WOS 2010-011, October 14, 2010, Section IV)

(Source: WOS 2023-014, October 10, 2023, Section II(B)(2), Jurisdictional Adjustment Statute, See (HHH) in this Section)

9.305 LIABILITY OF OPERATOR, OWNER, LESSEE FOR VIOLATIONS

A. Whenever an act or omission is declared to be in violation of this Statute, if the operator of the vehicle is not the owner or lessee of the vehicle, but is so operating or moving the vehicle with the express or implied permission of the owner or lessee, then the operator and/or owner or lessee are both subject to the provisions of this Statute with the primary responsibility to be that of the owner or lessee.

B. If the person operating the vehicle at the time of the violation or omission is not the owner or lessee of the vehicle, the person is fully authorized to accept the citation and execute the promise to appear on behalf of the owner or lessee.

(Source: WOS 2010-011, October 14, 2010, Section V)

9.306 ALLOWING UNAUTHORIZED PERSON TO DRIVE

It is a violation for the registered owner of a vehicle to knowingly permit another person to drive the vehicle when the other person is not a legally authorized driver.

(Source: WOS 2010-011, October 14, 2010, Section VI)

9.307 OPERATOR'S LICENSE, REGISTRATION, INSURANCE AND PLATES

A. Operator's License

1. No person shall operate a vehicle within the jurisdiction of the Tribe unless he or she has a valid operator's license, chauffeur's license or permit, issued to him or her by any jurisdiction recognized by the Tribe, on his or her person or within the vehicle being operated.

2. No person shall drive a motorcycle or a motor-driven cycle, except a moped, unless such person has a valid driver's license specially endorsed by a jurisdiction recognized by the Tribe to enable the holder to drive such vehicles, nor may a person drive a motorcycle of a larger engine displacement than that authorized by the special endorsement.

B. Registration of Vehicle

1. A certificate of license registration issued by the Tribe or other jurisdiction recognized by the Tribe for the limited purpose of this Section, to be valid must have endorsed thereon the signature of the registered owner (if a firm or corporation, the signature of one of its officers or other duly authorized agent) and must be carried in the vehicle for which it is issued.
2. It shall be a violation for any person to operate or have in his possession a vehicle without carrying thereon such certificate of license registration. Any person in charge of such vehicle shall, upon demand of an officer, permit an inspection of such certificate of license registration.
3. It shall be a violation for any person to sell or transfer any motor vehicle without having proper certificates of ownership.
4. A person may secure or obtain a certificate of ownership without obtaining a certificate of license registration and vehicle license plates, if the vehicle is not operated on a public road.

C. Liability Insurance or Other Financial Responsibility Required

1. It shall be a violation for a person to operate a motor vehicle on roads within tribal jurisdiction without insurance under an acceptable motor vehicle liability policy, is self-insured, is covered by an acceptable certificate of deposit, or is covered by an acceptable liability bond.
2. **“Acceptable”** means, for purposes of this Section, an amount consistent with tribal law or that of a jurisdiction recognized by the Tribe for the limited purpose of this Section. Written proof of financial responsibility for motor vehicle operation must be provided on the request of an Officer.

3. It shall be a violation to fail to display an insurance identification card when asked to do so by an Officer and shall create a presumption that the person does not have motor vehicle insurance.
4. If a person cited for a violation of this Section provides evidence to the Tribal Court that shows that at the time the person was cited, he or she was insured then the court may dismiss the violation without cost or fine.
5. The provisions of this Section shall not apply to operation of a motorcycle, a motor-driven cycle, or a moped.
6. It shall be a violation for any person who knowingly provides false evidence of financial responsibility to an Officer or to a court, including an expired or canceled insurance policy, bond, or certificate of deposit.

D. License Plate

1. It shall be a violation for a person to operate any vehicle over and along a public roadway without first obtaining and keeping in full force and effect a current and proper vehicle license plate and displaying the vehicle license plate properly registered to the vehicle and the current registered owner.
2. Exceptions.
 - a. Farm vehicle[s] if operated within a radius of fifteen miles of the farm where principally used or garaged and trailers used exclusively to transport farm implements from one farm to another during the daylight hours or at night when the equipment has lights that comply with the law.
 - b. "Special road construction equipment" which is designed and used primarily for grading of roads, paving of roads, earth moving, and other construction work on roads and which is only incidentally operated or moved over the road.

c. Spray or fertilizer applicator rigs designed and used exclusively for spraying or fertilizing in the conduct of agricultural operations and not primarily for the purpose of transportation, and nurse rigs or equipment auxiliary to the use of and designed or modified for the fueling, repairing or loading of spray and fertilizer applicator rigs and not used, designed or modified primarily for the purpose of transportation.

d. Forklifts operated during daylight hours on public highways adjacent to and within five hundred (500') feet of the warehouses they serve.

3. Attachment of Plates to Vehicles

a. Vehicle license number plates shall be attached conspicuously at the rear of the vehicle so it can be plainly seen and read at all times.

b. It is unlawful to display a vehicle license number plate not legally issued to the vehicle or plate(s) which have been in any manner changed, altered, disfigured or have become illegible.

c. It is unlawful to use any holders, frames, or any materials that in any manner change, alter, or make the vehicle license number plates illegible.

E. Legal Owner Not Liable for Acts of Registered Owner

The person, firm, co-partnership, association or corporation to whom a certificate of ownership has been issued shall not incur liability or be responsible for damage resulting from any act or contract made by the registered owner or by any person acting for, by or under the authority of the registered owner.

F. Alteration or Forgery

It shall be a violation for any person to alter, forge, or causes to be altered or forged any Operator's License, Registration, Insurance and/or Plates, Certificate of Title, or any assignment

thereof, or any release or notice of release of any encumbrance, or who holds or uses any certificate or assignment, or release or notice of release, knowing it to be altered or forged.

(Source: WOS 2010-011, October 14, 2010, Section VII)

9.308 PARKING PERMITS FOR PERSONS WITH DISABILITIES

A. The Department may issue parking permits for persons who have a disability that limits or impairs the ability to walk. The issuance of such permit shall allow the person to park in designated “Disabled” parking spaces.

B. Parking permits shall be in the form of a removable windshield placard and shall be displayed by hanging on the rear-view mirror when the vehicle is parked or in the form of a special license plate designated for persons with a Disability.

C. Any unauthorized use of the special placard or the special license plate is a violation.

D. It shall be a violation to park a vehicle in a parking place provided for persons with permits, whether on private property without charge or on public property reserved for permit parking. The Department may remove such violating vehicles at the owner’s expense.

(Source: WOS 2010-011, October 14, 2010, Section VIII)

9.309 VEHICLE LIGHTING AND OTHER EQUIPMENT

A. Violation

1. It shall be a violation for any person to drive or move or for the owner to cause or knowingly permit to be driven or moved on any highway any vehicle or combination of vehicles which is not equipped with the lamps and other equipment in proper condition and adjustment as mandated by this Statute.

2. Exceptions

- a. Farm vehicle[s] or other implements of husbandry, road machinery, road rollers, or farm tractors.
- b. motorcycles or motor-driven cycles except as specifically made applicable.

B. Lighted Lamps and Signaling Devices Requirements

Any person operating a motor vehicle shall display lighted head lights, other lights, and illuminating devices as required for different classes of vehicles, subject to exceptions with respect to parked vehicles any time from a half hour after sunset to a half hour before sunrise and at any other time when, due to insufficient light or unfavorable atmospheric conditions, persons and vehicles on the highway are not clearly discernible at a distance of one thousand feet ahead. The stop lights, turn signals, and other signaling devices shall be lighted as prescribed for the use of the devices.

C. Visibility Distance and Mounted Height of Lamps Requirements

- 1. Whenever a requirement is declared as to distance from which certain lamps and devices shall render objects visible or within which the lamps or devices shall be visible, these provisions shall apply during the times that lights are required in respect to a vehicle without load, on a straight, level, unlighted highway under normal atmospheric conditions unless a different time or condition is expressly stated.
- 2. The mounted height of lamps or devices means from the center of the lamp or device to the level ground when the vehicle is without a load.
- 3. No additional lamp, reflective device, or other motor vehicle equipment shall be added which impairs the effectiveness of this standard.

D. Head Lamps on Motor Vehicles Requirements

1. Any person operating a motor vehicle shall be equipped with at least two head lamps, with at least one on each side of the front of the motor vehicle, which comply with the requirements and limitations in this Statute.
2. Every head lamp upon every motor vehicle shall be located at a height of not more than fifty-four inches nor less than twenty-four inches.

E. Tail Lamps Requirements

1. Any person operating a motor vehicle, trailer, semitrailer, pole trailer, and any other vehicle being drawn at the end of a combination of vehicles, shall be equipped with at least two tail lamps mounted on the rear, which, when lighted during the time that lights are required, shall emit a red light plainly visible from a distance of one thousand feet to the rear, except that passenger cars manufactured or assembled prior to January 1, 1939, shall have at least one tail lamp.
2. With a combination of vehicles, only the tail lamps on the rearmost vehicle need actually be seen from the distance specified. On vehicles equipped with more than one tail lamp, the lamps shall be mounted on the same level and as widely spaced laterally as practicable.
3. Every tail lamp upon every vehicle shall be located at a height of not more than seventy-two-inches but not less than fifteen inches.
4. Either a tail lamp or a separate lamp shall be so constructed and placed as to illuminate with a white light the rear registration plate and render it clearly legible from a distance of fifty feet to the rear. Any tail lamp or tail lamps, together with any separate lamp or lamps for illuminating the rear registration plate, shall be lighted whenever the head lamps or auxiliary driving lamps are lighted.

F. Reflectors Requirements

1. Any person operating a motor vehicle, trailer, semitrailer, and pole trailer without carrying on the rear, either as a part of the tail lamps or separately, shall be equipped with two or more red reflectors.

2. Every reflector shall be mounted on the vehicle at a height not less than fifteen inches nor more than seventy-two inches, and shall be of a size and characteristics and so mounted as to be visible at night from all distances within six hundred feet to one hundred feet from the vehicle when directly in front of lawful upper beams of head lamps, except that reflectors on vehicles manufactured or assembled prior to January 1, 1970, shall be visible at night from all distances within three hundred and fifty feet to one hundred feet when directly in front of lawful upper beams of head lamps.

G. Stop Lamps and Turn Signals Requirements

1. Any person operating a motor vehicle, trailer, semitrailer, and pole trailer shall be equipped with two or more stop lamps, except that passenger cars manufactured or assembled prior to January 1, 1964, shall be equipped with at least one stop lamp. On a combination of vehicles, only the stop lamps on the rearmost vehicle need actually be seen from the distance required.

2. Every motor vehicle, trailer, semitrailer and pole trailer shall be equipped with electric turn signal lamps, except that passenger cars, trailers, semitrailers, pole trailers, and trucks less than eighty inches in width, manufactured or assembled prior to January 1, 1953, need not be equipped with electric turn signal lamps.

H. Additional Equipment Required on Certain Vehicles

1. Any person operating a Bus, Truck, Motor Home, and Motor Vehicle with Mounted Camper Eighty Inches or More in Over-All Width shall be equipped as follows:

a. On the front, two clearance lamps, one at each side, and on vehicles manufactured or assembled after January 1, 1964, three identification lamps.

b. On the rear, two clearance lamps, one at each side, and after January 1, 1964, three identification lamps.

c. On each side, two side marker lamps, one at or near the front and one at or near the rear.

d. On each side, two reflectors, one at or near the front and one at or near the rear.

2. Trailers and Semitrailers Eighty Inches or More in Over-All Width:

a. On the front, two clearance lamps, one at each side.

b. On the rear, two clearance lamps, one at each side, and after January 1, 1964, three identification lamps.

c. On each side, two side marker lamps, one at or near the front and one at or near the rear.

d. On each side, two reflectors, one at or near the front and one at or near the rear.

e. A mobile home need not be equipped with side marker lamps or reflectors while operated under the terms of a special permit.

3. Truck Tractors:

On the front, two cab clearance lamps, one at each side, and on vehicles manufactured or assembled after January 1, 1964, three identification lamps.

4. Trailers, Semitrailers, and Pole Trailers Thirty Feet or More in Over-All Length:

On each side, one amber side marker lamp and one amber reflector, centrally

located with respect to the length of the vehicle. A mobile home need not be equipped with side marker lamps or reflectors while being operated under the terms of a special permit.

5. Pole Trailers:

- a.** On each side, one amber side marker lamp at or near the front of the load.
- b.** One amber reflector at or near the front of the load.
- c.** On the rearmost support for the load, one combination marker lamp showing amber to the front and red to the rear and side, mounted to indicate maximum width of the pole trailer.

6. Boat Trailers Eighty Inches or More in Overall Width:

- a.** One on each side, at or near the midpoint, one clearance lamp performing the function of both a front and rear clearance lamp.
- b.** On the rear, after June 1, 1978, three identification lamps.
- c.** One on each side, two side marker lamps, one at or near the front and one at or near the rear.
- d.** On each side, two reflectors, one at or near the front and one at or near the rear.
- e.** Identification lamps required or permitted by this Statute shall be grouped in a horizontal row, with lamp centers spaced not less than six nor more than twelve inches apart, and mounted on the permanent structure of the vehicle as close as practicable to the vertical centerline. When the cab of a vehicle is not more than forty-two inches wide at the front roof line, a single identification lamp at the center of the cab complies with the requirements for front identification lamps.

7. Color of Lamps and Reflectors

- a.** Front clearance lamps and those marker lamps and reflectors mounted on the front or on the side near the front of a vehicle shall display or reflect an amber color.
- b.** Rear clearance lamps and those marker lamps and reflectors mounted on the rear or on the sides near the rear of a vehicle shall display or reflect a red color.
- c.** All lighting devices and reflectors mounted on the rear of any vehicle shall display or reflect a red color, except the stop lamp or other signal device, which may be red, amber, or yellow, and except that on any vehicle forty or more years old, the taillight may also contain a blue or purple insert of not more than one inch in diameter, and except that the light illuminating the license plate shall be white and the light emitted by a back-up lamp shall be white or amber.

8. Mounting of Reflectors and Lamps

- a.** Required reflectors shall be mounted at a height not less than twenty-four inches and not higher than sixty inches, except that if the highest part of the permanent structure of the vehicle is less than twenty-four inches the reflector at that point shall be mounted as high as the permanent structure will permit.
- b.** The rear reflectors on a pole trailer may be mounted on each side of the bolster or load.
- c.** Any required red reflector on the rear of a vehicle may be incorporated with the tail lamp, but the reflector shall meet all the other reflector requirements of this Statute.
- d.** Clearance lamps shall be mounted on the permanent structure of the vehicle so as to indicate the extreme height and width of the vehicle. Clearance lamps and

side marker lamps may be mounted in combination provided illumination is given as required by both.

e. No rear clearance lamp may be combined in any shell or housing with any tail lamp or identification lamp.

9. Visibility of Reflectors and Lamps

a. Every required reflector on any vehicle shall be of a size and characteristics and maintained so as to be readily visible at nighttime from all distances within six hundred feet to one hundred feet from the vehicle when directly in front of lawful lower beams of head lamps, except that the visibility for reflectors on vehicles manufactured or assembled prior to January 1, 1970, shall be measured in front of the lawful upper beams of headlamps.

b. Front and rear clearance lamps and identification lamps shall be capable of being seen and distinguished under normal atmospheric conditions at the times that lights are required at all distances between five hundred feet and fifty feet from the front and rear, respectively, of the vehicle.

c. Side marker lamps shall be capable of being seen and distinguished under normal atmospheric conditions at the times that lights are required at all distances between five hundred feet and fifty feet from the side of the vehicle.

I. Obstructed Lights Not Required

Whenever motor and other vehicles are operated in combination during the time that lights are required, any lamp (except tail lamps) need not be lighted which, by reason of its location on a vehicle of the combination, would be obscured by another vehicle of the combination. This does not affect the requirement that lighted clearance lamps be displayed on the front of the foremost vehicle required to have clearance lamps, nor that all lights required on the rear of the rearmost vehicle of any combination be lighted.

J. Lamps, Reflectors, and Flags on Projecting Load Requirement

1. When the load on any vehicle extends four feet or more beyond the rear of the bed or body of the vehicle during the time that lights are required, two red lamps, visible from a distance of at least five hundred feet to the rear; two red reflectors, visible at night from all distances within six hundred feet to one hundred feet to the rear when directly in front of lawful lower beams of headlamps and located so as to indicate maximum width; and, on each side, one red lamp, visible from a distance of at least five hundred feet to the side, located so as to indicate maximum overhang, shall be displayed at the extreme rear end of the load.
2. At all other times, any vehicle that has a load which extends beyond its sides or more than four feet beyond its rear, shall display red flags, not less than twelve inches square, marking the extremities of the loads at each point where a lamp would otherwise be required by this section when lights are required.

K. Lamps on Parked or Stopped Vehicles Requirements

1. Every parked or stopped vehicle shall be equipped with one or more lamps which, when lighted, shall display a white or amber light visible from a distance of one thousand feet to the front, and a red light visible from a distance of one thousand feet to the rear of the vehicle.
2. The location of the lamp or lamps shall always be such that at least one lamp or combination of lamps meeting the requirements of this section is installed as near as practicable to the side of the vehicle which is closest to passing traffic.
3. Whenever a vehicle is parked or stopped on a roadway or shoulder, whether attended or unattended, during the hours between a half hour after sunset and a half hour before sunrise and there is insufficient light to reveal any person or object within a distance of one thousand feet upon the highway, the vehicle shall be equipped with and shall display light visible from a distance of one thousand feet to the front, and a red light visible from a distance of one thousand feet to the rear of the vehicle

4. Any lighted head lamps upon a parked vehicle shall be depressed or dimmed.

L. Hazard Warning Lights and Reflectors on Farm Equipment Requirements

1. Every farm tractor and every self-propelled unit of farm equipment or implement of husbandry manufactured or assembled after January 1, 1970, shall be equipped with vehicular hazard warning lights visible from a distance of not less than one thousand feet to the front and rear in normal sunlight, which shall be displayed whenever any vehicle is operated upon a highway.

2. Every self-propelled unit of farm equipment or implement of husbandry manufactured or assembled after January 1, 1970, shall at all times, and every other motor vehicle shall during the time that lights are required, be equipped with lamps and reflectors as follows:

- a. At least two headlamps;

- b. At least one red lamp visible when lighted from a distance of not less than one thousand feet to the rear mounted as far to the left of center of the vehicle as practicable;

- c. At least two red reflectors visible from all distances within six hundred to one hundred feet to the rear when directly in front of lawful lower beams of headlamps.

3. After January 1, 1970, every farm tractor and every self-propelled unit of farm equipment or implement of husbandry designed for operation at speeds not in excess of twenty-five miles per hour shall at all times be equipped with a slow moving vehicle emblem mounted on the rear.

M. Lamps and Reflectors on Other Vehicles and Equipment Requirements

1. Animal-drawn vehicles are to be equipped with lamps or other lighting devices, shall, during the time that lights are required, be equipped with at least one lamp displaying

a white light visible from a distance of not less than one thousand feet to the front, and shall also be equipped with two lamps displaying red light visible from a distance of not less than one thousand feet to the rear of the vehicle, or as an alternative, one lamp displaying a red light visible from a distance of not less than one thousand feet to the rear and two red reflectors visible from all distances of six hundred to one hundred feet to the rear when illuminated by the lawful lower beams of head lamps.

2. Every animal-drawn vehicle shall at all times be equipped with a slow-moving vehicle emblem.

N. Spot Lamps and Auxiliary Lamps Requirements

1. Any motor vehicle may be equipped with not to exceed two spot lamps and every lighted spot lamp shall be so aimed and used that no part of the high intensity portion of the beam will strike the windshield, or any windows, mirror, or occupant of another vehicle in use.

2. Any motor vehicle may be equipped with not to exceed two fog lamps mounted on the front at a height of not less than twelve inches nor more than thirty inches and so aimed that when the vehicle is not loaded none of the high intensity portion of the light shall project to the left of the center of the vehicle at a distance of twenty-five feet ahead higher than a level of four inches below the level of the center of the lamp from which it comes. Lighted fog lamps meeting the above requirements may be used with lower head lamp beams.

3. Any motor vehicle may be equipped with not to exceed two auxiliary passing lamps mounted on the front at a height not less than twenty-four inches nor more than forty-two inches.

4. Any motor vehicle may be equipped with not to exceed two auxiliary driving lamps mounted on the front at a height not less than sixteen inches nor more than forty-two inches.

O. Red Flashing Lights on Fire Department Vehicles Requirements

All fire department vehicles in service may be identified by red lights of an intermittent flashing type, visible from both front and rear for a distance of five hundred feet under normal atmospheric conditions. The red flashing lights shall be well separated from the headlights so that they will not black out when headlights are on. The red flashing lights shall be in operation at all times when the vehicle is on emergency status.

P. Firemen's Private Cars

1. Firemen, when approved by the chief of their respective service, are authorized to use a green light on the front of their private cars when on emergency duty only. The green light shall be visible for a distance of two hundred feet under normal atmospheric conditions. The use of the green light is only for the purpose of identification, and the operator of a vehicle so equipped is entitled to any of the privileges provided the operators of authorized emergency vehicles.

2. Any sign or plate indicating fire department connection on a private car of any member of a fire department shall include the name of the municipality or fire department organization to which the owner belongs.

3. No private vehicle that bears a sign or plate indicating a fire department connection, shall be driven or operated on any public highway, except when the owner is a bona fide member of a fire department.

4. Any individual displaying a green light, or a sign or plate, shall also carry attached to a convenient location on the private vehicle to which the green light or sign or plate is attached, an identification card showing the name of the owner of the vehicle, the organization to which he or she belongs and bearing the signature of the chief of the service involved.

Q. Warning Devices on Vehicles Requirements

1. Authorized emergency vehicles shall be equipped with at least one lamp capable of displaying a red light visible from at least five hundred feet in normal sunlight and a siren capable of giving an audible signal.
2. A school bus and private carrier bus shall be equipped with a "stop" signal upon a background not less than fourteen by eighteen inches displaying the word "stop" in letters of distinctly contrasting colors not less than eight inches high, and shall further be equipped with signal lamps mounted as high and as widely spaced laterally as practicable, which shall be capable of displaying to the front two alternately flashing red lights located at the same level and to the rear two alternately flashing red lights located at the same level and these lights shall have sufficient intensity to be visible at five hundred feet in normal sunlight.
3. Vehicles operated by public agencies whose law enforcement duties include the authority to stop and detain motor vehicles on the public highways may be equipped with a siren and either red or blue lights of a type designated for that purpose.
4. The lights described in this section shall not be mounted nor used on any vehicle other than a school bus, a private carrier bus, or an authorized emergency or law enforcement vehicle. Optical strobe light devices shall not be installed or used on any vehicle other than an emergency vehicle authorized by the Chief of Police.
5. The use of the signal equipment described herein, used in conjunction with emergency equipment, shall impose upon drivers of other vehicles the obligation to yield right of way and stop.

R. Signs on Buses Requirements

1. Every school bus and private carrier bus shall bear upon the front and rear, above the windows, plainly visible signs containing only the words "school bus" on a school bus and only the words "private carrier bus" on a private carrier bus, in letters not less than eight inches in height.

2. Every school bus shall, in addition to any other equipment required by this Statute, be equipped with a crossing arm mounted to the bus that, when extended, will require students who are crossing in front of the bus to walk more than five feet from the front of the bus.

S. Emergency Tow Trucks Requirements

All emergency tow trucks shall be identified by an intermittent or revolving red light capable of 360° visibility at a distance of five hundred feet under normal atmospheric conditions. This intermittent or revolving red light shall be used only at the scene of an emergency or accident, and it is unlawful to use the light while traveling to or from an emergency or accident, or for any other purposes.

T. Stop Lamps and Electric Turn Signals Requirements

1. Any vehicle may be equipped and when required under this Statute shall be equipped with a stop lamp or lamps on the rear of the vehicle which shall display a red or amber light, or any shade of color between red and amber, visible from a distance of not less than one hundred feet and on any vehicle manufactured or assembled after January 1, 1964, three hundred feet to the rear in normal sunlight, and which shall be actuated upon application of a service brake, and which may but need not be incorporated with one or more other rear lamps.

2. Any vehicle may be equipped and when required, shall be equipped, with electric turn signals mounted on the same level and as widely spaced laterally as practicable, which indicate an intention to turn by flashing lights showing to the front and rear of a vehicle or on a combination of vehicles on the side of the vehicle or combination toward which the turn is to be made. The lamps showing to the front shall, when signaling, emit amber light. On any vehicle manufactured prior to January 1, 1969, the lamps showing to the front may emit white or amber light, or any shade of light between white and amber. The lamp showing to the rear shall, when signaling, emit a red or amber light, or any shade of color between red and amber.

3. Turn signal lamps shall be visible from a distance of not less than five hundred feet to the front and rear in normal sunlight. Turn signal lamps may, but need not, be incorporated in other lamps on the vehicle.

U. Additional Lighting Equipment Optional

1. Any motor vehicle may be equipped with:

a. Not more than two side cowl or fender lamps which shall emit an amber or white light without glare.

b. Not more than one running-board courtesy lamp on each side which shall emit a white or amber light without glare.

c. One or more back-up lamps either separately or in combination with other lamps, but any back-up lamp or lamps shall not be lighted when the motor vehicle is in forward motion.

d. One or more side marker lamps, and any such lamp may be flashed in conjunction with turn or vehicular hazard warning signals. Side marker lamps located toward the front of a vehicle shall be amber, and side marker lamps located toward the rear shall be red.

2. Any vehicle eighty inches or more in over-all width, if not otherwise required, may be equipped with not more than three identification lamps showing to the front which shall emit an amber light without glare and not more than three identification lamps showing to the rear which shall emit a red light without glare.

V. Hazard Warning Lamps Requirements

1. Any vehicle may be equipped with lamps for the purpose of warning operators of other vehicles of the presence of a vehicular traffic hazard requiring the exercise of unusual care in approaching, overtaking, or passing.

2. After June 1, 1978, every motor home, bus, truck, truck tractor, trailer, semitrailer, or pole trailer eighty inches or more in overall width or thirty feet or more in overall length shall be equipped with lamps meeting the requirements of this section.

3. Vehicular hazard warning signal lamps used to display the warning to the front shall be mounted at the same level and as widely spaced laterally as practicable, and shall display simultaneously flashing white or amber lights. On any vehicle manufactured prior to January 1, 1969, the lamps showing to the front may display simultaneously flashing white or amber lights, or any shade of color between white and amber. The lamps used to display the warning to the rear shall be mounted at the same level and as widely spaced laterally as practicable, and shall show simultaneously flashing amber or red lights, or any shade of color between amber and red. These warning lights shall be visible from a distance of not less than five hundred feet in normal sunlight.

W. Multiple-Beam Road-Lighting Equipment Requirements

Except as provided, the head lamps or the auxiliary driving lamp or the auxiliary passing lamp or combination thereof on motor vehicles shall be so arranged that the driver may select at will between distributions of light projected to different elevations, and the lamps may be arranged so the selection can be made automatically subject to the following limitations:

1. There shall be an upper distribution of light so aimed and of such intensity as to reveal persons and vehicles at a distance of four hundred fifty feet ahead for all conditions of loading.

2. There shall be a lower distribution of light so aimed and of sufficient intensity to reveal persons and vehicles at a distance of one hundred fifty feet ahead; and on a straight level road under any conditions of loading none of the high intensity portion of the beam shall be directed to strike the eyes of an approaching driver.

3. Every motor vehicle which has multiple-beam road-lighting equipment shall be equipped with a beam indicator, which shall be lighted whenever the upper distribution of

light from the head lamps is in use, and shall not otherwise be lighted. This indicator shall be so designed and located that when lighted it will be readily visible without glare to the driver of the vehicle so equipped.

X. Use of Multiple-Beam Road-Lighting Equipment Requirements

Whenever a motor vehicle is being operated on a roadway or shoulder adjacent thereto during the time that lights are required, the driver shall use a distribution of light directed high enough and of sufficient intensity to reveal persons and vehicles at a safe distance in advance of the vehicle, subject to the following requirements and limitations:

1. Whenever a driver of a vehicle approaches an oncoming vehicle within five hundred feet, the driver shall use a distribution of light aimed so that the glaring rays are not projected into the eyes of the oncoming driver. The lower distribution of light shall be deemed to avoid glare at all times, regardless of road contour and loading.
2. Whenever the driver of a vehicle approaches another vehicle from the rear within three hundred feet the driver shall use a distribution of light permissible under this Statute other than the upper distribution of light.

Y. Single-Beam Road-Lighting Equipment Requirements

Head lamp systems which provide only a single distribution of light are permitted on all farm tractors regardless of date of manufacture, and on all other motor vehicles manufactured and sold prior to one year after March 18, 1955, in lieu of multiple-beam road-lighting equipment if the single distribution of light complies with the following requirements and limitations:

1. The head lamps shall be aimed so that when the vehicle is not loaded none of the high intensity portion of the light shall at a distance of twenty-five feet ahead project higher than a level of five inches below the level of the center of the lamp from which it comes, and in no case higher than forty-two inches above the level on which the vehicle stands at a distance of seventy-five feet ahead.

2. The intensity shall be sufficient to reveal persons and vehicles at a distance of at least two-hundred feet.

Z. Special Restrictions on Lamps Requirements

1. Except as required by this Statute, no person shall drive or move any vehicle or equipment upon any highway with any lamp or device displaying a red light visible from directly in front of the center of the vehicle.

2. Flashing lights are prohibited except those required by this Statute.

(Source: WOS 2010-011, October 14, 2010, Section IX)

9.310 BRAKING EQUIPMENT REQUIRED

A. Violation

1. It shall be a violation for a vehicle and combination of vehicles that is not equipped with service brakes adequate to control the movement of and to stop and hold the vehicle under all conditions of loading, and on any grade incident to its operation, unless indicated otherwise.

2. It shall be a violation for a vehicle and combination of vehicles that is not equipped with parking brakes adequate to hold the vehicle on any grade on which it is operated, under all conditions of loading, on a surface free from snow, ice, or loose material, unless indicated otherwise.

B. Maintenance of Brakes and Failure Indicator Requirements

1. All brakes shall be maintained in good working order and shall be so adjusted as to operate as equally as practicable with respect to the front and back wheels and to wheels on opposite sides of the vehicle.

2. All passenger cars manufactured on or after January 1, 1968, and other types of vehicles manufactured on or after September 1, 1975, shall be equipped with brake system failure indicator lamps which shall be maintained in good working order. The brake system shall demonstrate good working order and integrity by the application of a force of one-hundred and twenty-five pounds to the brake pedal for ten seconds without the occurrence of any of the following:

- a. Illumination of the brake system failure indicator lamp.
- b. A decrease of more than eighty percent of service brake pedal height as measured from its free position to the floorboard or any other object which restricts service brake pedal travel.
- c. Failure of any hydraulic line or other part.

3. Brake hoses shall not be mounted so as to contact the vehicle body or chassis. In addition, brake hoses shall not be cracked, chafed, flattened, abraded, or visibly leaking. Protection devices such as "rub rings" shall not be considered part of the hose or tubing.

(Source: WOS 2010-011, October 14, 2010, Section X)

9.311 WHEELS AND FRONT SUSPENSION

A. Violation

1. It shall be a violation for a vehicle not to be equipped with wheel nuts, hub caps, or wheel discs extending outside the body of the vehicle when viewed from directly above which:

- a. Incorporate winged projections; or
- b. Constitute a hazard to pedestrians and cyclists.

B. Requirements

1. For the purposes of this section, a wheel nut is defined as an exposed nut which is mounted at the center or hub of a wheel, and is not one of the ordinary hexagonal nuts which secure a wheel to an axle and are normally covered by a hub cap or wheel disc.
2. Tire rims and wheel discs shall have no visible cracks, elongated bolt holes, or indications of repair by welding. In addition, the lateral and radial run-out of each rim bead area shall not exceed one-eighth of an inch of total indicated run-out.
3. King pins or ball joints shall not be worn to the extent that front wheels tip in or out more than one-quarter of an inch at the lower edge of the tire.

(Source: WOS 2010-011, October 14, 2010, Section XI)

9.312 STEERING AND SUSPENSION SYSTEMS

A. Violation

It shall be a violation for a vehicle not to be equipped with a steering control system shall be constructed and maintained so that no components or attachments, including horn activating mechanism and trim hardware, can catch the driver's clothing or jewelry during normal driving maneuvers.

B. Requirements

1. System play, lash, or free play in the steering system shall not exceed the values tabulated herein.

Steering wheel diameter Lash in inches:	
16 or less	2
18	2 1/4
20	2 1/2

- 2. Free play in the steering linkage shall not exceed one-quarter of an inch.
- 3. Other components of the steering system such as the power steering belt, tie rods, or idler arms or Pitman arms shall not be broken, worn out, or show signs of breakage.
- 4. Ball joint seals shall not be cut or cracked. Structural parts shall not be bent or damaged. Stabilizer bars shall be connected. Springs shall not be broken, or extended by spacers. Shock absorber mountings, shackles, and U-bolts shall be securely attached. Rubber bushings shall not be cracked, or extruded out or missing from suspension joints. Radius rods shall not be missing or damaged.
- 5. Shock absorber system. Shock absorbers shall not be loose from mountings, leak, or be inoperative.

(Source: WOS 2010-011, October 14, 2010, Section XII)

9.313 HORNS, WARNING DEVICES, AND THEFT ALARMS

A. Violation

It shall be a violation to operate a motor vehicle upon a highway without being equipped with a horn in good working order, capable of emitting sound audible under normal conditions from a distance of not less than two hundred feet.

B. Requirements

- 1. No horn or other warning device may emit an unreasonably loud or harsh sound or a whistle. The driver of a motor vehicle shall when reasonably necessary to insure safe operation give audible warning with the horn but shall not otherwise use the horn.
- 2. No vehicle may be equipped with nor may any person use upon a vehicle any siren,

whistle, or bell, except as otherwise permitted in this section.

3. A vehicle may be equipped with a theft alarm signal device so long as it is arranged so that it cannot be used by the driver as an ordinary warning signal. Such a theft alarm signal device may use a whistle, bell, horn, or other audible signal but not a siren.

4. Any authorized emergency vehicle may be equipped with a siren, whistle, or bell capable of emitting sound audible under normal conditions from a distance of not less than five hundred feet, but the siren shall not be used except when the vehicle is operated in response to an emergency call or in the immediate pursuit of an actual or suspected violator of the law, in which case the driver of the vehicle shall sound the siren when reasonably necessary to warn pedestrians and other drivers of its approach.

(Source: WOS 2010-011, October 14, 2010, Section XIII)

9.314 MUFFLERS

A. Violation

It shall be a violation to operate a motor vehicle that is not equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise, and no person shall use a muffler cut-out, bypass, or similar device upon a motor vehicle on a highway.

B. Requirements

No person shall modify the exhaust system of a motor vehicle in a manner which will amplify or increase the noise emitted by the engine above that emitted by the muffler originally installed on the vehicle.

(Source: WOS 2010-011, October 14, 2010, Section XIV)

9.315 MIRRORS

A. Violation

It shall be a violation to operate a motor vehicle that is not equipped with a mirror mounted on the left side and located so as to reflect to the driver a view of the highway for a distance of at least two hundred feet to the rear of the vehicle.

B. Requirements

1. Every motor vehicle shall be equipped with an additional mirror mounted either inside the vehicle approximately in the center or outside the vehicle on the right side and located so as to reflect to the driver a view of the highway for a distance of at least two hundred feet to the rear of the vehicle.

2. All mirrors required by this section shall be maintained in good condition.

(Source: WOS 2010-011, October 14, 2010, Section XV)

9.316 WINDSHIELDS REQUIRED, UNOBSTRUCTED AND EQUIPPED WITH WIPERS

A. Violation

It shall be a violation to operate a motor vehicle on a public roadway that is not equipped with a front windshield manufactured of safety glazing materials for use in motor vehicles, except, however, on vehicles not so equipped or where windshields are not in use, the operators of the vehicles shall wear approved safety glasses, goggles, or face shields.

B. Requirements

1. No person shall drive any motor vehicle with any sign, poster, or other nontransparent material upon the front windshield, side wings, or side or rear windows which obstruct the driver's clear view of the highway or any intersecting highway.

2. The windshield on every motor vehicle shall be equipped with a device for cleaning rain, snow, or other moisture from the windshield, which device shall be so constructed as to be controlled or operated by the driver of the vehicle. It is unlawful for any person to operate a motor vehicle first sold or delivered after January 1, 1938, which is not equipped with such device or devices in good working order capable of cleaning the windshield thereof over two separate arcs, one each on the left and right side of the windshield, each capable of cleaning a surface of not less than one hundred twenty square inches, or other device or devices capable of accomplishing substantially the same result.

3. Every windshield wiper upon a motor vehicle shall be maintained in good working order.

(Source: WOS 2010-011, October 14, 2010, Section XVI)

9.317 TIRES, PNEUMATIC AND RE-GROOVED

A. Violation

It shall be a violation to operate a vehicle upon the public highways unless it is completely equipped with pneumatic rubber tires except vehicles equipped with temporary-use spare tires that meet federal standards that are installed and used in accordance with the manufacturer's instructions.

B. Requirements

1. No tire on a vehicle moved on a highway may have on its periphery any block, flange, cleat, or spike or any other protuberance of any material other than rubber which projects beyond the tread of the traction surface of the tire, except that it is permissible to use farm machinery with tires having protuberances that will not injure the highway.

2. It is a traffic violation for any person, firm, or corporation to sell or offer for sale any new pneumatic passenger car tire which does not meet the standards of federal motor vehicle safety standard No. 109, as promulgated by the United States Department of

Transportation under authority of the National Traffic and Motor Vehicle Safety Act of 1966 (80 Stat. 719, 728; 15 U.S.C. 1392, 1407) unless the tires are sold for off-highway use, as evidenced by a statement signed by the purchaser at the time of sale certifying that he is not purchasing the tires for use on the public highways.

3. It is a traffic violation for any person, firm, or corporation to sell or offer for sale any re-grooved tire which does not meet the standard established by federal motor vehicle standard part 569 – re-grooved tires, as promulgated by the United States Department of Transportation under authority of the National Traffic and Motor Vehicle Safety Act of 1966 (80 Stat. 719, 728; 15 U.S.C. 1392, 1407) unless the tires are sold or re-grooved for off-highway use, as evidenced by a statement signed by the purchaser or the person who re-grooved the tire at the time of sale or re-grooving certifying that he is not purchasing or re-grooving the tires for use on the public highways.

4. No person shall drive or move or cause to be driven or moved any vehicle, the tires of which have contact with the driving surface of the road, unless the vehicle is equipped with tires in safe operating condition in accordance with requirements established by this section.

5. A tire shall be considered unsafe if it has:

a. Any ply or cord exposed either to the naked eye or when cuts or abrasions on the tire are probed.

b. Any bump, bulge, or knot, affecting the tire structure.

c. Any break repaired with a boot.

d. A tread depth of less than $\frac{2}{32}$ of an inch measured in any two major tread grooves at three locations equally spaced around the circumference of the tire, or for those tires with tread wear indicators, a tire shall be considered unsafe if it is worn to the point that the tread wear indicators contact the road in any two major tread grooves at three locations equally spaced around the circumference of the tire.

e. A legend which indicates the tire is not intended for use on public highways such as, "not for highway use" or "for racing purposes only".

f. Such condition as may be reasonably demonstrated to render it unsafe.

g. If not matched in tire size designation, construction, and profile to the other tire and/or tires on the same axle, except for temporary-use spare tires that meet federal standards that are installed and used in accordance with the manufacturer's instructions.

6. No person, firm, or corporation shall sell any vehicle for use on the public highways unless the vehicle is equipped with tires that are in compliance with the provisions of this section. If the tires are found to be in violation of the provisions of this section, the person, firm, or corporation selling the vehicle shall cause the tires to be removed from the vehicle and shall equip the vehicle with tires that are in compliance with the provisions of this section.

(Source: WOS 2010-011, October 14, 2010, Section XVII)

9.318 SUN-SCREENING OR COLORING OF WINDOWS

A. Violation

It shall be a violation to operate a motor vehicle that has film sun-screening material applied to any window except the windshield, outside mirrors on both the left and right sides so as to reflect to the driver a view of the roadway, through each mirror, a distance of at least two hundred feet to the rear of the vehicle.

B. Requirements

1. The following types of film sun-screening material are not permitted:

- a. Mirror finish products.
 - b. Red, gold, yellow, or black material.
 - c. Film sun-screening material that is in liquid pre-application form, brushed or sprayed on.
2. Nothing in this section prohibits the use of shaded or heat-absorbing safety glazing material in which the shading or heat-absorbing characteristics have been applied at the time of manufacture of the safety glazing material and which meet federal standards for the safety glazing materials.

(Source: WOS 2010-011, October 14, 2010, Section XVIII)

9.319 DISABLED VEHICLE - DISPLAY OF WARNING DEVICES

A. Violation

Whenever any motor truck, passenger bus, truck tractor over eighty inches in overall width, trailer, semitrailer, or pole trailer is disabled upon the traveled portion of any highway, or the shoulder, at any time when lighted lamps are required on vehicles, the driver of the vehicle shall display the following warning devices during the time the vehicle is so disabled on the highway or shall be found in violation of this Statute.

B. Requirements

1. A lighted fusee, a lighted red electric lantern, or a portable red emergency reflector shall be immediately placed at the traffic side of the vehicle in the direction of the nearest approaching traffic.
2. As soon thereafter as possible, but in any event within the burning period of the fusee (fifteen minutes), the driver shall place three liquid-burning flares (pot torches), three lighted red electric lanterns, or three portable red emergency reflectors on the traveled

portion of the highway in the following order:

- a.** One, approximately one hundred feet from the disabled vehicle in the center of the lane occupied by the vehicle and toward traffic approaching in that lane.
 - b.** One, approximately one hundred feet in the opposite direction from the disabled vehicle and in the center of the traffic lane occupied by the vehicle.
 - c.** One at the traffic side of the disabled vehicle not less than ten feet rearward or forward thereof in the direction of the nearest approaching traffic
- 3.** Whenever any vehicle referred to in this section is disabled within five hundred feet of a curve, hillcrest, or other obstruction to view, the warning signal in that direction shall be so placed as to afford ample warning to other users of the highway, but in no case less than five hundred feet from the disabled vehicle.
- 4.** Whenever any vehicle of a type referred to in this section is disabled upon any roadway of a divided highway during the time that lights are required, the appropriate warning devices shall be placed as follows:
 - a.** One at a distance of approximately two hundred feet from the vehicle in the center of the lane occupied by the stopped vehicle and in the direction of traffic approaching in that lane;
 - b.** one at a distance of approximately one hundred feet from the vehicle, in the center of the lane occupied by the vehicle and in the direction of traffic approaching in that lane;
 - c.** and one at the traffic side of the vehicle and approximately ten feet from the vehicle in the direction of the nearest approaching traffic.
- 5.** Whenever any vehicle of a type referred to in this section is disabled upon the traveled portion of a highway or the shoulder thereof outside any municipality at any time

when the display of fusees, flares, red electric lanterns, or portable red emergency reflectors is not required, the driver of the vehicle shall display two red flags upon the roadway in the lane of traffic occupied by the disabled vehicle, one at a distance of approximately one hundred feet in advance of the vehicle, and one at a distance of approximately one hundred feet to the rear of the vehicle.

6. Whenever any motor vehicle used in the transportation of explosives or any cargo tank truck used for the transportation of any flammable liquid or compressed flammable gas, or any motor vehicle using compressed gas as a fuel, is disabled upon a highway, the driver of the vehicle shall immediately display the following warning devices: One red electric lantern or portable red emergency reflector placed on the roadway at the traffic side of the vehicle, and two red electric lanterns or portable red reflectors, one placed approximately one hundred feet to the front and one placed approximately one hundred feet to the rear of this disabled vehicle in the center of the traffic lane occupied by the vehicle. Flares, fusees, or signals produced by flame shall not be used as warning devices for disabled vehicles of the type.

(Source: WOS 2010-011, October 14, 2010, Section XIX)

9.320 VEHICLES TRANSPORTING EXPLOSIVES

A. Violation

It shall be a violation to operate a motor vehicle that is transporting any explosive as a cargo or part of a cargo upon a highway and not obey the following requirements.

B. Requirements

1. Be marked or placarded on each side and the rear with the word “Explosives” in letters not less than eight inches high, or there shall be displayed on the rear of the vehicle a red flag not less than twenty-four inches square marked with the word "danger" in white letters six inches high.

2. Be equipped with not less than two fire extinguishers, filled and ready for immediate use, and placed at a convenient point on the vehicle.

(Source: WOS 2010-011, October 14, 2010, Section XX)

9.321 FUEL SYSTEM

A. Violation

It shall be a violation to operate a motor vehicle that is not equipped with a fuel system that is manufactured, installed, and maintained with due regard for the safety of the occupants of the vehicle and the public.

B. Requirements

1. Fuel tanks shall be equipped with approved caps.
2. There shall be no signs of leakage from the carburetor or the fuel pump or the fuel hoses in the engine compartment or between the fuel tank and the engine compartment.
3. No person shall operate any motor vehicle upon the public highways unless the fuel tank is securely attached and so located that another vehicle would not be exposed to direct contact with the fuel tank in the event of a collision.

(Source: WOS 2010-011, October 14, 2010, Section XXI)

9.322 VEHICLE WITH ALTERNATIVE FUEL SOURCE

A. Violation

It shall be a violation to operate a motor vehicle fueled by an alternative fuel that does not bear a reflective placard issued by the national fire protection association indicating the vehicle is so fueled.

B. Requirement

As used in this section "alternative fuel source" includes propane, compressed natural gas, liquid petroleum gas, or any chemically similar gas but does not include gasoline or diesel fuel.

(Source: WOS 2010-011, October 14, 2010, Section XXII)

9.323 TELEVISION VIEWERS - EARPHONES

A. Violation

It shall be a violation to operate a motor vehicle that is equipped with any television viewer, screen, or other means of visually receiving a television broadcast which is located in the motor vehicle at any point forward of the back of the driver's seat, or which is visible to the driver while operating the motor vehicle.

B. Requirements

1. No person shall operate any motor vehicle on a public highway while wearing any headset or earphones connected to any electronic device capable of receiving a radio broadcast or playing a sound recording for the purpose of transmitting a sound to the human auditory senses.
2. This section does not apply to authorized emergency vehicles or to motorcyclists wearing a helmet with built-in headsets or earphones.

(Source: WOS 2010-011, October 14, 2010, Section XXIII)

9.324 SAFETY LOAD CHAINS AND DEVICES REQUIRED

It shall be a violation to operate any vehicle upon the public highways without having the load securely fastened and protected by safety chains or other devices.

(Source: WOS 2010-011, October 14, 2010, Section XXIV)

9.325. FENDERS OR SPLASH APRONS

A. Violation

Except as authorized under this section, it is a violation to operate any motor vehicle, trailer, or semitrailer that is not equipped with fenders, covers, flaps, or splash aprons adequate for minimizing the spray or splash of water or mud from the roadway to the rear of the vehicle. All such devices shall be as wide as the tires behind which they are mounted and extend downward at least to the center of the axle.

B. Requirements

A motor vehicle that is not less than forty years old and is owned and operated primarily as a collector's item need not be equipped with fenders when the vehicle is used and driven during fair weather on well-maintained, hard-surfaced roads.

(Source: WOS 2010-011, October 14, 2010, Section XXV)

9.326 SEAT BELTS AND SHOULDER HARNESSSES

A. Violation

It shall be a violation to sell any automobile manufactured or assembled after January 1, 1964, unless the automobile is equipped with seat belts installed for use on the front seats.

B. Requirements

1. Every passenger car manufactured or assembled after January 1, 1965, shall be equipped with at least two lap-type safety belt assemblies for the front seating positions.
2. Every passenger car manufactured or assembled after January 1, 1968, except

police vehicles, shall be equipped with a lap-type safety belt assembly for each permanent passenger seating position.

3. Every passenger car manufactured or assembled after January 1, 1968, shall be equipped with at least two shoulder harness-type safety belt assemblies for the front seating positions.

(Source: WOS 2010-011, October 14, 2010, Section XXVI)

9.327 BUMPERS AND BODY HARDWARE

A. Violation

When any motor vehicle was originally equipped with bumpers or any other collision energy absorption or attenuation system, that system shall be maintained in good operational condition, and it shall be a violation to remove or disconnect, and no owner shall cause or knowingly permit the removal or disconnection of any part of that system except temporarily in order to make repairs, replacements, or adjustments.

B. Requirements

1. The body, fenders, and bumpers shall be maintained without protrusions which could be hazardous to pedestrians. In addition, the bumpers shall be so attached and maintained so as to not protrude beyond the original bumper line.

2. The hood, hood latches, hood fastenings, doors, and door latches shall be maintained in a condition sufficient to ensure proper working equal to that at the time of original vehicle manufacture.

(Source: WOS 2010-011, October 14, 2010, Section XXVII)

9.328 ODOMETERS

A. Violation

1. It shall be a violation for any person to disconnect, turn back, or reset the odometer of any motor vehicle with the intent to reduce the number of miles indicated on the odometer gauge.
2. It shall be a violation for any person to sell a motor vehicle if the seller has knowledge that the odometer on the motor vehicle has been turned back and fails to notify the buyer, prior to the time of sale, that the odometer has been, or seller had reason to believe the odometer has been turned back.
3. It shall be a violation for any person to sell a motor vehicle if the seller has knowledge that the odometer on the motor vehicle has been replaced with another odometer and fails to notify the buyer, prior to the time of sale, that the odometer has been, or seller believes the odometer has been replaced.
4. It shall be a violation for any person to advertise for sale, to sell, to use, or to install on any part of a motor vehicle or on an odometer in a motor vehicle any device which causes the odometer to register any mileage other than the true mileage driven. For the purposes of this section the true mileage driven is that driven by the car as registered by the odometer within the manufacturer's designed tolerance.

B. In any suit brought by the purchaser of a motor vehicle against the seller of a vehicle, the purchaser shall be entitled to recover his court costs and a reasonable attorney's fee fixed by the court, if:

1. The suit or claim is based substantially upon the purchaser's allegation that the odometer on the vehicle has been tampered with or replaced contrary to this Statute; and
2. It is found in the suit that the seller of the vehicle or any of the seller's employees or agents knew or had reason to know the odometer on the vehicle had been tampered with or replaced and failed to disclose this knowledge to the purchaser prior to the time of sale.

(Source: WOS 2010-011, October 14, 2010, Section XXVIII)

9.329 MOTORCYCLES AND MOTOR-DRIVEN CYCLES - HEAD LAMPS

A. Violation

It shall be a violation to operate a motorcycle and motor-driven cycle that is not equipped with at least one lamp which shall comply with the requirements and limitations of this section.

B. Requirements

- 1.** Every head lamp upon every motorcycle and motor-driven cycle shall be located at a height of not more than fifty-four inches nor less than twenty-four inches from the center of the lamp to the ground.
- 2.** Every motorcycle other than a motor-driven cycle shall be equipped with multiple-beam road-lighting equipment, which shall:
 - a.** Reveal persons and vehicles at a distance of at least three hundred feet ahead when the uppermost distribution of light is selected.
 - b.** Reveal persons and vehicles at a distance of at least one hundred fifty feet ahead when the lowermost distribution of light is selected, and on a straight, level road under any condition of loading none of the high intensity portion of the beam shall be directed to strike the eyes of an approaching driver.
- 3.** Every motorcycle and motor-driven cycle shall have its head lamps and tail lamps lighted whenever the vehicle is in motion upon a highway.
- 4.** The head lamp or head lamps upon every motor-driven cycle may be of the single-beam or multiple-beam type but in either event shall comply with the requirements and limitations as follows:

a. Every such head lamp or head lamps on a motor-driven cycle shall be of a sufficient intensity to reveal a person or a vehicle at a distance of not less than one hundred feet when the motor-driven cycle is operated at any speed less than twenty-five miles per hour and at a distance of not less than two hundred feet when the motor-driven cycle is operated at a speed of twenty-five or more miles per hour, and at a distance of not less than three hundred feet when the motor-driven cycle is operated at a speed of thirty-five or more miles per hour.

b. In the event the motor-driven cycle is equipped with a multiple-beam head lamp or head lamps the upper beam shall meet the minimum requirements set forth for upper beam lights, and the lower beam shall meet the requirements applicable to a lower distribution of light.

c. In the event the motor-driven cycle is equipped with a single-beam lamp or lamps, the lamp or lamps shall be so aimed that when the vehicle is loaded none of the high-intensity portion of light, at a distance of twenty-five feet ahead, shall project higher than the level of the center of the lamp from which it comes.

(Source: WOS 2010-011, October 14, 2010, Section XXIX)

9.330 MOTOR-DRIVEN CYCLES TAIL LAMPS, REFLECTORS, AND STOP LAMPS

A. Violation

It shall be a violation to operate a motorcycle and motor-driven cycle that is not equipped with at least one tail lamp which shall comply with the requirements and limitations of this section.

B. Requirements

- 1.** Every motorcycle and motor-driven cycle shall have at least one tail lamp which shall be located at a height of not more than seventy-two nor less than fifteen inches.
- 2.** Either a tail lamp or a separate lamp shall be so constructed and placed as to

illuminate with a white light the rear registration plate and render it clearly legible from a distance of fifty feet to the rear. The tail lamp or tail lamps, and any separate lamp or lamps for illuminating the rear registration plate, shall be wired so as to be lighted whenever the head lamps or auxiliary driving lamps are lighted.

3. Every motorcycle and motor-driven cycle shall carry on the rear, either as part of the tail lamp or separately, at least one red reflector.

4. Every motorcycle and motor-driven cycle shall be equipped with at least one stop lamp.

(Source: WOS 2010-011, October 14, 2010, Section XXX)

9.331 MOTORCYCLES AND MOTOR-DRIVEN CYCLES - BRAKE REQUIREMENTS

A. Violation

It shall be a violation for a Motorcycle not to be equipped with brakes operating on both the front and rear wheels unless the vehicle was originally manufactured without both front and rear brakes. A front brake shall not be required on any motorcycle over twenty-five years old which was originally manufactured without a front brake and which has been restored to its original condition and is being ridden to or from or otherwise in conjunction with an antique or classic motorcycle contest, show or other such assemblage, and no front brake shall be required on any motorcycle manufactured prior to January 1, 1931.

B. Requirements

1. Motorcycles and motor-driven cycles need not be equipped with parking brakes.

2. Every motorcycle and motor-driven cycle, at all times and under all conditions of loading, upon application of the service brake, shall be capable of:

- a. Decelerating to a stop from not more than twenty miles per hour at not less than fourteen feet per second per second.
 - b. Stopping from a speed of twenty miles per hour in not more than thirty feet, the distance to be measured from the point at which movement of the service brake pedal or control begins.
3. Tests for deceleration and stopping distance shall be made on a substantially level (not to exceed plus or minus one percent grade), dry, smooth, hard surface free from loose material.

(Source: WOS 2010-011, October 14, 2010, Section XXXI)

9.332 MOTORCYCLES, MOTOR-DRIVEN CYCLES, OR MOPEDS EQUIPMENT

A. Violation

1. It shall be a violation to operate a motorcycle or motor-driven cycle not equipped with mirrors on the left and right sides of the motorcycle which shall be so located as to give the driver a complete view of the highway for a distance of at least two hundred feet to the rear of the motorcycle or motor-driven cycle.
2. It shall be a violation to operate a motorcycle or motor-driven cycle which does not have a windshield unless wearing safety glasses, goggles, or a face shield.
3. It shall be a violation for a person under the age of twenty-one (21) to operate or ride upon a motorcycle, motor-driven cycle, or moped on a public highway, unless wearing upon his or her head a protective helmet of a type conforming to federal rules except when the vehicle is an antique motor-driven cycle or automobile that is licensed as a motorcycle.

B. Requirements

1. Mirrors are not required on any motorcycle or motor-driven cycle over twenty-five years old originally manufactured without mirrors and which has been restored to its original condition and which is being ridden to or from or otherwise in conjunction with

an antique or classic motorcycle contest, show, or other such assemblage. No mirror is required on any motorcycle manufactured prior to January 1, 1931.

2. For persons under the age of twenty-one (21), the helmet must be equipped with either a neck or chin strap which shall be fastened securely while the motorcycle or motor-driven cycle is in motion.

(Source: WOS 2012-005, June 10, 2012, Section XXXII)

9.333 MOTORCYCLES' EXHAUST SYSTEM

It shall be a violation for a person to modify the exhaust system of a motorcycle in a manner which will amplify or increase the noise emitted by the engine of the vehicle above that emitted by the muffler originally installed on the vehicle. It is unlawful to operate a motorcycle not equipped as required by this section or which has been amplified as prohibited by this section.

(Source: WOS 2010-011, October 14, 2010, Section XXXIII)

9.334 MOTORCYCLES AND MOTOR-DRIVEN CYCLES ADDITIONAL REQUIREMENTS AND LIMITATIONS

It shall be a violation for a motorcycle or a motor-driven cycle not to comply with the requirements and limitations concerning horns and warning devices, mufflers and prevention of noise, mirrors, and tires.

(Source: WOS 2010-011, October 14, 2010, Section XXXIV)

9.335 COLLISIONS

A. Striking Unattended Vehicle or Other Property

1. It shall be a violation for a operator of any vehicle which collided with any unattended vehicle or any property on or next to a public road resulting only in damage to

the vehicle or property and not immediately stop and either locate or notify the operator or owner of the vehicle or property and provide the following information:

- a. Name
 - b. Date of birth
 - c. Address of the operator and owner of the vehicle
2. If the owner or operator of the damaged vehicle or property is not available then the operator shall leave a note in a conspicuous place on the vehicle or property damaged.
3. The driver shall further make report of the accident as in the case of other accidents upon the public roads.

B. Striking Attended Vehicle causing Injuries

1. It shall be a violation for a driver of any vehicle involved in an accident resulting in the injury to or death of any person and not immediately stop at or as close as possible to the scene of the accident without obstructing traffic more than is necessary, and shall immediately return to and remain at the scene of the accident.
2. The person shall provide his or her name, date of birth, address, insurance company, insurance policy number, and vehicle license number and shall show his or her driver's license to any person struck or injured or the driver or any occupant of, or any person attending the vehicle.
3. If none of the persons specified are in condition to receive the information to which they are entitled under subsection 2 and no police officer is present, the driver of any vehicle involved in the accident, shall, as soon as possible, report the accident to the Department and shall submit the required information.

4. The driver of the vehicle involved in the accident shall file an accident report with the Department.

5. Whenever the driver of the vehicle involved in any accident is physically incapable of submitting the required accident report and there is another occupant, other than a passenger for hire, in the vehicle at the time of the accident capable of making a report, that occupant shall make a report. Upon recovery the driver shall make a report as required.

6. The driver shall also give to any person injured in the accident reasonable assistance, including the carrying or the making of arrangements for the carrying of the person to a physician or hospital for medical treatment if it is apparent that such treatment is necessary or if the carrying is requested by the injured person or on his/her behalf.

7. Under no circumstances shall the rendering of assistance or other compliance with the provisions of this subsection be evidence of the liability of any driver for the accident.

C. Striking Attended Vehicle without causing Injuries

1. It shall be a violation of a driver of any vehicle involved in an accident resulting only in damage to a vehicle which is driven or attended by any person or damage to other property and not immediately stop at or as close as possible to the scene of the accident without obstructing traffic more than is necessary, and shall immediately return to the scene of the accident and provide the following information:

- a. Name
- b. Date of birth
- c. Address of the operator and owner of the vehicle

2. The driver of any vehicle involved in an accident may file an accident report with the Department.

D. Officer's Report

Any police officer present at the scene of any accident or in possession of any facts concerning any accident by way of official investigation shall make a report the same as is required of the parties to the accident and as fully as the facts in his possession will permit.

E. False Information

It shall be a violation for a person who knowingly gives false information in required oral or written reports.

(Source: WOS 2010-011, October 14, 2010, Section XXXV)

9.336 TOWING AND IMPOUNDMENT

A. Definitions

1. "Abandoned vehicle" means a vehicle that a registered tow truck operator has impounded and held in the operator's possession for ninety-six consecutive hours.
2. "Impound" means to take and hold a vehicle in legal custody. There are two types of impounds - public and private.
3. "Public impound" means that the vehicle has been impounded at the direction of a law enforcement officer or by a public official having jurisdiction over the public property upon which the vehicle was located.
4. "Private impound" means that the vehicle has been impounded at the direction of a person having control or possession of the private property upon which the vehicle was located.
5. "Junk vehicle" means a vehicle that meets at least three of the following requirements:

- a.** Is three years old or older;
 - b.** Is extensively damaged, including but not limited to any of the following: a broken window or windshield, missing wheels, tires, motor, or transmission;
 - c.** Is apparently inoperable;
 - d.** Has an approximate fair market value equal only to the approximate value of the scrap in it.

- 6.** “Registered tow truck operator” or “operator” means any person who engages in the impounding, transporting, or storage of unauthorized vehicles or the disposal of abandoned vehicles.

- 7.** “Residential property” means property that has no more than four living units located on it.

- 8.** “Tow truck” means a motor vehicle that is equipped for and used in the business of towing vehicles.

- 9.** “Tow truck service” means the transporting upon the public streets and highways of vehicles, together with personal effects and cargo, by a tow truck of a registered operator.

- 10.** “Unauthorized vehicle” means a vehicle that is subject to removal and impoundment after being left unattended in one of the following public or private locations for the indicated period of time:
 - a.** Public locations:
 - i.** Constituting an accident or a traffic hazard; immediately
 - ii.** On a highway and tagged; 24 hours

iii. In a publicly owned or controlled posted parking facility; immediately

b. Private locations:

i. On residential property; immediately

ii. On private, nonresidential property, properly posted; immediately

iii. On private, nonresidential property, not posted; 24 hours

B. Tow Truck Operator’s Registration Requirements

It shall be a violation for a person to engage in or offer to engage in the activities of a registered tow truck operator without a current registration either issued by Tribal, Federal, State or local authority that authorizes such activities.

C. Impounding Unauthorized Vehicles Posting Requirements

It shall be a violation for a person to impound, tow, or otherwise disturb any unauthorized vehicle standing on nonresidential private property or in a public parking facility for less than twenty-four hours unless a sign is posted near each entrance and on the property in a clearly conspicuous and visible location to all who park on the property that clearly indicates:

- 1.** The times a vehicle may be impounded as an unauthorized vehicle; and
- 2.** The name, telephone number, and address of the towing firm where the vehicle may be redeemed.

D. Impoundment of Vehicles without Serial Number by Law Enforcement

- 1.** Any vehicle, watercraft, camper, or any component part, from which the

manufacturer's serial number or any other distinguishing number or identification mark has been removed, defaced, covered, altered, obliterated, or destroyed, may be impounded and held by the Department for the purpose of conducting an investigation to determine the identity of the article or articles, and to determine whether it has been reported stolen.

2. Within five days of the impounding of any vehicle, watercraft, camper, or component part thereof, the Department shall send written notice of the impoundment by certified mail to all persons known to the agency as claiming an interest in the article or articles. The notice shall advise the person of the seizure, the possible disposition of the article or articles, the requirement of filing a written claim requesting notification of potential disposition, and the right of the person to request a hearing to establish a claim of ownership. Within five days of receiving notice of other persons claiming an interest in the article or articles, the Department shall send a like notice to each.

3. If reported as stolen, the Department shall promptly release the vehicle, watercraft, camper, or parts, to the person who is the lawful owner or the lawful successor in interest, upon receiving proof that the person presently owns or has a lawful right to the possession of the article or articles.

4. If the vehicle is not claimed then the Department may dispose of the vehicle, watercraft, camper, or component part by destruction, by selling at public auction to the highest bidder, or by holding the article or articles for the official use of the Department, when:

a. The true identity of the article or articles cannot be established by restoring the original manufacturer's serial number or other distinguishing numbers or identification marks or by any other means;

b. After the true identity of the article or articles has been established, the Department cannot locate the person who is the lawful owner or if the lawful owner or his successor in interest fails to claim the article or articles within thirty (30) days after receiving notice from the Department that the article or articles is in its possession.

5. Before the release or use by the Department of any impounded article an identification number shall be assigned to the article.

E. General Impoundment by Law Enforcement

1. If a vehicle is subject to removal after the indicated period of time as stated in this Statute, it may be impounded by a registered tow truck operator at the direction of a law enforcement officer if the vehicle is on public property, or at the direction of the property owner or an agent if it is on private property.

2. A law enforcement officer may also direct the impoundment of a vehicle pursuant to a writ or court order.

3. The person requesting a private impound or a law enforcement officer requesting a public impound shall provide a signed authorization for the impoundment at the time and place of the impoundment to the registered tow truck operator before the operator may proceed with the impound. A registered tow truck operator, employee, or his or her agent may not serve as an agent of a property owner for the purposes of signing an impoundment authorization or, independent of the property owner, identify a vehicle for impoundment.

4. Whenever an officer finds an unattended vehicle at the scene of an accident or when the driver of a vehicle involved in an accident is physically or mentally incapable of deciding upon steps to be taken to protect his or her property;

5. Whenever an officer determines the vehicle to be unsafe to drive;

6. Whenever an officer discovers a vehicle that the officer determines or has reasonable grounds to believe to be a stolen vehicle;

7. Whenever a vehicle without a special license plate, card, or decal indicating that the vehicle is being used to transport a disabled person is parked in a stall or space clearly and conspicuously marked for disabled parking, which space is provided on private

property without charge or on public property.

F. Impoundment of a Vehicle in Right-of-Way

1. A law enforcement officer discovering an unauthorized vehicle left within a highway right-of-way shall attach to the vehicle a readily visible notification. The notification shall contain the following information:

- a. The date and time attached;
- b. The identity of the officer;
- c. A statement that if the vehicle is not removed within twenty-four hours from the time the notification is attached, the vehicle may be taken into custody and stored at the owner's expense; and
- d. The address and telephone number where additional information may be obtained.

2. If the vehicle has current plates, the officer shall check the records to learn the identity of the last owner of record. The officer shall ensure that a reasonable effort is made to contact the owner by telephone in order to give the owner the information on the notification.

3. If the vehicle is not removed within twenty-four hours from the time the notification is attached, a law enforcement officer may take custody of the vehicle and provide for the vehicle's removal to a place of safety including the business location of a registered tow truck-operator. If the vehicle does not pose a safety hazard it may remain on the roadside for more than twenty-four hours if the owner or operator is unable to remove it from the place where it is located and so notifies the Department.

G. Responsibility of Registered Owner

The last registered owner of record is liable for costs incurred in abandonment of any vehicle including removing, storing, and disposing of the abandoned vehicle, less amounts realized at auction, unless the register owner can show a report of sale or transfer regarding the vehicle involved or a vehicle theft report filed with a law enforcement agency.

H. Junk Vehicle Disposition

- 1.** Any law enforcement officer having jurisdiction shall inspect and may authorize the disposal of an abandoned junk vehicle. The person making the inspection shall record the make and vehicle identification number or license number of the vehicle if available, and shall also verify that the approximate value of the junk vehicle is equivalent only to the approximate value of the scrap in it.
- 2.** The law enforcement officer shall provide information on the vehicle's registered and legal owner to the landowner.
- 3.** Upon receiving information on the vehicle's registered and legal owner, the landowner shall mail a notice to the registered and legal owners. The notification shall describe the redemption procedure and the right to arrange for the removal of the vehicle.
- 4.** If the vehicle remains unclaimed more than fifteen days after the landowner has mailed notification to the registered and legal owner, the landowner may dispose of the vehicle or sign an affidavit of sale to be used as a title document.
- 5.** If no information on the vehicle's registered and legal owner is found, the landowner may immediately dispose of the vehicle or sign an affidavit of sale to be used as a title document.
- 6.** The landowner of the property upon which the junk vehicle is located is entitled to recover from the vehicle's registered owner any costs incurred in the removal of the junk vehicle.
- 7.** For the purposes of this section, the term "landowner" includes a legal owner of

private property, a person with possession or control of private property, or a Tribal official having jurisdiction over trust land.

8. A person complying in good faith with the requirements of this section is immune from any liability arising out of an action taken or omission made in the compliance.

(Source: WOS 2010-011, October 14, 2010, Section XXXVI)

9.337 APPLYING RULES OF THE ROAD-WAY

A. General Application

The provisions of this Statute relating to the operation of vehicles refer exclusively to the operation of vehicles upon highways except where a different place is specifically referred to in a given section.

B. Persons Riding Animals or Driving Animal-Drawn Vehicles

Every person riding an animal or driving any animal-drawn vehicle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by this Statute except those provisions of this Statute which by their very nature can have no application.

C. Persons Working on Highway Right of Way

Unless specifically made applicable, the provisions of this Statute shall not apply to persons, motor vehicles and other equipment while legitimately engaged in work within the right of way of any highway but shall apply to these persons and vehicles when traveling to or from such work.

D. Authorized Emergency Vehicles

The driver of an authorized emergency vehicle, when responding to an emergency call or

when in the pursuit of an actual or suspected violator of the law or when responding to but not upon returning from a fire alarm, may exercise the privileges set forth in this section, but subject to the conditions stated.

- 1.** The driver of an authorized emergency vehicle may:
 - a.** Park or stand, irrespective of the provisions of this Statute;
 - b.** Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;
 - c.** Exceed the maximum speed limits so long as he does not endanger life or property;
 - d.** Disregard regulations governing direction of movement or turning in specified directions.

- 2.** The exemptions granted to an authorized emergency vehicle shall apply only when the vehicle is making use of visual signals, except that:
 - a.** An authorized emergency vehicle operated as a police vehicle need not be equipped with or display a red light visible from in front of the vehicle;
 - b.** authorized emergency vehicles shall use audible signals when necessary to warn others of the emergency nature of the situation but in no case shall they be required to use audible signals while parked or standing.

- 3.** The foregoing provisions shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall these provisions protect the driver from the consequences of his reckless disregard for the safety of others.

(Source: WOS 2010-011, October 14, 2010, Section XXXVII)

9.338 OBEDIENCE TO POLICE OFFICERS, FLAGMEN, OR FIRE FIGHTERS

It shall be a violation for a person to willfully fail or refuse to comply with any lawful order or direction of any duly authorized flagman or any police officer or fire fighter invested by law with authority to direct, control, or regulate traffic.

(Source: WOS 2010-011, October 14, 2010, Section XXXVIII)

9.339 TRAFFIC SIGNS, SIGNALS, AND MARKINGS

A. Violation

It shall be a violation for a driver of any vehicle, every bicyclist, and every pedestrian not to obey the instructions of any applicable official traffic control device placed in accordance with the provisions of this Statute, unless otherwise directed by a police officer, subject to the exception granted the driver of an authorized emergency vehicle in this Statute.

B. Requirements

- 1.** No provision of this Statute for which official traffic control devices are required is enforced against an alleged violator if at the time and place of the alleged violation an official device is not in proper position and sufficiently legible or visible to be seen by an ordinarily observant person. Whenever a particular section does not state that official traffic control devices are required, that section is effective even though no devices are erected or in place.
- 2.** Whenever official traffic control devices are placed in position approximately conforming to the requirements of this Statute, the devices are presumed to have been so placed by the official act or direction of lawful authority, unless the contrary is established by competent evidence.

3. Any official traffic control device placed pursuant to the provisions of this Statute and purporting to conform to the lawful requirements pertaining to these devices is presumed to comply with the requirements of this Statute, unless the contrary is established by competent evidence.

C. Display of Unauthorized Signs, Signals, or Markings

1. No person shall place, maintain or display upon or in view of any highway any unauthorized sign, signal, marking or device which purports to be or is an imitation of or resembles an official traffic-control device, sign or signal, or which attempts to direct the movement of traffic, or which hides from view or interferes with the effectiveness of an official traffic-control device or any sign or signal.

2. No person shall place or maintain nor shall any public authority permit upon any highway any traffic sign or signal bearing thereon any commercial advertising.

3. This section shall not be deemed to prohibit the erection upon private property adjacent to highways of signs giving useful directional information and of a type that cannot be mistaken for official signs.

4. Every prohibited sign, signal or marking is hereby declared to be a public nuisance and the Department is hereby empowered to remove the same or cause it to be removed without notice.

(Source: WOS 2010-011, October 14, 2010, Section XXXIX)

**9.340 INTERFERENCE WITH OFFICIAL TRAFFIC-CONTROL DEVICES
SIGNS OR SIGNALS**

It shall be a violation for a person, without lawful authority, attempt to or in fact alter, deface, injure, knock down or remove any official traffic-control device or any sign or signal or any inscription, shield or insignia, or any other part.

(Source: WOS 2010-011, October 14, 2010, Section XL)

9.341 DRIVING ON RIGHT SIDE OF ROADWAY, OVERTAKING AND PASSING AND USE OF ROADWAY

A. Violation

It shall be a violation to drive a vehicle upon the left half of a roadway, except as follows:

1. When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;
2. When an obstruction exists making it necessary to drive to the left of the center of the highway; provided, any person so doing shall yield the right of way to all vehicles traveling in the proper direction upon the unobstructed portion of the highway within such distance as to constitute an immediate hazard;
3. Upon a roadway divided into three marked lanes and providing for two-way movement traffic under the rules applicable thereon; or
4. Upon a street or highway restricted to one-way traffic.

B. Requirements

1. Drivers of vehicles proceeding in opposite directions shall pass each other to the right, and upon roadways having width for not more than one line of traffic in each direction each driver shall give to the other at least one-half of the main-traveled portion of the roadway as nearly as possible.
2. The following rules shall govern the overtaking and passing of vehicles proceeding in the same direction, subject to those limitations, exceptions and special rules hereafter stated:

- a.** The driver of a vehicle overtaking another vehicle proceeding in the same direction shall pass to the left at a safe distance and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle.
 - b.** The driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle on audible signal and shall not increase the speed of his vehicle until completely passed by the overtaking vehicle.
 - 3.** The driver of a vehicle may overtake and pass upon the right of another vehicle only under the following conditions:
 - a.** When the vehicle overtaken is making or about to make a left turn;
 - b.** Upon a roadway with unobstructed pavement of sufficient width for two or more lanes of vehicles moving lawfully in the direction being traveled by the overtaking vehicle.
 - c.** The driver of a vehicle may overtake and pass another vehicle upon the right only under conditions permitting the movement in safety. The movement shall not be made by driving off the roadway.
 - 4.** No vehicle shall be driven to the left side of the center of the roadway in overtaking and passing another vehicle proceeding in the same direction unless authorized by this Statute and unless the left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit the overtaking and passing to be completely made without interfering with the operation of any vehicle approaching from the opposite direction or any vehicle overtaken. In every event the overtaking vehicle must return to an authorized lane of travel as soon as practicable and in the event the passing movement involves the use of a lane authorized for vehicles approaching from the opposite direction, before coming within two hundred feet of any approaching vehicle.
 - 5.** No vehicle shall be driven on the left side of the roadway under the following conditions:

- a.** When approaching or upon the crest of a grade or a curve in the highway where the driver's view is obstructed within such distance as to create a hazard in the event another vehicle might approach from the opposite direction;
 - b.** When the view is obstructed upon approaching within one hundred feet of any bridge or viaduct.
 - c.** The foregoing limitations shall not apply upon a one-way roadway, nor when an obstruction exists making it necessary to drive to the left of the center of the highway, nor to the driver of a vehicle turning left into or from an alley, private road or driveway.
- 6.** The appropriate Tribal or state authorities shall determine those portions of any highway under their respective jurisdictions where overtaking and passing or driving to the left of the roadway would be especially hazardous and may by appropriate signs or markings on the roadway indicate the beginning and end of the zones.
- 7.** Where signs or markings are in place to define a no-passing zone, no driver may at any time drive on the left side of the roadway within the no-passing zone or on the left side of any pavement striping designed to mark the no-passing zone throughout its length.
- 8.** The appropriate Tribal or state authorities may determine any highway, roadway, part of a roadway, or specific lanes be designated for one-way traffic where upon vehicular traffic shall proceed in one direction as indicated by official traffic control devices.
- 9.** Whenever any roadway has been divided into two or more clearly marked lanes for traffic the following rules, consistent with all others, shall apply:
 - a.** A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from that lane until the driver has first determined that the movement can be made with safety.

b. Upon a roadway which is divided into three lanes and provides for two-way movement of traffic, a vehicle shall not be driven in the center lane except in preparation for making a left turn and the allocation shall be designated by official traffic-control devices.

c. Official traffic-control devices may be installed prohibiting the changing of lanes on sections of roadway and drivers of vehicles shall obey the directions of every such device.

(Source: WOS 2010-011, October 14, 2010, Section XLI)

9.342 FOLLOWING TOO CLOSELY

A. Violations

It shall be a violation for a driver of a motor vehicle to follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of the vehicles and the traffic upon and the condition of the highway.

B. Requirements

1. The driver of any motor truck or motor vehicle drawing another vehicle when traveling upon a roadway outside of a business or residence district and which is following another motor truck or motor vehicle drawing another vehicle shall, whenever conditions permit, leave sufficient space so that an overtaking vehicle may enter and occupy the space without danger, except that this shall not prevent a motor truck or motor vehicle drawing another vehicle from overtaking and passing any like vehicle or other vehicle.

2. Motor vehicles being driven upon any roadway outside of a business or residence district in a caravan or motorcade whether or not towing other vehicles shall be so operated as to allow sufficient space between the vehicles or combination of vehicles so as to enable any other vehicle to enter and occupy the space without danger. This provision shall not apply to funeral processions.

(Source: WOS 2010-011, October 14, 2010, Section XLII)

9.343 YIELDING

A. Violation

It shall be a violation for any person operating any vehicle where designated, and bearing the required signs to fail and neglect to yield the vehicle as required.

B. Requirements

1. When two vehicles approach or enter an intersection from different highways at approximately the same time, the driver of the vehicle on the left shall yield the right of way to the vehicle on the right.
2. The driver of a vehicle intending to turn to the left within an intersection or into an alley, private road, or driveway shall yield the right of way to any vehicle approaching from the opposite direction which is within the intersection or so close as to constitute an immediate hazard.
3. Preferential right of way may be indicated by stop signs or yield signs as authorized.
4. Except when directed to proceed by a duly authorized flagman, police officer, or fire fighter vested by law with authority to direct, control, or regulate traffic, every driver of a vehicle approaching a stop sign shall stop at a clearly marked stop line, but if none, before entering a marked crosswalk on the near side of the intersection or, if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the roadway, and after having stopped shall yield the right of way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time when the driver is moving across or within the intersection or junction of roadways.

5. The driver of a vehicle approaching a yield sign shall slow down to a speed reasonable for the existing conditions and, if required for safety to stop, shall stop at a clearly marked stop line, but if none, before entering a marked crosswalk on the near side of the intersection or if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the roadway, and then after slowing or stopping, the driver shall yield the right of way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time the driver is moving across or within the intersection or junction of roadways.

6. If a driver is involved in a collision with a vehicle in the intersection or junction of roadways, after driving past a yield sign without stopping, the collision is deemed prima facie evidence of his failure to yield right of way.

(Source: WOS 2010-011, October 14, 2010, Section XLIII)

9.344 STOP OR STOPPING

A. Violation

It shall be a violation for any person operating any vehicle when entering any intersection determined, designated, and bearing the required sign to fail and neglect to bring the vehicle to a complete stop before entering the intersection.

B. Requirements

1. No driver shall enter an intersection or a marked crosswalk unless there is sufficient space on the other side of the intersection or crosswalk to accommodate the vehicle he is operating without obstructing the passage of other vehicles or pedestrians notwithstanding any traffic control signal indications to proceed.

2. The driver of a vehicle about to enter or cross a highway from a private road or driveway shall yield the right of way to all vehicles lawfully approaching on the highway.

(Source: WOS 2010-011, October 14, 2010, Section XLIV)

9.345 OPERATION OF VEHICLES ON APPROACH OF AUTHORIZED EMERGENCY VEHICLES

A. Violation

It shall be a violation for a driver of a vehicle not to immediately yield the right of way to an approaching authorized emergency vehicle making use of audible and visual signals, or of a police vehicle properly and lawfully making use of an audible signal only.

B. Requirements

1. The driver of a vehicle shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the roadway clear of any intersection and shall stop and remain in that position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer.
2. This section shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway.

(Source: WOS 2010-011, October 14, 2010, Section XLV)

9.346 HIGHWAY CONSTRUCTION AND MAINTENANCE

A. Violation

It shall be a violation for a driver of a vehicle not to yield the right of way to any authorized vehicle or pedestrian actually engaged in work upon a highway within any highway construction or maintenance area indicated by official traffic control devices.

B. Requirement

The driver of a vehicle shall yield the right of way to any authorized vehicle obviously and actually engaged in work upon a highway whenever the vehicle displays flashing amber lights.

(Source: WOS 2010-011, October 14, 2010, Section XLVI)

9.347 TRANSIT VEHICLES

A. Violation

It shall be a violation for a driver of a vehicle not to yield the right of way to a transit vehicle traveling in the same direction that has signaled and is reentering the traffic flow.

B. Requirement

Nothing in this section shall operate to relieve the driver of a transit vehicle from the duty to drive with due regard for the safety of all persons using the roadway.

(Source: WOS 2010-011, October 14, 2010, Section XLVII)

9.348 PEDESTRIANS' RIGHTS AND DUTIES

A. Violation

It shall be a violation for a pedestrian and/or driver of a vehicle not to follow traffic-control signs and signals at intersections as it relates to pedestrians and the following requirements.

B. Stopping for Pedestrians in Crosswalks Requirements

1. The operator of an approaching vehicle shall stop and remain stopped to allow a pedestrian to cross the roadway within an unmarked or marked crosswalk when the

pedestrian is upon or within one lane of the half of the roadway upon which the vehicle is traveling or onto which it is turning. For purposes of this section "half of the roadway" means all traffic lanes carrying traffic in one direction of travel, and includes the entire width of a one-way roadway.

2. No pedestrian shall suddenly leave a curb or other place of safety and walk, run, or otherwise move into the path of a vehicle which is so close that it is impossible for the driver to stop.

3. Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear shall not overtake and pass the stopped vehicle.

C. Crossing at Other Than Crosswalks Requirements

1. Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right of way to all vehicles upon the roadway.

2. Where curb ramps exist at or adjacent to intersections or at marked crosswalks in other locations, disabled persons may enter the roadway from the curb ramps and cross the roadway within or as closely as practicable to the crosswalk. All other pedestrian rights and duties as defined elsewhere in this Statute remain applicable.

3. No pedestrian shall cross a roadway at an unmarked crosswalk where an official sign prohibits the crossing.

D. Drivers to Exercise Care Requirements

Notwithstanding the foregoing provisions of this Statute every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway and shall give warning by sounding the horn when necessary and shall exercise proper precaution upon observing any child or any obviously confused or incapacitated person upon a roadway.

E. Pedestrians on Roadways Requirements

Where sidewalks are not provided any pedestrian walking or otherwise moving along and upon a highway shall, when practicable, walk or move only on the left side of the roadway or its shoulder facing traffic which may approach from the opposite direction and upon meeting an oncoming vehicle shall move clear of the roadway.

F. Pedestrians Soliciting Rides or Business Requirements

1. No person shall stand in, on, or alongside a public roadway at any place where a motor vehicle cannot safely stop off the main traveled portion for the purpose of soliciting a ride for himself or for another from the occupant of any vehicle.
2. The provisions of subsection (a) above shall not be construed to prevent a person upon a public highway from soliciting, or a driver of a vehicle from giving a ride where an emergency actually exists, nor to prevent a person from signaling or requesting transportation from a passenger carrier for the purpose of becoming a passenger thereon for hire.
3. No person shall stand in a roadway for the purpose of soliciting employment or business from the occupant of any vehicle.
4. No person shall stand on or in proximity to a street or highway for the purpose of soliciting the watching or guarding of any vehicle while parked or about to be parked on a street or highway.

G. Pedestrians' Right of Way on Sidewalk Requirements

The driver of a vehicle shall yield the right of way to any pedestrian on a sidewalk.

H. Pedestrians Yield to Emergency Vehicles Requirements

1. Upon the immediate approach of an authorized emergency vehicle making use of audible and visual signals, or of a police vehicle making use of an audible signal, every pedestrian shall yield the right of way to the authorized emergency vehicle.

2. This section shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway nor from the duty to exercise due care to avoid colliding with any pedestrian.

(Source: WOS 2010-011, October 14, 2010, Section XLVIII)

9.349 TURNING AND STARTING AND SIGNALS ON STOPPING AND TURNING

A. Violation

It is a violation for a driver of a vehicle is not to follow the requirements for turning, starting, signaling and stopping as set forth in this section.

B. Position and Method of Turning at Intersections Requirements

The driver of a vehicle intending to turn shall do so as follows:

1. **Right Turns:** Both the approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway.

2. **Left Turns:** The driver of a vehicle intending to turn left shall approach the turn in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of the vehicle. Whenever practicable the left turn shall be made to the left of the center of the intersection and so as to leave the intersection or other location in the extreme left-hand lane lawfully available to traffic moving in the same direction as the vehicle on the roadway being entered.

3. **Two-Way Left Turn Lanes:** A two-way left turn lane is near the center of the

roadway set aside for use by vehicles making left turns in either direction from or into the roadway. Two-way left turn lanes shall be designated by distinctive uniform roadway markings.

4. Upon a roadway where a center lane has been provided by distinctive pavement markings for the use of vehicles turning left from either direction, no vehicles may turn left from any other lane. A vehicle shall not be driven in this center lane for the purpose of overtaking or passing another vehicle proceeding in the same direction. A signal, either electric or manual, for indicating a left turn movement, shall be made at least one hundred feet before the actual left turn movement is made.

C. "U" Turns Requirements

1. The driver of any vehicle shall not turn the vehicle so as to proceed in the opposite direction unless the movement can be made safely and without interfering with other traffic.

2. No vehicle shall be turned so as to proceed in the opposite direction upon any curve, or upon the approach to or near the crest of a grade, where the vehicle cannot be seen by the driver of any other vehicle approaching from either direction within five hundred feet.

D. Starting Parked Vehicle Requirements

No person shall start a vehicle which is stopped, standing or parked unless and until the movement can be made with reasonable safety.

E. Turning, Stopping, Moving Right or Left and Use of Signals Requirements

1. No person shall turn a vehicle or move right or left upon a roadway unless and until the movement can be made with reasonable safety nor without giving an appropriate signal in the manner provided.

2. A signal of intention to turn or move right or left when required shall be given

continuously during not less than the last one hundred feet traveled by the vehicle before turning.

3. No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal to the driver of any vehicle immediately to the rear when there is opportunity to give a signal.

4. The signals provided for shall not be flashed on one side only on a disabled vehicle, flashed as a courtesy or "do pass" signal to operators of other vehicles approaching from the rear, nor be flashed on one side only of a parked vehicle except as may be necessary for compliance with this section.

F. Signals by Hand and Arm or Signal Lamps Requirements

1. Any stop or turn signal when required shall be given either by means of the hand and arm or by signal lamps.

2. Any motor vehicle in use on a highway shall be equipped with, and required signal shall be given by, signal lamps when the distance from the center of the top of the steering post to the left outside limit of the body, cab or load of the motor vehicle exceeds twenty-four inches, or when the distance from the center of the top of the steering post to the rear limit of the body or load exceeds fourteen feet. The latter measurements shall apply to any single vehicle, also to any combination of vehicles.

G. Method of Giving Hand and Arm Signals

All required signals given by hand and arm shall be given from the left side of the vehicle in the following manner and the signals shall indicate as follows:

1. Left turn: Hand and arm extended horizontally.

2. Right turn: Hand and arm extended upward.

3. Stop or decrease speed: Hand and arm extended downward.

(Source: WOS 2010-011, October 14, 2010, Section XLIX)

9.350 SPECIAL STOPS

A. Violation

It is a violation for a driver of a vehicle not to follow the requirements for special stops as set forth in this section.

B. Emerging From Alley, Driveway, or Building Requirement

The driver of a vehicle within a business or residence district emerging from an alley, driveway or building shall stop the vehicle immediately prior to driving onto a sidewalk or onto the sidewalk area extending across any alleyway or driveway, and shall yield the right of way to any pedestrian as may be necessary to avoid collision, and upon entering the roadway shall yield the right of way to all vehicles approaching on said roadway.

C. Overtaking or Meeting School Bus and Duties of Bus Driver Requirement

1. The driver of a vehicle upon overtaking or meeting from either direction any school bus which has stopped on the roadway for the purpose of receiving or discharging any school children shall stop the vehicle before reaching the school bus when there is in operation on the school bus a visual signal, and the driver shall not proceed until the school bus resumes motion or the visual signals are no longer activated.
2. The driver of a vehicle upon a highway with three or more marked traffic lanes need not stop upon meeting a school bus which is proceeding in the opposite direction and is stopped for the purpose of receiving or discharging school children.
3. The driver of a school bus shall actuate the visual signals only when the bus is stopped on the roadway for the purpose of receiving or discharging school children.

4. The driver of a school bus may stop completely off the roadway for the purpose of receiving or discharging school children only when the school children do not have to cross the roadway. The school bus driver shall actuate the hazard warning lamps before loading or unloading school children at such stops.

D. Overtaking or Meeting Private Carrier Bus and Duties of Bus Driver Requirements

1. The driver of a vehicle upon overtaking or meeting from either direction any private carrier bus which has stopped on the roadway for the purpose of receiving or discharging any passenger shall stop the vehicle before reaching the private carrier bus when there is in operation on said bus a visual signal and the driver shall not proceed until the bus resumes motion or the visual signals are no longer activated.

2. The driver of a vehicle upon a highway with three or more lanes need not stop upon meeting a private carrier bus which is proceeding in the opposite direction and is stopped for the purpose of receiving or discharging passengers.

3. The driver of a private carrier bus shall actuate the required visual signals only when the bus is stopped on the roadway for the purpose of receiving or discharging passengers.

4. The driver of a private carrier bus may stop a private carrier bus completely off the roadway for the purpose of receiving or discharging passengers only when the passengers do not have to cross the roadway. The private carrier bus driver shall actuate the hazard warning lamps before loading or unloading passengers at such stops.

(Source: WOS 2010-011, October 14, 2010, Section L)

9.351 SPEED RESTRICTIONS

A. Violation

It shall be a violation for a person to drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing.

B. Speed Limit Requirements

1. Except when a special hazard exists that requires lower speeds, the limits specified in this section or established as hereinafter authorized shall be maximum lawful speeds, and no person shall drive a vehicle on a highway at a speed in excess of the maximum limits.

- a. Fifteen miles per hour in residential courts and on unpaved roads
- b. Twenty-five miles per hour on paved streets;
- c. Fifty-five miles per hour on state highways.

2. The driver of every vehicle shall drive at an appropriate reduced speed when approaching and crossing an intersection, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway, and when special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway conditions.

C. Minimum Speed Regulation and Passing Slow-Moving Vehicle Requirements

No person shall drive a motor vehicle at such a slow speed as to impede the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law. A person following a vehicle driving at less than the legal maximum speed and desiring to pass the vehicle may exceed the speed limit on highways having only one lane of traffic in each direction, at only such a speed and for only such a distance as is necessary to complete the pass with a reasonable margin of safety.

D. Slow-Moving Vehicle to Pull Off Roadway Requirements

On a two-lane highway where passing is unsafe because of traffic in the opposite direction or other conditions, a slow moving vehicle, behind which five or more vehicles are formed in a line, shall turn off the roadway wherever sufficient area for a safe turn-out exists, in order to permit the vehicles following to proceed. As used in this section a slow moving vehicle is one which is proceeding at a rate of speed less than the normal flow of traffic at the particular time and place.

E. School and Playground Requirements

It is unlawful for the operator of any vehicle to operate the same at a speed in excess of twenty miles per hour upon a highway when passing any marked school or playground zone when the marked school or playground zone is fully posted with standard school speed limit signs or standard playground speed limit signs.

F. Due Care Requirements

Compliance with speed requirements of this Statute shall not relieve the operator of any vehicle from the further exercise of due care and caution as further circumstances shall require.

G. Vehicles with Solid or Hollow Cushion Tires Requirements

Except for vehicles equipped with temporary-use spare tires that meet federal standards, it is unlawful to operate any vehicle equipped or partly equipped with solid rubber tires or hollow center cushion tires, or to operate any combination of vehicles any part of which is equipped or partly equipped with solid rubber tires or hollow center cushion tires, so long as solid rubber tires or hollow center cushion tires may be used under the provisions of this title, upon any public highway at a greater rate of speed than ten miles per hour, provided the temporary-use spare tires are installed and used in accordance with the manufacturer's instructions.

H. Special Speed Limitation on Motor-Driven Cycle Requirements

No person shall operate any motor-driven cycle during the time that lights are required at

a speed greater than thirty-five miles per hour unless the motor-driven cycle is equipped with a head lamp or lamps which are adequate to reveal a person or vehicle at a distance of three hundred feet ahead.

I. Reckless Driving and Exceeding Speed Limit Requirements

1. No person shall operate any motor vehicle in a manner which causes damage to any person or property, or in a manner which endangers or is likely to endanger any person or property.
2. The unlawful operation of a vehicle in excess of the maximum lawful speeds provided in this Statute at the point of operation and under the circumstances described shall be prima facie evidence of the operation of a motor vehicle in a reckless manner.

(Source: WOS 2010-011, October 14, 2010, Section LI)

9.352 ALCOHOL

A. Violation

It is a violation to drink any alcoholic beverage in a motor vehicle when the vehicle is upon a highway or for a person to have in his or her possession while in a motor vehicle upon a highway, a bottle, can, or other receptacle containing an alcoholic beverage if the container has been opened or a seal broken or the contents partially removed.

B. Requirements

1. It is not a violation if the container is kept in the trunk of the vehicle or in some other area of the vehicle not normally occupied by the driver or passengers if the vehicle does not have a trunk. A utility compartment or glove compartment is deemed to be within the area occupied by the driver and passengers.
2. This section does not apply to a public conveyance that has been commercially

chartered for group use or to the living quarters of a motor home or camper or, to any passenger for compensation in a for-hire vehicle licensed under city, county, or state law, or to a privately-owned vehicle operated by a person possessing a valid operator's license endorsed for the appropriate classification in the course of his usual employment transporting passengers at the employer's direction.

3. Nothing in this subsection shall be construed to authorize possession or consumption of an alcoholic beverage by the operator of any vehicle while upon a highway.

(Source: WOS 2010-011, October 14, 2010, Section LII)

9.353 OPERATING MOTOR VEHICLE IN A NEGLIGENT MANNER

A. Violation

It is a violation for any person to operate a motor vehicle in a negligent manner.

B. Requirements

1. For the purpose of this section to “operate in a negligent manner” means the operation of a vehicle in such a manner as to endanger or be likely to endanger any persons or property.

2. Any person operating a motor vehicle on private property with the consent of the owner in a manner consistent with the owner's consent shall not be guilty of negligent driving.

3. The violation of operating a vehicle in a negligent manner is considered to be a lesser violation than, but included in, the violation of operating a vehicle in a reckless manner, and any person charged with operating a vehicle in a reckless manner may be found to have committed the lesser violation of operating a vehicle in a negligent manner.

(Source: WOS 2010-011, October 14, 2010, Section LIII)

9.354 ROADWAY CONSTRUCTION ZONES

A. Violation

It shall be a violation to drive a vehicle in a roadway construction zone at a speed greater than that allowed by traffic control devices.

B. Requirements

- 1.** A roadway construction zone is an area where construction, repair, or maintenance work is being conducted by public employees or private contractors, on or adjacent to any public roadway.
- 2.** A person found to have a violation relating to speed restrictions in a roadway construction zone shall be assessed a monetary penalty equal to twice the penalty normally assessed for the same violation. This penalty may not be waived, reduced, or suspended.
- 3.** A person who drives a vehicle in a roadway construction zone in such a manner as to endanger or be likely to endanger any persons or property, or who removes, evades, or intentionally strikes a traffic safety or control device is guilty of reckless endangerment of roadway workers.

(Source: WOS 2010-011, October 14, 2010, Section LIV)

9.355 RACING OF VEHICLES ON HIGHWAYS AND RECKLESS DRIVING

A. Violation

It shall be a violation for a person or persons to race any motor vehicle or motor vehicles upon any public highway.

B. Requirement

Any person or persons who willfully compare or contest relative speeds by operation of one or more motor vehicles is guilty of racing, which shall constitute reckless driving, whether or not the speed is in excess of the maximum speed prescribed by law. Any comparison or contest of the accuracy with which motor vehicles may be operated in terms of relative speeds not in excess of the posted maximum speed does not constitute racing.

(Source: WOS 2010-011, October 14, 2010, Section LV)

9.356 STOPPING, STANDING, AND PARKING

A. Violation

It shall be a violation for any person to stop, park, or leave standing any vehicle, whether attended or unattended, upon the roadway if found in violation of this section.

B. Requirements

- 1.** Any vehicle stopped, parked or left:
 - a.** On the roadway side of any vehicle stopped or parked at the edge or curb of a street;
 - b.** On a sidewalk or street planting strip;
 - c.** Within an intersection;
 - d.** On a crosswalk;
 - e.** Alongside or opposite any street excavation or obstruction when stopping, standing, or parking would obstruct traffic;

- f.** Upon any bridge or other elevated structure upon a highway;
- g.** At any place where official signs prohibit stopping.

2. Stand or park a vehicle, whether occupied or not, except momentarily to pick up or discharge a passenger or passengers:

- a.** In front of a public or private driveway or within five feet of the end of the curb radius leading thereto;
- b.** Within fifteen feet of a fire hydrant;
- c.** Within twenty feet of a crosswalk;
- d.** Within thirty feet upon the approach to any flashing signal, stop sign, yield sign, or traffic control signal located at the side of a roadway;
- e.** Within twenty feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within seventy-five feet of said entrance when properly posted; or
- f.** At any place where official signs prohibit standing.

3. Park a vehicle, whether occupied or not, except temporarily for the purpose of and while actually engaged in loading or unloading property or passengers at any place where official signs prohibit parking.

4. Parking or standing is permitted in the manner provided by law at all other places, except a time limit may be imposed or parking restricted at other places, but the limitation and restriction shall be by Tribal Statute.

5. No person shall move a vehicle not lawfully under his or her control into any prohibited area or away from a curb such a distance as is unlawful.

6. It is unlawful for any person to reserve or attempt to reserve any portion of a highway for the purpose of stopping, standing, or parking to the exclusion of any other person, nor shall any person be granted such right.

7. The following exclusions apply:

a. The driver of any vehicle that is disabled in such manner and to such extent that it is impossible to avoid stopping and temporarily leaving the vehicle in such position. The driver shall nonetheless arrange for the prompt removal of the vehicle.

b. The driver of a public transit vehicle who temporarily stops the vehicle upon the roadway for the purpose of and while actually engaged in receiving or discharging passengers.

c. The driver of a solid waste collection company or recycling company vehicle who temporarily stops the vehicle as close as practical to the right edge of the right-hand shoulder of the roadway or right edge of the roadway if no shoulder exists for the purpose of and while actually engaged in the collection of solid waste or recyclables, or both.

C. Additional Requirements

1. Except as otherwise provided in this section, every vehicle stopped or parked upon a two-way roadway shall be so stopped or parked with the right-hand wheels parallel to and within twelve inches of the right-hand curb or as close as practicable to the right edge of the right-hand shoulder.

2. Every vehicle stopped or parked upon a one-way roadway shall be so stopped or parked parallel to the curb or edge of the roadway, in the direction of authorized traffic movement, with its right-hand wheels within twelve inches of the right-hand curb or as close as practicable to the right edge of the right-hand shoulder, or with its left-hand wheels within twelve inches of the left-hand curb or as close as practicable to the left edge of the

left-hand shoulder.

(Source: WOS 2010-011, October 14, 2010, Section LVI)

9.357 UNATTENDED MOTOR VEHICLE AND REMOVAL FROM HIGHWAY

A. Violation

It shall be a violation for the operator of a vehicle to leave the vehicle unattended within the limits of any highway unless the operator of the vehicle arranges for the prompt removal of the vehicle.

B. Requirements

No person driving or in charge of a motor vehicle shall permit it to stand unattended without first stopping the engine, locking the ignition, removing the key and effectively setting the brake and, when standing upon any perceptible grade, turning the front wheels to the curb or side of the highway.

(Source: WOS 2010-011, October 14, 2010, Section LVII)

9.358 LIMITATIONS ON BACKING

It shall be a violation for any driver of a vehicle to back up unless the movement can be made safely and without interfering with other traffic.

(Source: WOS 2010-011, October 14, 2010, Section LVIII)

9.359 DRIVING ON SIDEWALK PROHIBITED

It shall be a violation for any person to drive any motor vehicle upon a sidewalk or sidewalk area except upon a permanent or duly authorized temporary driveway.

(Source: WOS 2010-011, October 14, 2010, Section LIX)

9.360 OPERATING MOTORCYCLES ON ROADWAYS

A. Violation and Requirements

Motorcycles are entitled to full use of a lane and no motor vehicle shall be driven in such a manner as to deprive any motorcycle of the full use of a lane. It shall be a violation for the following actions:

1. The operator of a motorcycle shall not overtake and pass in the same lane occupied by the vehicle being overtaken.
2. No person shall operate a motorcycle between lanes of traffic or between adjacent lines or rows of vehicles.
3. Motorcycles shall not be operated more than two abreast in a single lane.
4. Subsections (b) and (c) of this section shall not apply to police officers in the performance of their official duties.

(Source: WOS 2010-011, October 14, 2010, Section LX)

9.361 RIDING ON MOTORCYCLES

A. Violation

It shall be a violation for a person operating a motorcycle to carry any other person, or for any other person to ride on a motorcycle, unless the motorcycle meets the following requirements

B. Requirements

1. Is designed to carry more than one person, in which event a passenger may ride upon the permanent and regular seat if designed for two persons, or upon another seat firmly attached to the motorcycle at the rear or side of the operator.
2. The motorcycle must contain foot pegs, of an approved type, for each person the motorcycle is designed to carry.

(Source: WOS 2010-011, October 14, 2010, Section LXI)

9.362 MOTORCYCLES ADDITIONAL VIOLATIONS

- A. It shall be a violation for a person to operate on a public highway a motorcycle in which the handlebars or grips are more than fifteen inches higher than the seat or saddle for the operator.
- B. It shall be a violation for a person to ride a motorcycle in a position where both feet are placed on the same side of the motorcycle.
- C. It shall be a violation for a person to ride upon a motorcycle and to attach their self or the motorcycle to any other vehicle on a roadway.

(Source: WOS 2010-011, October 14, 2010, Section LXII)

9.363 THROWING DANGEROUS MATERIALS ON HIGHWAY PROHIBITED

It shall be a violation for the following:

- A. No person shall throw or deposit upon any highway any glass bottle, glass, nails, tacks, wire, cans or any other substance likely to injure any person, animal or vehicle upon the highway.
- B. Any person who drops, or permits to be dropped or thrown, upon any highway any destructive or injurious material shall immediately remove the same or cause it to be removed.
- C. Any person removing a wrecked or damaged vehicle from a highway shall remove any

glass or other injurious substance dropped upon the highway from the vehicle.

(Source: WOS 2010-011, October 14, 2010, Section LXIII)

9.364 DROPPING LOAD, OTHER MATERIALS AND REQUIREMENTS

A. Violation

- 1.** It is a violation for any person to transport any living animal on the running board, fenders, hood, or other outside part of any vehicle unless a suitable harness, cage or enclosure is provided and so attached as to protect the animal from falling or being thrown.
- 2.** It is a violation for any person to transport any persons upon the running board, fenders, hood or other outside part of any vehicle, except that this provision shall not apply to authorized emergency vehicles.
- 3.** It shall be a violation for a vehicle to be driven or moved on any public highway unless the vehicle is so constructed or loaded as to prevent any of its load from dropping, sifting, leaking, or otherwise escaping, except that sand may be dropped for the purpose of securing traction and shall meet the following requirements.

B. Requirements

- 1.** Any person operating a vehicle from which any glass or objects have fallen or escaped, which would constitute an obstruction or injure a vehicle or otherwise endanger travel upon a public highway shall immediately cause the public highway to be cleaned of all the glass or objects and shall pay any costs associated.
- 2.** No person may operate on any public highway any vehicle with any load unless the load and the covering as required by subsection (c) of this section are securely fastened to prevent the covering or load from becoming loose, detached, or in any manner a hazard to other users of the highway.

- a.** Any vehicle operating on a paved public highway with a load of dirt, sand, or gravel susceptible to being dropped, spilled, leaked, or otherwise escaping is covered so as to prevent spillage. Covering of such loads is not required if six inches of freeboard is maintained within the bed.
- b.** Any vehicle with deposits of mud, rocks, or other debris on the vehicle's body, fenders, frame, undercarriage, wheels, or tires shall be cleaned of such material before the operation of the vehicle on a paved public highway.
- c.** Nothing in this section may be construed to prohibit a public maintenance vehicle from dropping sand on a highway to enhance traction, or sprinkling water or other substances to clean or maintain a highway.

(Source: WOS 2010-011, October 14, 2010, Section LXIV)

9.365 MOTOR VEHICLE ADDITIONAL VIOLATIONS

- A.** No person shall drive a vehicle when it is so loaded, or when there are in the front seat such a number of persons, exceeding three, as to obstruct the view of the driver to the front or sides of the vehicle or as to interfere with the driver's control over the driving mechanism of the vehicle.
- B.** No passenger in a vehicle shall ride in such position as to interfere with the driver's view ahead or to the sides, or to interfere with his control over the driving mechanism of the vehicle.
- C.** No person shall open the door of a motor vehicle on the side adjacent to moving traffic unless and until it is reasonably safe to do so, and can be done without interfering with the movement of other traffic, nor shall any person leave a door open on the side of a vehicle adjacent to moving traffic for a period of time longer than necessary to load or unload passengers.
- D.** No person or persons shall occupy any trailer while it is being moved upon a public highway, except a person occupying a proper position for steering a trailer designed to be steered from a rear-end position.

E. The driver of any motor vehicle when traveling upon a down grade shall not coast with the gears of the vehicle in neutral.

F. The driver of a commercial motor vehicle when traveling upon a down grade shall not coast with the clutch disengaged.

G. The driver of any vehicle other than one on official business shall not follow any fire apparatus traveling in response to a fire alarm closer than five hundred feet or stop the vehicle within five hundred feet of any fire apparatus stopped in answer to a fire alarm.

H. No vehicle shall be driven over any unprotected hose of a fire department when laid down on any street, or private driveway, to be used at any fire or alarm of fire, without the consent of the fire department official in command.

I. It is unlawful for any person to operate a motor vehicle upon the highways when the person has in his or her embrace another person which prevents the free and unhampered operation of the vehicle.

J. It is unlawful to operate or drive any vehicle or combination of vehicles over or along any pavement or gravel or crushed rock surface on a public highway with one, two, or all of the wheels off the roadway, except for the purpose of stopping off the roadway, or having stopped, for proceeding back onto the pavement, gravel or crushed rock surface.

K. It is unlawful to operate any passenger motor vehicle which has been modified from the original design so that any portion of the passenger vehicle other than the wheels has less clearance from the surface of a level roadway than the clearance between the roadway and the lowermost portion of any rim of any wheel the tire on which is in contact with the roadway.

(Source: WOS 2010-011, October 14, 2010, Section LXV)

9.366 CHILD RESTRICTIONS AND REQUIRMENTS

A. Leaving Children Unattended

It is a violation for any person, while operating or in charge of a vehicle, to park or willfully allow the vehicle to stand upon a public highway or in a public place with its motor running, leaving a minor child or children under the age of sixteen years unattended in the vehicle.

B. Child Passenger Restraint Required

1. Whenever a child who is less than ten years of age is being transported in a motor vehicle that is in operation and that is required to be equipped with a safety belt system in a passenger seating position, the driver of the vehicle shall keep the child properly restrained as follows:

a. If the child is less than three years of age, the child is properly restrained in a child restraint system that complies with standards of the United States Department of Transportation and that is secured in the vehicle in accordance with instructions of the manufacturer of the child restraint system;

b. If the child is less than ten but at least three years of age, the child shall be restrained either as specified in (1) of this subsection or with a safety belt properly adjusted and fastened around the child's body.

3. This section does not apply to hire vehicles, or vehicles designed to transport sixteen or less passengers, including the driver, operated by auto transportation companies, and vehicles providing customer shuttle service between parking, convention, and hotel facilities, and airport terminals.

(Source: WOS 2010-011, October 14, 2010, Section LXVI)

9.367 SAFETY BELTS, USE REQUIRED

A. Definitions

For the purposes of this section, the term "motor vehicle" includes:

1. "Buses," meaning motor vehicles with motive power, except trailers, designed to carry more than ten passengers;
2. "Multipurpose passenger vehicles," meaning motor vehicles with motive power, except trailers, designed to carry ten persons or less that are constructed either on a truck chassis or with special features for occasional off-road operation;
3. "Passenger cars," meaning motor vehicles with motive power, except multipurpose passenger vehicles, motorcycles, or trailers, designed for carrying ten passengers or less; and
4. "Trucks," meaning motor vehicles with motive power, except trailers, designed primarily for the transportation of property.

B. Violations

1. It shall be a violation for the following:
 - a. Every person sixteen years of age or older operating or riding in a motor vehicle shall wear the safety belt assembly in a properly adjusted and securely fastened manner.
 - b. No person may operate a motor vehicle unless all passengers under the age of sixteen years are either wearing a safety belt assembly or are securely fastened into an approved child restraint device.

C. Requirements

1. This section only applies to motor vehicles that meet the manual seat belt safety standards as set forth in federal motor vehicle safety standard 208. This section does not apply to a vehicle occupant for whom no safety belt is available when all designated seating positions as required by federal motor vehicle safety standard 208 are occupied.

2. This section does not apply to an operator or passenger who possesses written verification from a licensed physician that the operator or passenger is unable to wear a safety belt for physical or medical reasons.

(Source: WOS 2010-011, October 14, 2010, Section LXVII)

9.368 MOPEDS GENERAL REQUIREMENTS AND OPERATION

A. Violation

1. It shall be a violation to operate a moped on a public roadway that is not equipped with the following requirements.
2. Notwithstanding any other provision of law, a moped may not be operated on a bicycle path or trail, bikeway, equestrian trail, or hiking or recreational trail.

B. Requirements

1. Removal of any muffling device or pollution control device from a moped is unlawful.
2. Mopeds shall comply with those federal motor vehicle safety standards established under the national traffic vehicle safety act of 1966 (15 U.S.C. Sec. 1381, et. seq.) which are applicable to a motor-driven cycle, as that term is defined in such federal standards.

(Source: WOS 2010-011, October 14, 2010, Section LXVIII)

9.369 WHEELCHAIR CONVEYANCES

It shall be a violation for the following:

- A. No person may operate a wheelchair conveyance on any public roadway with a posted

speed limit in excess of thirty-five miles per hour.

B. No person other than a wheelchair-bound person may operate a wheelchair conveyance on a public roadway.

C. Every wheelchair-bound person operating a wheelchair conveyance upon a roadway shall be granted all the rights and is subject to all the duties applicable to the driver of a vehicle by this Statute, except those provisions that by their nature can have no application.

(Source: WOS 2010-011, October 14, 2010, Section LXIX)

9.370 OPERATION OF NON-MOTORIZED VEHICLES

A. General

It shall be a violation for a person operating a bicycle upon any highway or upon any bicycle path that does not follow the requirements, subject to those exceptions stated herein.

B. Requirements

1. Every person riding a bicycle upon a roadway shall be granted all of the rights and is subject to all of the duties applicable to the driver of a vehicle by this Statute, except as to those provisions of this Statute which by their nature can have no application.

2. All hand signals required of persons operating bicycles shall be given in the following manner:

a. Left turn: Left hand and arm extended horizontally beyond the side of the bicycle;

b. Right turn: Left hand and arm extended upward beyond the side of the bicycle, or right hand and arm extended horizontally to the right side of the bicycle;

- c.** Stop or Decrease Speed: Left hand and arm extended downward beyond the side of the bicycle. The hand signals required by this section shall be given before initiation of a turn.
- 3.** A person propelling a bicycle shall not ride other than upon or astride a permanent and regular attached seat.
- 4.** No bicycle shall be used to carry more persons at one time than the number for which it is designed and equipped.
- 5.** No person riding upon any bicycle, coaster, roller skates, sled or toy vehicle shall attach the same or their self to any vehicle upon a roadway.
- 6.** Every person operating a bicycle upon a roadway at a rate of speed less than the normal flow of traffic at the particular time and place shall ride as near to the right side of the right through lane as is safe except as may be appropriate while preparing to make or while making turning movements, or while overtaking and passing another bicycle or vehicle proceeding in the same direction. A person operating a bicycle upon a roadway may use the shoulder of the roadway or any specially designated bicycle lane if one exists.
- 7.** Persons riding bicycles upon a roadway shall not ride more than two abreast except on paths or parts of roadways set aside for the exclusive use of bicycles.
- 8.** No person operating a bicycle shall carry any package, bundle or article which prevents the driver from keeping at least one hand upon the handle bars.
- 9.** Every bicycle when in use during the time that lights are required shall be equipped with a lamp on the front which shall emit a white light visible from a distance of at least five hundred feet to the front and with a red reflector on the rear which shall be visible from all distances from one hundred feet to six hundred feet to the rear when directly in front of lawful lower beams of head lamps on a motor vehicle. A lamp emitting a red light visible from a distance of five hundred feet to the rear may be used in addition to the red

reflector.

10. Every bicycle shall be equipped with a brake which will enable the operator to make the braked wheels to stop on dry, level, clean pavement.

(Source: WOS 2010-011, October 14, 2010, Section LXX)

9.371 AUTHORITY FOR ISSUANCE OF A TRAFFIC VIOLATION CITATION

A. A law enforcement officer has the authority to issue a notice of traffic violation citation:

1. When the violation is committed in the officer's presence;
2. When the officer is acting upon the request of a law enforcement officer in whose presence the traffic violation was committed; or
3. If an officer investigating at the scene of a motor vehicle accident has reasonable cause to believe that the driver of a motor vehicle involved in the accident has committed a traffic violation.

B. The Tribal court may issue a notice of traffic violation citation upon receipt of a written statement of the officer that there is reasonable cause to believe that a traffic violation was committed.

C. If any motor vehicle without a driver is found parked, standing, or stopped in violation of this title, the officer finding the vehicle shall take its registration number and may take any other information displayed on the vehicle which may identify its user, and shall conspicuously affix to the vehicle a notice of traffic violation citation.

(Source: WOS 2010-011, October 14, 2010, Section LXXI)

9.372 TRIBAL COURT JURISDICTION

All violations of this Statute designated as a traffic violations may be heard and determined by the Tribal Court.

(Source: WOS 2010-011, October 14, 2010, Section LXXII)

9.373 DETERMINATION OF A TRAFFIC VIOLATION

A. A notice of traffic violation citation represents a determination that a violation has been committed. The determination will be final unless contested as provided in this Statute.

B. The form for the notice of traffic violation citation shall include the following:

- 1.** A statement that the notice represents a determination that a traffic violation has been committed by the person named in the notice and that the determination is final unless contested as provided in this Statute;
- 2.** A statement that a traffic violation is a noncriminal offense for which imprisonment may not be imposed as a sanction;
- 3.** A statement of the specific traffic violation for which the notice was issued;
- 4.** A statement of the monetary penalty established for the traffic violation;
- 5.** A statement of the options provided in this Statute for responding to the notice and the procedures necessary to exercise these options;
- 6.** A statement that at any hearing to contest the determination the Tribe has the burden of proving, by a preponderance of the evidence, that the violation was committed; and that the person may subpoena witnesses including the officer who issued the notice of violation;
- 7.** A statement that at any hearing requested for the purpose of explaining mitigating circumstances surrounding the commission of the violation the person will be deemed to have committed the violation and may not subpoena witnesses;

8. A statement that the person must respond to the notice as provided in this Statute within fifteen days or the failure to pay may incur additional costs and penalties;

9. A statement that failure to appear at a hearing requested for the purpose of contesting the determination or for the purpose of explaining mitigating circumstances may result in additional costs and penalties;

10. A statement, which the person shall sign, that the person promises to respond to the notice of violation in one of the ways provided in this Statute.

(Source: WOS 2010-011, October 14, 2010, Section LXXIII)

9.374 RESPONSE TO NOTICE, CONTESTING DETERMINATION, HEARING AND FAILURE TO RESPOND OR APPEAR

A. Any person who receives a notice of traffic violation citation shall respond to the notice as provided in this section within fifteen days of the date of the notice.

B. If the person determined to have committed the violation does not contest the determination the person shall respond by completing the appropriate portion of the notice of violation and submitting it, either by mail or in person, to the Tribal Court specified on the notice. A check or money order in the amount of the penalty prescribed for the violation must be submitted with the response. When a response which does not contest the determination is received, an appropriate order is entered in the court's records.

C. If the person determined to have committed the violation wishes to contest the determination the person shall respond by completing the portion of the notice of violation requesting a hearing and submitting it, either by mail or in person, to the Tribal Court specified on the notice. The court shall notify the person in writing of the time, place, and date of the hearing, and that date shall not be sooner than seven days from the date of the notice, except by agreement.

D. If the person determined to have committed the violation does not contest the determination but wishes to explain mitigating circumstances surrounding the violation, the person shall respond by completing the portion of the notice of violation requesting a hearing for that purpose and submitting it, either by mail or in person, to the Tribal Court specified on the notice. The court shall notify the person in writing of the time, place, and date of the hearing.

E. If any person issued a notice of traffic violation citation:

1. Fails to respond to the notice of traffic violation as provided in this section; or

2. Fails to appear at a hearing requested pursuant to this section; the court shall enter an appropriate order assessing the monetary penalty prescribed for the traffic violation and may assess additional costs and penalties.

(Source: WOS 2010-011, October 14, 2010, Section LXXIV)

9.375 HEARINGS, RULES OF PROCEDURE AND COUNSEL

A. Any person subject to proceedings under this Statute may be represented by counsel at their own expense.

B. An attorney representing the Tribe may appear in any proceedings under this Statute but need not appear, notwithstanding any Statute or rule of court to the contrary.

(Source: WOS 2010-011, October 14, 2010, Section LXXV)

9.376 HEARINGS FOR CONTESTING DETERMINATION OF VIOLATION

A. A hearing held for the purpose of contesting the determination that a violation has been committed shall be without a jury.

B. The court may consider the notice of traffic violation citation and any other written report made under oath submitted by the officer who issued the notice or whose written statement was the basis for the issuance of the notice in lieu of the officer's personal appearance at the hearing.

C. The person named in the notice may subpoena witnesses, including the officer, and has the right to present evidence and examine witnesses present in court.

D. The burden of proof is upon the Tribe to establish the commission of the violation by a preponderance of the evidence.

E. After consideration of the evidence and argument, the court shall determine whether the violation was committed. Where it has not been established that the violation was committed, an order dismissing the notice shall be entered in the court's records. Where it has been established that the violation was committed, an appropriate order shall be entered in the court's records.

(Source: WOS 2010-011, October 14, 2010, Section LXXVI)

9.377 HEARINGS FOR EXPLANATION OF MITIGATING CIRCUMSTANCES

A. A hearing held for the purpose of allowing a person to explain mitigating circumstances surrounding the commission of a violation is an informal proceeding. The person may not subpoena witnesses. The determination that an violation has been committed may not be contested at a hearing held for the purpose of explaining mitigating circumstances.

B. After the court has heard the explanation of the circumstances surrounding the commission of the violation an appropriate order shall be entered in the court's records.

C. There may be no appeal from the court's determination or order.

(Source: WOS 2010-011, October 14, 2010, Section LXXVII)

9.378 MONETARY PENALTIES

- A.** A person found to have committed a traffic violation shall be assessed a monetary penalty. No penalty may exceed two hundred and fifty dollars for each offense unless authorized by this Statute or title.

- B.** The Tribal Court shall prescribe by rule a schedule of monetary penalties for designated traffic violations. This rule shall also specify the conditions under which the Tribal Court may exercise discretion in assessing costs and penalties for traffic violations.

- C.** The schedule shall be reviewed every two years to adjust for inflation.

- D.** Whenever a monetary penalty is imposed by a court under this Statute it is immediately payable. If the person is unable to pay at that time the court may, in its discretion, grant an extension of the period in which the penalty may be paid. If the penalty is not paid on or before the time established for payment the court shall notify a collection agency of the failure to pay the penalty, and the collection agency shall process the failure to pay as a bad debt.

(Source: WOS 2010-011, October 14, 2010, Section LXXVIII)

9.379 ORDER OF COURT, CIVIL NATURE

- A.** An order entered after the receipt of a response which does not contest the determination, or after it has been established at a hearing that the violation was committed, or after a hearing for the purpose of explaining mitigating circumstances is civil in nature.

- B.** The court may include in the order the imposition of any cost and/or penalties authorized by the provisions of this Statute for the commission of a violation. The court may, in its discretion, waive, reduce, or suspend the monetary penalty prescribed for the violation.

- C.** At the person's request the court may order performance of a number of hours of community service in lieu of a monetary penalty, at the rate set by the Tribal Court.

(Source: WOS 2010-011, October 14, 2010, Section LXXIX)

9.380 PRESUMPTION REGARDING STOPPED, STANDING, OR PARKED VEHICLES

In any traffic violation citation case involving a violation relating to the stopping, standing, or parking of a vehicle, proof that the particular vehicle described in the notice of traffic violation was stopping, standing, or parking in violation of any provision of this title or an equivalent resolution, together with proof that the person named in the notice of traffic violation was at the time of the violation the registered owner of the vehicle, shall constitute in evidence a prima facie presumption that the registered owner of the vehicle was the person who parked or placed the vehicle at the point where, and for the time during which, the violation occurred.

(Source: WOS 2010-011, October 14, 2010, Section LXXXI)

9.381 ATTORNEY FEES

No attorney fees may be awarded to either party in a traffic violation case.

(Source: WOS 2010-011, October 14, 2010, Section LXXXI)

9.382. CITATION RETENTION REQUIREMENTS

A. The Department shall provide in appropriate form traffic violation citations containing notices to appear which shall be issued in books with citations in quadruplicate and meeting the requirements of this section.

B. The Department is responsible for the issuance of the books and shall maintain a record of every book and each violation citation contained therein issued to individual members of the department and shall require and retain a receipt for every book so issued.

C. Every enforcement officer upon issuing a violation citation to an alleged violator of any provision of this Statute shall deposit the original or a copy of the traffic citation with the Tribal court.

D. Upon the deposit of the original or a copy of the violation citation with the court, this original or copy of the violation citation may be disposed of only by the court.

E. The Department shall require the return of every traffic citation issued by an officer under and of all copies of every traffic citation which has been spoiled or upon which any entry has been made and not issued to an alleged violator.

F. The Department shall also maintain or cause to be maintained in connection with every traffic violation citation issued by an officer a record of the disposition of the charge by the court in which the original or copy of the traffic citation was deposited.

(Source: WOS 2010-011, October 14, 2010, Section LXXXII)

9.383 SAVINGS CLAUSE

In the event that any section, subsection or phrase of this Statute is found by a court of competent jurisdiction to violate the Constitution or laws of the Little Traverse Bay Bands of Odawa Indians, such part 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 so long as the overall intent of the Statute remains intact.

(Source: WOS 2010-011, October 14, 2010, Section LXXXIII)

9.384 EFFECTIVE DATE

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

(Source: WOS 2010-011, October 14, 2010, Section LXXXIV)

Chapter 4. Check, Draft or Order for Payment of Money

9.401 PURPOSE

The purpose of this Statute is to protect the financial resources for The Little Traverse Bay Bands of Odawa Indians through the imposition of imprisonment and/or fines on any person who issues a check, draft, or order for payment of money to The Little Traverse Bay Bands of Odawa Indians, a department of The Little Traverse Bay Bands of Odawa Indians, or any enterprise that is owned by The Little Traverse Bay Bands of Odawa Indians, that is returned unpaid from the issuer's financial institution.

(Source: WOS 2004-05, September 26, 2004, Section I)

9.402 DEFINITIONS

- A.** The word “**credit**” as used herein, shall mean an arrangement or understanding with the bank or depository, for the payment of such check, draft, or order, in full, upon the presentation thereof for payment.
- B.** “**Imprisonment**” means confinement in a jail or other facility, or community service as may be ordered by the Court.

(Source: WOS 2004-05, September 26, 2004, Section II)

9.403 APPLICABILITY

This Statute applies to all persons that fall under the jurisdiction of The Little Traverse Bay Bands of Odawa Indians.

(Source: WOS 2004-05, September 26, 2004, Section III)

9.404 CHECK, DRAFT, OR ORDER FOR PAYMENT OF MONEY; MAKING, DRAWING, UTTERING, OR DELIVERING WITHOUT SUFFICIENT FUNDS WITH

INTENT TO DEFRAUD; VIOLATION, PENALTIES

The following provisions shall apply to all checks, drafts, or orders for payment of money within the jurisdiction of The Little Traverse Bay Bands of Odawa Indians:

A. A person shall not make, draw, utter, or deliver any check, draft, or order for the payment of money, to apply on account or otherwise, upon any bank or other depository with intent to defraud and knowing at the time of the making, drawing, uttering, or delivering that the maker or drawer does not have sufficient funds in or credit with the bank or other depository to pay the check, draft, or order in full upon its presentation.

B. A person shall not make, draw, utter, or deliver any check, draft, or order for the payment of money, to apply on account or otherwise, upon any bank or other depository with intent to defraud if the person does not have sufficient funds for the payment of the check, draft, or order when presentation for payment is made to the drawee. This subsection does not apply if the lack of funds is due to garnishment, attachment, levy, or other lawful cause and that fact was not known to the person when the person made, drew, uttered, or delivered the check, draft, or order.

C. A person who violates this section is guilty of a crime as follows:

1. If the amount payable in the check, draft, or order is less than \$100.00, as follows:

a. For a first offense, a misdemeanor punishable by imprisonment for not more than thirty (30) days or a fine of not more than \$500.00, or both.

b. For an offense following one (1) or more prior convictions under this section or a local ordinance substantially corresponding to this section, a misdemeanor punishable by imprisonment for not more than six (6) months or a fine of not more than \$1,000.00, or both.

2. If the amount payable in the check, draft, or order is \$100.00 or more but less than \$500.00, as follows:

a. For a first or second offense, a misdemeanor punishable by imprisonment for not more than six (6) months or a fine of not more than \$1,000.00 or three (3) times the amount payable, whichever is greater, or both imprisonment and a fine.

b. For an offense following two (2) or more prior convictions under this section, a felony punishable by imprisonment for not more than one (1) year or a fine of not more than \$2,000.00, or both. For purposes of this subparagraph, however, a prior conviction does not include a conviction for a violation or attempted violation of subsection IV(C)(1).

3. If the amount payable in the check, draft, or order is \$500.00 or more, a felony punishable by imprisonment for not more than one (1) year or a fine of not more than \$2,000.00 or three (3) times the amount payable, whichever is greater up to \$5,000.00, or both imprisonment and a fine.

D. If the prosecuting attorney intends to seek an enhanced sentence based upon the defendant having one (1) or more prior convictions, the prosecuting attorney shall include in the complaint and information a statement listing the prior conviction or convictions. The existence of the defendant's prior conviction or convictions shall be determined by the court, without a jury, at sentencing or at a separate hearing for that purpose before sentencing. The existence of a prior conviction may be established by any evidence relevant for that purpose, including, but not limited to, one (1) or more of the following:

- 1.** A copy of the judgment of conviction.
- 2.** A transcript of a prior trial, plea-taking, or sentencing.
- 3.** Information contained in a pre-sentence report.
- 4.** The defendant's statement.

E. A person shall not, with intent to defraud, make, draw, utter, or deliver any check, draft, or order for payment of money, to apply on an account or otherwise, upon any bank or other

depository, it at the time of making, drawing, uttering, or delivering the check, draft, or order he or she does not have an account in or credit with the bank or other depository for the payment of the check, draft, or order upon presentation. A person who violates this section is guilty of a felony, punishable by imprisonment for not more than one (1) year, or by a fine of not more than \$500.00, or both.

F. A person shall not, with intent to defraud, make, utter, or deliver, within a period of not more than ten (10) days, three (3) or more checks, drafts, or orders for the payment of money, to apply on account or otherwise, upon any bank or other depository, knowing at the time of making, drawing, uttering, or delivering each of the checks, drafts, or orders that the maker or drawer does not have sufficient funds or credit with the bank or other depository for the payment of the check, draft, or order in full upon its presentation. A person who violates this section is guilty of a felony, punishable by imprisonment for not more than one (1) year, or by a fine of not more than \$500.00, or both.

G. Evidence of intent to defraud, etc. – As against the maker or drawer thereof, the making, drawing, uttering or delivering of a check, draft, or order, payment of which is refused by the drawee, when presented in the usual course of business, shall be prima facie evidence of intent to defraud and of knowledge of insufficient funds in or credit with such bank or other depository, provided such maker or drawer shall not have paid the drawee thereof the amount due thereon, together with all costs and protest fees, within five (5) days after receiving notice that such check, draft or order has not been paid by the drawee.

H. Notice of protest as evidence of intent to defraud, etc. – Where such check, draft, or order is protested, on the ground of insufficiency of funds or credit, the notice of protest thereof shall be admissible proof of presentation, non-payment and protest, and shall be prima facie evidence of intent to defraud, and of knowledge of insufficient funds or credit with such bank or other depository.

(Source: WOS 2004-05, September 26, 2004, Section IV)

9.405 SAVINGS CLAUSE

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

(Source: WOS 2004-05, September 26, 2004, Section V)

9.406 EFFECTIVE DATE

This Statute shall take effect thirty (30) days after enactment by Tribal Council [September 26, 2004].

(Source: WOS 2004-05, September 26, 2004, Section VI)

Chapter 5. Felony Defined

9.501 PURPOSE

This Statute is hereby enacted to define a felony.

(Source: WOS 2005-13, October 9, 2005, Section I)

9.502 DEFINITIONS

- A. The “**Tribe**” shall mean the Little Traverse Bay Bands of Odawa Indians.

- B. “**Misdemeanor**” means a crime that is less serious than a felony and is usually punishable by fine, penalty, forfeiture, or confinement in a place other than prison (such as county jail).

(Source: WOS 2005-13, October 9, 2005, Section II)

9.503 CONSTITUTION MANDATE TO DEFINE A FELONY

Within the jurisdiction of the Tribe a person shall be considered guilty of a felony if they have been convicted in a court of competent jurisdiction of:

- A. A crime defined by the Tribe’s criminal code as a felony or;

- B. Rape or;

- C. Sexual assault against an individual who has not attained the age of 16 years or;

- D. Any other crime that is listed by the Major Crimes Act, Title 18, United States Code, Section 1153 paragraph A. “(a) Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely, murder, manslaughter, kidnapping, maiming, a felony under chapter 109A, incest, assault with intent to commit murder,

assault with a dangerous weapon, assault resulting in serious bodily injury (as defined in section 1365 of this title), an assault against an individual who has not attained the age of 16 years, arson, burglary, robbery, and a felony under section 661 of this title within the Indian country, shall be subject to the same law and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States.”

Convictions of crimes in jurisdictions other than the Tribe of lesser degree than listed in Section (D) above shall be considered a Misdemeanor within the jurisdiction of the Tribe regardless of classification in the jurisdiction of the conviction.

(Source: WOS 2005-13, October 9, 2005, Section III)

9.504 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.

(Source: WOS 2005-13, October 9, 2005, Section IV)

9.505 EFFECTIVE DATE

Effective upon signature of the Executive or 30 days from Tribal Council approval which ever comes first.

(Source: WOS 2005-13, October 9, 2005, Section V)

Chapter 6. Victims' Rights

9.601 SHORT TITLE

This Statute may be cited as the “Victims’ Rights Statute.”

(Source: WOS 2015-005, March 6, 2015, Section I)

9.602 PURPOSE

The purpose of this Statute is to protect the rights of crime victims. This Statute repeals and replaces the “Victims’ Rights Act,” WOTCL 9.600.

(Source: WOS 2015-005, March 6, 2015, Section II)

9.603 JURISDICTION

This Statute applies to victims, as defined in this Statute, of crimes under the laws of LTBB.

(Source: WOS 2015-005, March 6, 2015, Section III)

9.604 DEFINITIONS

- A. **“Court”** means the Little Traverse Bay Bands of Odawa Indians Tribal Court.
- B. **“Crime”** means a violation of the laws of the Little Traverse Bay Bands of Odawa Indians for which the offender, upon conviction, may be punished by imprisonment or fine.
- C. **“Defendant”** means a person charged with having committed a crime against a victim.
- D. **“Final disposition”** means the ultimate termination of the criminal prosecution of a defendant including, but not limited to, dismissal, acquittal or imposition of a sentence by the

Court.

- E. “LTBB or Tribe”** means the Little Traverse Bay Bands of Odawa Indians.
- F. “Prisoner”** means a person who has been convicted and sentenced to imprisonment for having committed a crime against a victim.
- G. “Prosecutor”** means the Little Traverse Bay Bands of Odawa Indians Tribal Prosecutor.
- H. “Victim”** means any of the following:
 - 1.** Any individual who suffers direct or threatened physical, financial or emotional harm as a result of the commission of a crime;
 - 2.** A parent, guardian or custodian of a victim who is less than eighteen (18) years of age if the parent, guardian or custodian so chooses; or
 - 3.** A parent, guardian or custodian of a victim who is so mentally incapacitated that he or she cannot meaningfully understand or participate in the legal process.
 - 4.** If a victim is physically unable to exercise the rights under this Statute, the victim may designate his or her spouse or a child of fifteen (15) years of age or older, parent, sibling, grandparent or legal representative of the victim to act in place of the victim during the duration of the physical disability.

(Source: WOS 2015-005, March 6, 2015, Section IV)

9.605 RIGHTS OF CRIME VICTIMS

All crime victims have the following rights:

- A. Right to be Protected.** The following measures may be taken to protect victims as necessary and appropriate:

1. Have police escorts to and from court;
2. Have secure waiting areas separate from those of the accused and his or her family, witness and friend during court proceedings;
3. Have bail denied or have specific conditions imposed on bail release such as protective orders for defendants who are found to present a danger to the community, the victims, or witnesses;
4. Have the victim's address, place of employment, and other personal identification information kept confidential based upon the victim's reasonable apprehension of acts or threats of physical violence or intimidation by the defendant or at the defendant's direction against the victim or the victim's immediate family; and
5. Have any other action taken that is necessary to protect the victim from the accused.

B. Right to Notice. The right to reasonable, accurate, and timely notice of the victim's rights and any public court proceeding, or any parole proceeding, involving the crime or any release or escape of the accused and the right not to be excluded from any public court proceeding.

1. **Initial Notice.** Within twenty four (24) hours after the initial contact between the victim of a reported crime and law enforcement having the responsibility of investigating that crime, law enforcement must give the victim information about the availability of emergency and medical services and the rights of the victim.

2. **Notice of Charges.** The right to be notified immediately, if the Prosecutor chooses not to file charges against the Defendant or drops charges being held against the Defendant.

3. **Notice of Release.**

a. Within twenty four (24) hours after the arraignment of the defendant for a crime, the prosecutor must give the victim notice of whether the defendant is

eligible for pretrial release and notice if the defendant is released from custody by bond or otherwise.

b. The Prosecutor may move that the bond or personal recognizance of a defendant be revoked where the victim's statement or affidavit asserts acts or threats of physical violence or intimidation by the defendant or at the defendant's direction against the victim or the victim's immediate family.

3. Notice of Trial Process. Within seven (7) days after the arraignment of the defendant for a crime, the Prosecutor must give the victim a written notice in plain English of each of the following:

a. A brief statement of the procedural steps in the processing of a criminal case;

b. Suggested procedures if the victim is subjected to threats or intimidation; and

c. The appropriate person to contact for further information.

5. Notice of Sentencing.

a. Upon request of the victim, the victim must be given notice of the following:

i. The defendant's conviction;

ii. The crimes for which the defendant was convicted;

iii. The victim's right to make a written or oral impact statement for use in the preparation of a pre-sentence investigation report concerning the defendant;

iv. The address and telephone number of the probation office, if any,

which is to prepare the pre-sentence investigation report;

v. That a pre-sentence investigation report and any statement of the victim included in the report will be made available to the defendant unless exempted from disclosure by the Court;

vi. The victim's right to make an impact statement at sentencing;

vii. The time and place of the sentencing proceeding

b. The notice given by the Prosecutor to the victim must be given by any means reasonably calculated to give prompt and actual notice.

6. Notice of Appeal.

a. Upon request of the victim, the Court must notify the victim of the following:

i. That the defendant has filed an appeal of his or her conviction;

ii. A brief explanation in plain English of the appeal process, including the possible dispositions;

iii. Whether the defendant has been released on bail or other recognizance pending the disposition of the appeal;

iv. The time and place of any appellate court proceedings and any changes in the time or place of those proceedings; and

v. The result of the appeal.

b. In the event the defendant's conviction is reversed and the case is returned to the trial court for further proceedings, the victim must have the same rights

previously requested during the proceedings, which led to the appeal.

7. Notice of Release. Upon request of the victim, the Court must notify the victim of the defendant's release.

8. Notice of Escape. A victim who requests notice of the escape and the Prosecutor who is or has prosecuted the crime for which the person is detained or under sentence must be given immediate notice of the escape of the person accused, convicted or imprisoned for committing a crime against the victim. The notice must be given by means reasonably calculated to give prompt and actual notice.

C. Right not to be Excluded. The victim has the right to attend proceedings related to the crime for which the defendant is charged, unless the Court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at the proceeding. The victim has the right to have a support person present during such proceedings such as a family member, trusted advocate, or legal representative.

D. Right to be Heard During Proceedings. The right to be heard at any court or agency proceeding involving release, plea, sentencing, or any parole proceeding.

1. The victim has the right to submit or make a written or oral impact statement to law enforcement for use in preparing investigations and reports.

2. The victim has the right to appear and make an oral impact statement at the sentencing of the defendant.

3. The victim has the right to address or submit a written statement for consideration by a probation officer, a parole board or any other group or person having authority over the prisoner's release.

E. Right to Confer with the Prosecutor. The Prosecutor must offer the victim an opportunity to consult with the Prosecutor to obtain the victim's views about the disposition of a crime, including the victim's views about dismissal, plea or sentence negotiations, and pretrial or

probation programs.

F. Right to Restitution. The right to full and timely restitution as provided by law.

1. Consistent with LTBB criminal laws, the Court may order that the defendant make restitution to any victim of the defendant's course of conduct that gives rise to the conviction or the victim's estate.
2. If the Court does not order restitution, or orders only partial restitution, the Court must state on the record the reasons for that action.
3. If a crime results in damage to or loss or destruction of property of a victim of the offense, the order of restitution may require that the defendant do either of the following:
 - a. Return the property to its owner or to another person designated by the owner; or
 - b. If return of the property is impossible, impractical or inadequate, pay an amount equal to the value of the property on the date of the damage, loss or destruction.
4. If a crime results in physical or psychological injury to a victim, the order of restitution may require that the defendant do one or more of the following, as applicable:
 - a. Pay an amount equal to the cost of actual medical and related professional services and devices relating to physical and psychological care;
 - b. Pay an amount equal to the cost of actual physical and occupational therapy and rehabilitation;
 - c. Reimburse the victim or the victim's estate for after-tax income loss suffered by the victim as a result of the offense; or

- d.** Pay an amount equal to the cost of psychological and medical treatment for members of the victim's family that has been incurred as a result of the offense.
- 5.** If a crime resulting in bodily injury also results in death of a victim, the order of restitution may require that the defendant pay an amount equal to the cost of actual funeral and related expenses.
- 6.** Instead of restitution, and if the victim or the victim's estate consents, the order of restitution may require the defendant make restitution in services in lieu of money, or make restitution to a person designation by the victim or victim's estate if that person provided services to the victim as a result of the crime.
- 7.** If the Court orders restitution, the Court must, if the victim is deceased, order that the restitution be made to the victim's estate.
- 8.** Any order of restitution must be as fair as possible to the victim or victim's estate without unduly complicating or prolonging the sentencing process.
- 9.** Any amount paid to a victim or victim's estate as restitution must be set off against any amount later recovered as compensatory damages by the victim or the victim's estate in any federal, state or Tribal civil proceeding.
- 10.** If the defendant is placed on probation or paroled, any restitution ordered under this section must be a condition of that probation or parole. The Court may revoke probation or parole if the defendant fails to comply with the order and if the defendant has not made a good faith effort to comply with the order. In determining whether to revoke probation or parole, the Court must consider the defendant's employment status, earning ability, financial resources, and the willfulness of the defendant's failure to pay and any other special circumstances that may have a bearing on the defendant's ability to pay.
- 11.** An order of restitution may be enforced by the Prosecutor, a victim, or victim's estate named in the order to receive the restitution in the same manner as a judgment in a civil action.

G. Right to Proceedings without Unreasonable Delay. The right to proceedings free from unreasonable delay. If the Court is ruling on a continuance or other delay in the proceedings, the Court must consider the impact of the delay on the victim. Victims who are children, elders, or otherwise vulnerable must be given preference in setting the Court docket.

H. Right to be Treated with Fairness and Respect. The right to be treated with fairness and with respect for the victim's dignity and privacy. The victim must be treated with fairness, respect, and dignity throughout the criminal justice process. During proceedings the Prosecutor and the Court must take this into consideration when requesting or ordering testing, testimony, or any other potentially invasive act.

I. Right to Return of Property. The right to the expeditious return of personal property seized as evidence whenever possible. Law enforcement must promptly return to the victim property belonging to that victim which is taken in the course of the investigation, except that law enforcement:

1. Must not return property which is contraband;
2. Must not return property if the ownership of the property is disputed until the dispute is resolved; and
3. Must retain as evidence any weapon used in the commission of the crime and any other evidence if the Prosecutor certifies that there is a need to retain that evidence in lieu of a photograph or other means of memorializing its possession by a law enforcement officer.

J. Right to Enforcement. The right to enforcement of these rights and access to other available remedies under the laws of LTBB. Upon request of a victim, the Prosecutor must ask the Court to enforce the rights of the victim.

K. Right to View Copies of Record and Evidence. The right to view copies of reports and other evidence related to the proceeding, provided that the records will not compromise the

prosecution of the case. Upon the closing of an investigation or if still open, before the statute of limitations has run on the particular crime or within one year after the case goes cold, the victim has a right to view any and all records and evidence gathered by law enforcement. Such items do not include anything that is privileged. If any of the items contain confidential information, that information must be redacted before the victim is allowed to view it.

(Source: WOS 2015-005, March 6, 2015, Section V)

L. Right to Confidentiality. All statements and information given by a victim of domestic violence or sexual assault to any victim advocate, therapist or counselor shall be deemed confidential, and shall not be admissible in court, absent a waiver of said confidentiality by the victim, or except as otherwise authorized by law or pursuant to court order. A therapist or counselor is a licensed individual with at least a bachelor's degree in counseling, psychology, social work or other related fields who is providing professional counseling, therapy or psychological services to a victim of domestic or sexual violence, whether paid or volunteer. A victim advocate is a professional individual trained and working in an office to provide information, emotional support, or assistance with community resources, be it financial, legal, therapeutic, or otherwise in order to help victims of domestic or sexual violence.

(Source: WOS 2020-012, May 22, 2020, Section V(L) Amendment)

9.606 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.

(Source: WOS 2015-005, March 6, 2015, Section VI)

9.607 EFFECTIVE DATE

Effective upon the 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.

(Source: WOS 2015-005, March 6, 2015, Section VII)

(Source: WOS 2020-012, May 22, 2020, Section V(L) Amendment)

Chapter 7. Special Jurisdiction Over Domestic Violence and Related Crimes

9.701 PURPOSE

The purpose of this statute is to exercise the sovereign authority of the Little Traverse Bay Bands of Odawa Indians over domestic violence and related crimes within its territorial jurisdiction to the fullest extent permitted by federal law. The laws herein are intended to ensure that victims of such crimes are treated with fairness, respect and compassion; to hold perpetrators accountable for their conduct; and to deter future crimes from being committed. This statute repeals and replaces Waganakising Odawak Statute 2021-004.

(Source: WOS 2023-005, August 18, 2023, Section I)

9.702 DEFINITIONS

- A.** “Child” means an unemancipated person less than eighteen (18) years of age.
- B.** “Clerk” means the clerk of the LTBB Tribal Court.
- C.** “Ex Post Facto Law” means a law that provides for the infliction of punishment for an act that was legal when committed.
- D.** “Family Member” means any person related by blood, adoption or marriage.
- E.** “Household Member” means any person who resides in a household.
- F.** “Indian” means a person who is a member of a federally recognized Indian Tribe.
- G.** “Indian Tribe” means any federally recognized Indian Tribe.
- H.** “Judge” means a judge for LTBB.
- I.** “Law Enforcement” means the LTBB Police Department.

- J.** “LTBB or Tribe” means the Little Traverse Bay Bands of Odawa Indians.
- K.** “Non-Indian” means a person who is not a member of a federally recognized Indian Tribe.
- L.** “Perpetrator” means the person who allegedly committed a covered crime.
- M.** “Protection Order” means any injunction, restraining order or other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence against, contact or communication with or physical proximity to, another person; including any temporary or final order issued by a civil or criminal court, whether obtained by filing an independent action or as an order in another proceeding, if the civil or criminal order was issued in response to a complaint, petition or motion filed by or on behalf of a person seeking protection
- N.** “Prosecutor” means the prosecutor, assistant prosecutor and special prosecutor for LTBB.
- O.** “Spouse or Intimate Partner” means a spouse or former spouse of the victim, a person who shares a child in common with the victim and a person who cohabitates or has cohabitated as a spouse with the victim; or a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of relationship and the frequency of interaction between the persons involved in the relationship.
- P.** “Territorial Jurisdiction of the Little Traverse Bay Bands of Odawa Indians” means all land that is held in trust by the United States government for the benefit of the Tribe.
- Q.** “Tribal Citizen” means a person who is an enrolled member of LTBB.
- R.** “Tribal Court” means the LTBB Tribal Court.
- S.** “Victim” means a person who has suffered actual physical or mental harm as a result of a covered crime.

T. “Writ of habeas corpus” means a court order to free a prisoner from illegal confinement.

(Source: WOS 2023-005, August 18, 2023, Section II)

9.703 JURISDICTION

A. General Criminal Jurisdiction. The general criminal jurisdiction of the Tribe extends to LTBB citizens and all other Indians.

B. Special Tribal Criminal Jurisdiction.

1. Based on the Tribe’s inherent sovereignty and statutory authorization in the Violence Against Women Reauthorization Acts of 2013 and 2022, 25 U.S.C. § 1304, the Tribe’s jurisdiction over the covered crimes in Section VI extends to all persons.

2. The Tribe may not exercise special tribal criminal jurisdiction over an alleged offense, other than obstruction of justice or assault of Tribal justice personnel, if neither the defendant nor the alleged victim is an Indian.

3. In this paragraph and with respect to a criminal proceeding in which the Tribe exercises special tribal criminal jurisdiction based on a violation of a protection order, the term “victim” means a person specifically protected by a protection order that the defendant allegedly violated.

C. The Tribal Court has full jurisdiction and authority to issue and enforce protection orders against all persons regarding matters arising within the territorial jurisdiction of LTBB, or otherwise within the authority of LTBB.

(Source: WOS 2023-005, August 18, 2023, Section III)

9.704 DUE PROCESS

A. Rights of the Accused. In all prosecutions for crimes arising under this statute, the accused shall have the following rights:

1. To be secure in one's houses, papers, and effects against unreasonable search and seizures, or issue warrants, unless based upon probable cause, and supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;
2. To be free from being put twice in jeopardy for the same offense;
3. To not be compelled to be a witness against oneself;
4. To a speedy and public trial;
5. To be informed of the nature and cause of the accusation and be confronted with the witnesses against oneself;
6. To have compulsory process for obtaining witnesses in one's favor;
7. To have the assistance of counsel for one's defense, including court-appointed counsel if the accused cannot afford an attorney, and to have all these rights explained at the time of one's arraignment;
8. To be free from excessive bail, excessive fines or the infliction of cruel and unusual punishments;
9. To not be denied equal protection of the law or to have one's liberty or property removed without due process of law;
10. To not be subject to any bill of attainder or ex post facto law;
11. To have a jury trial of not less than six (6) persons;

12. To be notified of the right to file a writ of habeas corpus and to request a stay of detention in federal court upon an order of detention;

13. To have the LTBB's criminal laws, rules of evidence and rules of criminal procedure publicly available prior to charging the defendant; and

14. To have all other rights under 25 U.S.C. § 1304.

B. Courts of Record.

1. Tribal Courts are the Courts of Record and the Clerk must certify under seal as to the accuracy and validity of the files and records of all proceedings before the LTBB Courts.

2. The Clerk shall take, preserve and certify under seal to the accuracy of a verbatim record of the proceedings before the Tribal Courts. The record may be created and recorded by a stenographic, electronic, mechanical, or other recording devices approved by the Chief Judge of the Tribal Court as a trustworthy means of creating a permanent verbatim record of all proceedings.

3. The Chief Judge shall proscribe the length of time verbatim transcripts must be preserved by the Clerk, unless otherwise addressed by Statute.

4. It is a criminal offense, punishable by penalties and under the laws of LTBB for the Clerk of the Tribal Courts to knowingly make or keep a false file, record or certificate or to alter, amend or destroy any file, record or transcript without lawful authority.

C. Court Appointed Attorneys. By December 1 of each year, the Chief Judge shall submit to Tribal Council an annual report on the average cost of defending offenses under this statute. The Judiciary may adopt a court rule that modifies the appointment of court-appointed attorneys based on standards for indigent defendants. A court appointed attorney may petition the court to withdraw as attorney of record and the court may grant the petition whenever private counsel has been retained on the defendant's behalf.

(Source: WOS 2023-005, August 18, 2023, Section IV)

9.705. JUDGE, COUNSEL AND JURY REQUIREMENTS

A. Tribal Court Judges. All judges presiding over cases in which special tribal criminal jurisdiction is asserted must be admitted to practice before the Supreme Court of the United States, or any United States Circuit Court of Appeals, or the Supreme Court of any state; and have sufficient legal training to preside over criminal trials.

B. Counsel. All attorneys appearing in Tribal Court must be licensed to practice law by the state or federal bar, be a member in good standing and be admitted to practice in Tribal Court.

C. Formation of Jury. Where the defendant is charged with a crime under this statute, the defendant has a right to be tried by a jury selected from a jury pool that represents a fair cross-section of the community, and in cases involving a covered crime by a non-Indian defendant under Section VI., that includes non-Indians.

- 1. Juror Qualifications.** The basic qualifications of a juror are any person:
 - a.** Who is at least 18 years of age;
 - b.** Who does not have a mental or physical condition rendering them incapable of performing jury service;
 - c.** Who has not been convicted of a felony in any jurisdiction in the last ten (10) years or convicted of a crime of domestic violence;
 - d.** Who is a LTBB Citizen or a citizen of another federally recognized tribe living within the territorial jurisdiction of LTBB; and
 - e.** Who, in the case of a covered crime involving a non-Indian defendant, is a LTBB citizen or a citizen of another federally recognized tribe living within the

territorial jurisdiction of LTBB, employed by LTBB or any of its entities, or lives in tribal housing.

2. Jury Selection Process. In cases involving a covered crime by a non-Indian defendant, the jury pools shall represent a fair cross-section of the community, and include non-Indians that live on trust land, are employed by LTBB or any of its entities, or live in tribal housing.

D. Civil Jurisdiction. The Tribal Court has full jurisdiction and authority for the purposes of carrying out the Jury Selection Process to exercise civil jurisdiction over any person who lives or works within the territorial jurisdiction of LTBB.

E. Imprisonment. Any defendant sentenced to greater than one-year imprisonment, must serve the sentence in a federal or state facility, or a tribal facility that is approved by the Bureau of Indian Affairs.

(Source: WOS 2023-005, August 18, 2023, Section V)

9.706 COVERED CRIMES

A. Covered Crimes. The following offenses are covered crimes under this statute:

1. “Assault of Tribal Justice Personnel” means any violation of LTBB’s criminal laws where a violation occurs that involves the use, attempted use, or threatened use of physical force against an individual authorized to act for, or on behalf of LTBB, or serving the Tribe during, or because of, the performance or duties of that individual in:

a. Preventing, detecting, investigating, making arrests relating to, making apprehensions for, or prosecuting a covered crime;

b. Adjudicating, participating in the adjudication of, or supporting the adjudication of a covered crime;

- c. Detaining, providing supervision for, or providing services for persons charged with a covered crime; or
 - d. Incarcerating, supervising, providing treatment for, providing rehabilitation services for, or providing reentry services for persons convicted of a covered crime.
2. **“Child Violence”** means any violation of LTBB’s criminal laws involving the use, threatened use or attempted use of violence against a child.
 3. **“Dating Violence”** means any violation of LTBB’s criminal laws that is committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
 4. **“Domestic Violence”** means any violation of LTBB’s criminal laws that is committed by:
 - a. A current or former spouse or intimate partner of the victim;
 - b. A person with whom the victim shares a child in common;
 - c. A person who is cohabitating with or who has cohabitated with the victim as a spouse or intimate partner; or
 - d. A person similarly situated to a spouse of the victim under the domestic- or family-violence laws of LTBB.
 5. **“Obstruction of Justice”** means any violation of LTBB’s criminal laws that involves interfering with the administration or due process of the laws of the Tribe, including any Tribal criminal proceeding or investigation of a crime.

6. **“Sex Trafficking”** means conduct within the meaning of 18 U.S.C. § 1591(a).
7. **“Sexual Violence”** means any nonconsensual sexual act or contact proscribed by LTBB’s criminal laws, including in any case in which the victim lacks the capacity to consent to the act.
8. **“Stalking”** means engaging in a course of conduct directed at a specific person proscribed by LTBB’s criminal laws that would cause a reasonable person:
 - a. To fear for the person’s safety or the safety of others; or
 - b. To suffer substantial emotional distress.
9. **“Violation of a Protection Order”** means an act that:
 1. Occurs within the territorial jurisdiction of LTBB; and
 2. Violates a provision of a protection order that:
 - i. Prohibits or provides protection against violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person;
 - ii. Was issued against the defendant;
 - iii. Is enforceable by LTBB; and
 - iv. Is consistent with 18 U.S.C. § 2265(b).

B. Other Acts Admissibility.

1. In a criminal action under this section in which the defendant is accused of a covered crime, evidence of the defendant’s commission of similar acts of violence is admissible for any purpose for which it is relevant, including propensity, if it is not otherwise excluded.

2. If the prosecutor intends to offer evidence under this section, such evidence, including any existing statements of witnesses or a summary of the substance of any testimony that is expected to be offered, shall be disclosed to the defendant not less than ten (10) days before the scheduled date of trial or at a later time as allowed by the Tribal Court for good cause shown.

C. Hearsay Admissibility

1. Evidence of a statement by an alleged victim of a covered crime is admissible for purposes of this subsection if all of the following apply:

a. The statement purports to narrate, describe or explain the infliction or threat of physical injury upon the declarant.

b. The statement was made under circumstances that would indicate the statement's trustworthiness.

c. The statement was made to a law enforcement officer.

d. The statement was made at, or near, the time the conduct alleged in the statement occurred.

2. For purposes of this subsection, circumstances relevant to the issue of trustworthiness include, but are not limited to all of the following:

a. Whether the statement was made in contemplation of pending or anticipated litigation in which the declarant was interested.

b. Whether the declarant has a bias or motive for fabricating the statement, and the extent of any bias or motive.

c. Whether the statement is corroborated by evidence other than statements that are admissible only under this section.

3. If the prosecutor intends to offer evidence under this section, such evidence, including the statements of witnesses or a summary of the substance of any testimony that is expected to be offered, shall be disclosed to the defendant not less than ten (10) days before the scheduled date of trial or at a later time as allowed by the Tribal Court for good cause shown.
4. Nothing in this section shall be construed to abrogate any privilege conferred by law.

(Source: WOS 2023-005, August 18, 2023, Section VI)

9.707 PENALTIES

A. A defendant who is found guilty of a crime under this statute is subject to incarceration for up to one (1) year, a fine of up to \$5,000.00, and any appropriate rehabilitative or probationary terms, unless aggravating circumstances exist and the Tribal Law and Order Act (“**TLOA**”) has been enacted by the Tribe.

B. Aggravating Circumstances. A defendant who is found guilty of a crime under this statute, where aggravating circumstances were present is subject to imprisonment for up to two years, a fine of up to \$10,000.00, and any appropriate rehabilitative or probationary terms, if the Tribe has enacted TLOA. “Aggravating circumstances” include circumstances where:

1. The defendant has a prior conviction in any court for a crime involving conduct prohibited by this statute;
2. The defendant knew that the victim was vulnerable or incapable of resistance;
3. The victim was pregnant and the defendant knew of the pregnancy;
4. The defendant was under the influence of controlled substances or alcohol; or

5. The attack took place in the presence of a child.

C. Serious Aggravating Circumstances. A defendant who is found guilty of a crime under this statute, and who has two (2) or more prior convictions for a crime involving conduct that is prohibited by this statute, or who uses a dangerous weapon to commit the offense, or who causes serious bodily injury as a result of the offense is subject to incarceration for up to three (3) years, a fine of up to \$15,000.00, and any appropriate rehabilitative or probationary terms, if the Tribe has enacted TLOA.

D. “Dangerous weapon” means any object which can inflict serious bodily harm on a victim.

E. “Serious bodily harm” means any bodily injury resulting in the need for medical treatment, whether or not such treatment was sought, or which seriously harms or impairs the normal health or functioning of the body

F. Forfeiture of Weapons. The Court may order forfeiture of any firearms and ammunition upon a conviction under this section.

(Source: WOS 2023-005, August 18, 2023, Section VII)

9.708 DUTIES OF LAW ENFORCEMENT

A. To Victims. A law enforcement officer responding to a claim that may be covered under this statute must use all reasonable means to protect the victim and children to prevent further violence. This may include, but is not limited to, the following:

1. Taking any necessary action to provide for the safety of the victim and household members;
2. Confiscating any weapons involved;

3. Assisting victims in obtaining medical treatment;
4. Assisting victims in removing essential personal effects;
5. Transporting the victims and any children to a shelter or other safe place;
6. Giving the victims immediate notice of rights, remedies, and services available;
and:
7. Notifying the appropriate agency or agencies that can provide assistance.

B. To Children Present. A law enforcement officer who responds to claim that may be covered under this statute where children are present must use all reasonable means to protect them and prevent further acts of violence in their presence. This includes taking necessary actions to provide for the safety of the children, ensuring the children have adequate supervision after the perpetrator is removed and any other necessary actions.

C. Arrests.

1. Crimes of Domestic Violence. Where a law enforcement officer has probable cause to believe that a person has committed a crime under this statute, the officer may, without or with a warrant, arrest and charge the perpetrator with the appropriate crime.

2. Violations of Protection Orders. Where a law enforcement officer has probable cause to believe that the perpetrator violated a Protection Order, the officer may arrest the perpetrator.

D. Seizing Weapons. Law enforcement officers have the authority to seize weapons incident to arrest and in the course of securing a crime scene. The law enforcement officer shall:

1. Seize all weapons alleged to have been involved or threatened to be used in the commission of a crime or any weapon in the immediate vicinity of the alleged

commission of the offense; and

2. Seize a weapon that is in plain view or that is located during a search authorized by a person entitled to consent to the search. All such weapons including those the officer concludes were used in the commission of a crime must be confiscated regardless of ownership.

(Source: WOS 2023-005, August 18, 2023, Section VIII)

9.709 DUTIES OF PROSECUTOR

A. In every case in which a person is arrested for or charged with a criminal offense under this statute, the Prosecutor's Office must maintain contact with the victim throughout the criminal proceedings.

B. The Prosecutor's Office must confer with the victim regarding the need for any civil protection orders, bonds and other restraints to assure the safety of the victim and the victim's family or household members.

C. The Prosecutor's Office must inform the victim of all hearing dates, continuances, and rights of the victim. The Prosecutor's Office shall make available to the victim all reports received by the Prosecutor at the conclusion of the case.

D. The Prosecutor's Office must inform the victim of major prosecutorial decisions including decisions not to file charges under this statute when the victim has reported the offense or the perpetrator has been arrested for a criminal offense under this statute, or decisions to enter into a plea agreement relating to a charge under this statute.

E. The Prosecutor's Office must obtain information from the victim regarding costs and losses sustained as a result of the perpetrator's offense and must seek restitution for the victim and provide opportunity to complete a victim's impact statement that will be presented to the Tribal Court.

(Source: WOS 2023-005, August 18, 2023, Section IX)

9.710 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.

(Source: WOS 2023-005, August 18, 2023, Section X)

9.711 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.

(Source: WOS 2023-005, August 18, 2023, Section XI)

Chapter 8. Sex Offender Registration and Notification

9.801 SHORT TITLE

This Statute may be cited as the “Sex Offender Registry Statute.” and repeals and replaces WOS 2009-008 and 2011-007.

(Source: WOS 2012-008, August 5, 2012, Section I)

9.802 PURPOSE

A. The purpose of this Statute is to implement the federal Sex Offender Registration and Notification Act (SORNA), Section 1 of United States Public Law 109-248, 42 U.S.C. 16901 et seq. [34 U.S.C. 20901 et seq.]; and the accompanying sex offenses. Little Traverse Bay Bands of Odawa Indians finds that sex offenders present a risk of re-offending and that the efforts of law enforcement to protect the community, conduct investigations and to apprehend those who commit sex offenses is impaired by the lack of information available about individuals who have pled to, or have been found guilty of sex offenses.

B. This Act establishes a registry for offenses, the requirements of registration, and what crimes a person must register.

(Source: WOS 2012-008, August 5, 2012, Section II)

9.803 DEFINITIONS

A. “Chief of Police” means the Chief of the Little Traverse Bay Bands of Odawa Indians Law Enforcement,

B. “Convicted” means an adult sex offender is “convicted” for the purposes of this Statute if the sex offender has been subject to penal consequences based on the conviction, however the conviction was styled. This includes convictions of juveniles who are prosecuted as adults.

- C.** “Department” means the Little Traverse Bay Bands of Odawa Indians Law Enforcement,
- D.** “Employee” means, for the purposes of this Statute, an individual employed by the Little Traverse Bay Bands of Odawa Indians including Tribal Government Administration, commercial entities including the Odawa Casino Resort and ancillary enterprises and activities. Independent contractors for the purpose of this Statute shall be included within the definition of “Employee”.
- E.** “Employer” means all departments and agencies of the Tribal Government Administration and commercial entities of the Tribe, including the Odawa Casino Resort and ancillary enterprises and activities.
- F.** "Immediate" and "immediately" means within three (3) business days.
- G.** “Imprisonment” means incarceration pursuant to a conviction, regardless of the nature of the institution in which the offender serves the sentence. The term is to be interpreted broadly to include, for example, confinement in a state "prison" as well as in a local or Tribal "jail".
- H.** “Indian” means a person who is a member of a federally recognized Indian Tribe,
- I.** “Indian Tribe” means any federally recognized Tribe,
- J.** “Jurisdiction” means this Tribe and any other Indian Tribe that has asserted jurisdiction pursuant to section 127 of SORNA and the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, and the United States Virgin Islands.
- K.** “Minor” or “Juvenile” means an individual who has not attained the age of eighteen (18) years.
- L.** “Non-Indian” means a person who is not a member of a federally recognized Indian Tribe,
- M.** “Resides” means, with respect to an individual, the location of the individual's home or other place where the individual habitually lives.

N. “Sex Offense” as used in this Statute is limited to those offenses contained in section 111 (5) of SORNA, Sex Offender Registration and Notification Act (SORNA), Section 1 of United States Public Law 109-248, 42 U.S.C. 16901 et seq. [34 U.S.C. 20901 et seq.] and Tribal Sex Offenses.

O. “Sex Offender” means a person convicted of a sex offense.

P. “Student” means a person who enrolls in or attends an educational institution owned or operated by the Tribe, including a secondary school, trade or professional school, or an institution of higher education.

Q. “Territorial Jurisdiction of the Little Traverse Bay Bands of Odawa Indians” means all land that is held in trust by the United States government for the benefit of the Tribe.

R. “Tribal Court” means the Little Traverse Bay Bands of Odawa Indians Tribal Court,

S. “Tribal Member” means a person who is enrolled Citizen of the Little Traverse Bay Bands of Odawa Indian,

T. “Tribe” means the Little Traverse Bay Bands of Odawa Indians,

U. “Visitor” means any person within the Tribe’s jurisdiction, who is not a resident,

(Source: WOS 2012-008, August 5, 2012, Section III)

(Source: WOS 2023-014, October 10, 2023, Section II(B)(3), Jurisdictional Adjustment Statute, See (Q) in this Section)

9.804 NOTIFICATION AND REGISTRATION REQUIREMENTS

A. In order to protect our Tribal children and create a safe environment, any person who resides on property owned by the Tribe in fee or trust, regardless of location; are employed by the Tribe, regardless of location; or who attends schools owned or operated by the Tribe; or are lodging

for more than seven (7) days on property owned by the Tribe, in fee or trust regardless of the location; shall register within three (3) business days with the Department if they have:

1. Pled guilty to, been found guilty of, or who has been found not guilty by reason of insanity to any Sex Offense under Waganakising Odawak Tribal Code, Title IX., Criminal Laws.

2. Who has pled guilty to, been found guilty of, or who has been found not guilty by reason of insanity, to any attempt, solicitation or conspiracy to commit a crime that requires or would require that person to register as a sex offender under federal law, or under the law of any state, other Indian Tribe, territory, commonwealth, foreign country or other jurisdiction.

B. Any person residing within the exterior boundaries of the Tribe's territorial jurisdiction who does not reside on property owned by the Tribe in fee or trust, regardless of location; are not employed by the Tribe, regardless of location; or who do not attend school owned or operated by the Tribe; or are not lodging for more than seven (7) days on property owned by the Tribe in fee or trust, regardless of the location; may but are not required to register within three (3) business days with the Department if they have:

1. Pled guilty to, been found guilty of, or who has been found not guilty by reason of insanity to any Sex Offense under Waganakising Odawak Tribal Code, Title IX. Criminal Laws, unless the initial conviction occurred in Tribal Court.

2. Who has pled guilty to, been found guilty of, or who has been found not guilty by reason of insanity, to any attempt, solicitation or conspiracy to commit a crime that requires or would require that person to register as a sex offender under federal law, or under the law of any state, other Indian Tribe, territory, commonwealth, foreign country or other jurisdiction.

C. The Tribe has requires sex offenders to register with the department, if such individual have entered a consensual relationships within the tribe or with its members through commercial dealing, contracts, leases or other arrangements, or such individuals conduct has threatened or has

a direct effect on the political integrity, economic security, or the health or welfare of the tribe.

(Source: WOS 2012-008, August 5, 2012, Section IV)

9.805 OFFENSES REQUIRING REGISTRATION

The following offenses are subject to the requirements of this Statute including attempt and conspiracies:

A. Tribal Offenses: Sex Offense under Waganakising Odawak Tribal Code, Title IX. Criminal Laws.

B. Foreign Offenses within the United States jurisdiction:

1. 18 U.S.C. §1591 (sex trafficking of children).
2. 18 U.S.C. §1801 (video voyeurism of a minor).
3. 18 U.S.C. §2241 (aggravated sexual abuse).
4. 18 U.S.C. §2242 (sexual abuse).
5. 18 U.S.C. §2243 (sexual abuse of a minor or ward).
6. 18 U.S.C. §2244 (abusive sexual contact).
7. 18 U.S.C. §2245 (offenses resulting in death).
8. 18 U.S.C. §2251 (sexual exploitation of children).
9. 18 U.S.C. §225IA (selling or buying of children).
10. 18 U.S.C. §2252 (material involving the sexual exploitation of a minor).

11. 18 U.S.C. §2252A (material containing child pornography).
12. 18 U.S.C. §2252B (misleading domain names on the internet).
13. 18 U.S.C. §2252C (misleading words or digital images on the internet).
14. 18 U.S.C. §2260 (production of sexually explicit depictions of a minor for import into the United States).
15. 18 U.S.C. §2421 (transportation of a minor for illegal sexual activity).
16. 18 U.S.C. §2422 (Coercion and Enticement of a Minor for Illegal Sexual Activity).
17. 18 U.S.C. §2423 (Transportation of Minors for Illegal Sexual Activity, Travel With the Intent to Engage in Illicit Sexual Conduct with a Minor, Engaging in Illicit Sexual Conduct in Foreign Places).
18. 18 U.S.C. §2424 (failure to file factual statement about an alien individual).
19. 18 U.S.C. §2425 (transmitting information about a minor to further criminal sexual conduct).

D. Other Foreign Offenses. Any conviction for a sex offense involving any conduct which was obtained under the laws of Canada, the United Kingdom, Australia, New Zealand, and any foreign country where the United States State Department, in its Country Reports on Human Rights Practices, has concluded that an independent judiciary generally (or vigorously) enforced the right to a fair trial in that country during the year in which the conviction occurred.

E. Military Offenses. Any military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of PL 105-119 (10 U.S.C. 951 note).

F. Juvenile Offenses or Adjudications. Any sex offense, or attempt or conspiracy to commit a sex offense, that is comparable to or more severe than the federal crime of aggravated sexual abuse (as codified in 18 U.S.C. §2241(a)(b)) and committed by a minor who is fourteen (14) years of age or older.

G. Any Jurisdiction Offenses. Any sex offense committed in any jurisdiction that involves:

- 1.** Any type of degree of genital, oral, or anal penetration.
- 2.** Any sexual touching of or contact with a person's body, either directly or through the clothing.
- 3.** Kidnapping of a minor.
- 4.** False imprisonment of a minor.
- 5.** Solicitation to engage a minor in sexual conduct understood broadly to include any direction, request, enticement, persuasion, or encouragement of a minor to engage in sexual conduct.
- 6.** Use of a minor in a sexual performance.
- 7.** Solicitation of a minor to practices prostitution.
- 8.** Possession, production, or distribution of child pornography.
- 9.** Criminal sexual conduct involving a minor (where the elements of the offense involve physical contact with the victim), or the use of the internet to facilitate or attempt such conduct. This includes offenses whose elements involve the use of other persons in prostitution, such as pandering, procuring, or pimping in cases where the victim was below eighteen (18) years of age at the time of the offense
- 10.** Any conduct that by its nature is a sex offense against a minor

- 11.** Any offense similar to those outlined in United States Code:
 - a.** 18 U.S.C. §1591 (sex trafficking by force, fraud, or coercion).
 - b.** 18 U.S.C. §1801 (video voyeurism of a minor).
 - c.** 18 U.S.C. §2241 (aggravated sexual abuse).
 - d.** 18 U.S.C. §2242 (sexual abuse).
 - e.** 18 U.S.C. §2244 (abusive sexual contact).
 - f.** 18 U.S.C. §2422(b) (coercing a minor to engage in prostitution).
 - g.** 18 U.S.C. §2423(a) (transporting a minor to engage in illicit conduct).

(Source: WOS 2012-008, August 5, 2012, Section V)

9.806 LEVELS OF RISK TO THE COMMUNITY

A. Sex offenders present various "Levels of Risk" to the Tribal community. The Tribe shall assign a tier to each offender based on the tier allocated within this Statute, whether the person is convicted on a new charge, incarcerated, recaptured or changes their residency, employment or school enrollment within LTBB's jurisdiction, based on the following classifications, such tier assignments may be appeal to the Tribal Court:

- 1.** Tier I: Level of Concern; lower risk to re-offend within the community at large and includes such offense, including convictions for attempt or conspiracy to commit such offenses as:
 - a.** False imprisonment of a minor.

- b.** Video voyeurism of a minor.
- c.** Possession or receipt of child pornography, and the following federal offenses:
 - d.** 18 U.S.C. § 1801 (video voyeurism of a minor).
 - e.** 18 U.S.C. § 2252 (receipt or possession of child pornography).
 - f.** 18 U.S.C. §2252A (receipt or possession of child pornography).
 - g.** 18 U.S.C. §2252B (misleading domain name).
 - h.** 18 U.S.C. §2252C (misleading words or digital images).
 - i.** 18 U.S.C. § 2422(a) (coercion to engage in prostitution).
 - j.** 18 U.S.C. § 2423(b) (travel with the intent to engage in illicit conduct).
 - k.** 18 U.S.C. § 2423(c) (engaging in illicit conduct in foreign places).
 - l.** 18 U.S.C. §2423(d) (arranging, inducing procuring or facilitating the travel in interstate commerce of an adult for the purpose of engaging in illicit conduct for financial gain).
 - m.** 18 U.S.C. §2424 (filing factual statement about an alien individual).
 - n.** 18 U.S.C. §2425 (transmitting information about a minor to further criminal sexual conduct).
 - o.** Any comparable military offense specified by the Secretary of Defense under Section 115(a)(8)(c)(i) of Public Law 105-119 (U.S.C. § 951 note).

2. Tier II: Level of Concern; moderate risk to re-offend within the community at large and includes such offence, including convictions for attempt or conspiracy to commit such offences as:

- a.** A person previously convicted of a Tier I offense who current sex offense conviction is punishable by more than one year imprisonment.
- b.** The use of minors in prostitution (to include solicitations).
- c.** Enticing a minor to engage in criminal sexual activity.
- d.** A non-forcible sexual act with a minor sixteen (16) or seventeen (17) years old.
- e.** Sexual contact with a minor thirteen (13) years or older.
- f.** The use of a minor in a sexual performance.
- g.** The production or distribution of child pornography, or the following federal offenses:
- h.** 18 U.S.C. §1591 (sex trafficking by force, fraud, or coercion).
- i.** 18 U.S.C. § 2244 (abusive sexual contact, victim thirteen (13) years or older).
- j.** 18 U.S.C. § 2251 (sexual exploitation of children).
- k.** 18 U.S.C. § 2251A (selling or buying children).
- l.** 18 U.S.C. § 2252 (sale or distribution of child pornography).

- m.** 18 U.S.C. §2252A (sale or distribution of material containing child pornography).
 - n.** 18 U.S.C. § 2260 (producing child pornography for import).
 - o.** 18 U.S.C. § 2421 (transportation for prostitution).
 - p.** 18 U.S.C. § 2422(b) (coercing a minor to engage in illicit conduct).
 - q.** 18 U.S.C. §2423(a) (transporting a minor to engage in illicit conduct).
 - r.** 18 U.S.C. §2423(d) (arranging, inducing procuring or facilitating the travel in interstate commerce of an adult for the purpose of engaging in illicit conduct for financial gain).
 - s.** Any comparable military offense specified by the Secretary of Defense under Section 115(a)(8)(c)(i) of Public Law 105-119 (U.S.C. § 951 note).
- 3.** Tier III: Level of Concern; high risk to re-offend within the community at large and includes such offence, including convictions for attempt or conspiracy to commit such offences as:
- a.** Any person convicted of a Tier II offense whose current sex offense conviction is punishable by more than one year imprisonment.
 - b.** Non-parental kidnapping of a minor.
 - c.** Any sexual act with another.
 - d.** Sexual contact with a minor under thirteen (13) years of age, or the following federal offenses:
 - e.** 18 U.S.C. § 2241 (aggravated sexual abuse).

- f.** 18 U.S.C. § 2242 (sexual abuse).
- g.** 18 U.S.C. § 2243 (sexual abuse of a minor).
- h.** 18 U.S.C. § 2244 (abusive sexual contact, victim under thirteen (13) years of age).
- i.** Any comparable military offense specified by the Secretary of Defense under Section 115(a)(8)(c)(i) of Public Law 105-119 (U.S.C. § 951 note).

B. Verifications and In-person Appearances. A sex offender who is or should be registered shall, at a minimum, appear in person at the Department for purposes of keeping registration current in accordance with the following time frames:

- 1.** Tier I offenses include those offenses punishable by less than one year of imprisonment. Persons convicted of such offenses must register at least once a year for fifteen (15) years.
- 2.** Tier II and Tier III offenses include offenses punishable by a term of imprisonment of one year or greater. Tier II sex offenders must register every six months for twenty-five (25) years.
- 3.** Tier III sex offenders have lifetime registration requirements and must register at least every three (3) months.
- 4.** At each in-person appearance, the Department shall:
 - a.** Obtain a current photograph of the sex offender.
 - b.** Review of Information. At each in-person appearance, the sex offender shall review existing information for accuracy.

C. Notification. If any new information or change in information is obtained at an in

person verification, and upon entry of the sex offender's information in to the registry, that information is immediately forwarded to all other registration jurisdictions of the information or change in information.

(Source: WOS 2012-008, August 5, 2012, Section VI)

9.807 REDUCTION IN REGISTRATION PERIODS

A. A sex offender may have their period of registration reduced as follows:

- 1.** A Tier I offender may have their period of registration and verification reduced by five (5) years if they have maintained a clean record for ten (10) consecutive years.
- 2.** A Tier III offender may have their period of registration and verification reduced to twenty-five (25) years if they were adjudicated delinquent of an offense as a juvenile which required Tier 3 registration and they have maintained a clean record for twenty-five (25) consecutive years.

B. A person has a clean record if:

- 1.** They have not been convicted of any offense for which a maximum sentence of imprisonment for one (1) year or more may be imposed.
- 2.** They have not been convicted of any sex offense.
- 3.** They have successfully completed, without revocation, any period of supervised release, probation, or parole.
- 4.** They have successfully completed an appropriate sex offender treatment program certified by the Tribal Court or by the United States Attorney General.

C. Petition to Tribal Court. Any person, who meets the requirement of section A and B, who is required to register as a sex offender may petition the Tribal Court for a show cause hearing to

determine if a reduction in term of registration may be granted. In the petition, the petitioner shall provide clear and convincing evidence that the petitioner is not a risk to commit a new violation for any violent crime or any crime related to the requirements of registration as a sex offender based upon:

D. The Tribal Court may grant a hearing if it finds that the petition is sufficient; and the person meets the eligibility requirements.

E. The Tribal Court may exempt the petitioner from the registration requirement only after a hearing on the petition in open court. The Tribal Court shall base its decision only upon a finding by clear and convincing evidence that the petitioner meets the reduction requirements as set forth in this Section.

(Source: WOS 2012-008, August 5, 2012, Section VII)

9.808 RELEASE OF INFORMATION, COMMUNITY NOTIFICATION AND IMMUNITY

A. The Department is authorized to release relevant and necessary information regarding sex offenders to the public when such information is reasonably necessary for protection of the Tribal community.

B. The Department shall monitor or utilize the SORNA Exchange Portal for inter-jurisdictional change of residence, employment or student status and whenever a sex offender registers or updates their information with the Department, the Department shall:

1. Immediately notify the State of Michigan, per the Memorandum of Agreement (MOA), and ensure the information is updated on Michigan Sex Offender Registry (MSOR).

2. Immediately notify any agency, department, or program within the Tribe that is responsible for criminal investigation, prosecution, or sex offender supervision functions, including but not limited to, police, whether State of Michigan, BIA, Tribal,

or FBI, Tribal Prosecutor, and Tribal Probation.

3. Immediately notify any and all other registration jurisdictions due to the sex offender's residency, school attendance, or employment.
4. Immediately notify National Child Protection Act agencies, which includes any agency responsible for conducting employment-related background checks under section 3 of the National Child Protection Act of 1993 (42 U.S.C. 5119a). Within seventy-two (72) hours of the registration of a sex offender, the Department shall notify the individuals, groups and organizations that may be at risk by any reasonable method based on the level of risk.

C. Community Notification. The Department shall ensure there is an automated community notification process in place that ensures the following:

1. Upon a sex offender's registration or update of information with the Tribe, the public registry website is immediately updated and posted within three (3) business days.
2. Email notice is available to the general public to notify them when a sex offender commences residence, employment, or school attendance with the Tribe, within a specified zip code, or within a certain geographic radius. This email notice shall include the sex offender's identity.

D. The Department is immune from liability for damages for any discretionary decision to release relevant and necessary information.

(Source: WOS 2012-008, August 5, 2012, Section VIII)

9.809 SEX OFFENDER REGISTRATION REQUIREMENTS

A. Duties. A sex offender who is required to register with the Department shall provide all of the information detailed as follows:

1. The date of all arrests.
2. The date of all convictions.
3. The sex offender's status of parole, probation, or supervised release.
4. The sex offender's registration status.
5. Any outstanding arrest warrants.
6. The sex offender's actual date of birth.
7. Any other date of birth used by the sex offender.
8. DNA sample, if the sex offender's DNA is not already contained in the Combined DNA Index System (CODIS).
9. CODIS. Any DNA sample obtained from a sex offender shall be submitted to an appropriate lab for analysis and entry of the resulting DNA profile in to CODIS.
10. Driver's License. The Department shall obtain, and the sex offender shall provide, all of the sex offender's valid driver's licenses issued by any jurisdiction for the purpose of photocopying.
11. Identification Cards. The Department shall obtain, and the sex offender shall provide, a photocopy of any identification card, including the sex offender's Tribal enrollment card issued, by any jurisdiction.
12. Passports. The Department shall obtain, and the sex offender shall provide, a photocopy of any passports used by the sex offender.
13. Immigration Documents. The Department shall obtain, and the sex offender shall provide, a photocopy of any and all immigration documents.

14. Employment. The Department shall obtain, and the sex offender shall provide, the following information related to the sex offender's employment, to include any and all places where the sex offender is employed in any means including volunteer and unpaid positions and the name of the sex offender's employer.

15. The address of the sex offender's employer, and similar information related to any transient or day labor employment.

16. Finger and Palm Prints. The Department shall obtain, and the sex offender shall provide, both finger prints and palm prints of the sex offender.

17. Internet Names. The Department shall obtain, and the sex offender shall provide, the following information related to the sex offender's internet related activity and any and all email addresses used by the sex offender, any and all instant Message addresses and identifiers, and any and all other designations or monikers used for self-identification in internet communications or postings, and any and all designations used by the sex offender for the purpose of routing or self- identification in internet communications or postings.

18. Name. The Department shall obtain, and the sex offender shall provide, the following information related to the sex offender's name:

a. The sex offender's full primary given name.

b. Any and all nicknames, aliases, and pseudonyms regardless of the context in which it is used.

c. Any and all ethnic or Tribal names by which the sex offender is commonly known. This does not include any religious or sacred names not otherwise commonly known.

19. Phone Numbers. The Department shall obtain, and the sex offender shall provide,

any and all telephone numbers included but not limited to:

- a.** Any and all land line telephone numbers.
- b.** Any and all cellular telephone numbers.
- c.** Any and all Voice Over Internet Protocol (VOIP) telephone numbers.

20. Photograph. The Department shall obtain a current photograph of the sex offender.

21. Physical Description. The Department shall obtain, and the sex offender shall provide, an accurate description of the sex offender as follows:

- a.** A physical description.
- b.** A general description of the sex offender's physical appearance or characteristics.
- c.** Any identifying marks, such as, but not limited to, scars, moles, birthmarks, or tattoos.

22. Professional Licenses. The Department shall obtain, and the sex offender shall provide, all licensing of the sex offender that authorizes the sex offender to engage in an occupation or carry out a trade or business.

23. Address. The Department shall obtain, and the sex offender shall provide, the following information related to the sex offender's residence:

- a.** The address of each residence at which the sex offender resides or will reside.
- b.** Any location or description that identifies where the sex offender habitually

resides regardless of whether it pertains to a permanent residence or location otherwise identifiable by a street or address.

24. School Location. The Department shall obtain, and the sex offender shall provide, the following information related to the sex offender's school:

- a.** The address of each school where the sex offender is or will be a student.
- b.** The name of each school the sex offender is or will be a student.

25. Social Security. The Department shall obtain, and the sex offender shall provide, the following information:

- a.** A valid social security number for the sex offender.
- b.** Any social security number the sex offender has used in the past, valid or otherwise.

26. Lodging Information. The Department shall obtain, and the sex offender shall provide, the following information when the sex offender will be absent from his residence for 7 days or more:

- a.** Identifying information of the temporary lodging locations including addresses and names.
- b.** The dates the sex offender will be staying at each temporary lodging location.

27. Travel Abroad.

- a.** In the event the sex offender intends to travel abroad the sex offender shall notify the Department at least twenty-one (21) days in advance of travel.

- b.** Upon such notification the Department shall:
 - i.** Immediately notify any other jurisdiction where the sex offender is either registered, or is required to register, of the updated information.
 - ii.** Immediately notify the U.S. Marshals Service.
 - iii.** Immediately update National Crime Information Center (NCIC)/MSOR information.
- c.** Recognizing that some sex offenders may commute to Canada for work on a daily basis or have family residing in Canada, the Department shall develop policies to address such employment and family matters.

28. Offense Information. The Department shall obtain the text of each provision of law defining the criminal offense(s) for which the sex offender is registered.

29. Vehicle Information. The Department shall obtain, and the sex offender shall provide, the following information related to all vehicles owned or operated by the sex offender for work or personal use including land vehicles, aircraft, and watercraft:

- a.** License plate numbers.
- b.** Registration numbers or identifiers.
- c.** General description of the vehicle to include color, make, model, and year.
- d.** Any permanent or frequent location where any covered vehicle is kept.

D. Digitization. All information obtained shall be, at a minimum, maintained by the Department in digitized format.

E. Electronic Database. A sex offender registry shall be maintained in an electronic

database by the Department or its designee and shall be in a form capable of electronic transmission, or otherwise electronically accessible by other jurisdictions.

(Source: WOS 2012-008, August 5, 2012, Section IX)

9.810 INITIAL REGISTRATION

A. Jurisdiction of Conviction. A sex offender must initially register in the jurisdiction where the sex offender was convicted of the sex offense regardless of the sex offender's actual or intended residency.

B. Jurisdiction of Incarceration. A sex offender must register in each jurisdiction in which the sex offender is incarcerated while completing any sentence for a sex offense, regardless of whether it is the same jurisdiction as the jurisdiction of conviction or residence.

C. Timing. A sex offender required to register with the Tribe under this Statute shall do so in the following timeframe:

1. If incarcerated, before release from imprisonment for the registration offense.
2. If not incarcerated, within three (3) business days of sentencing for the registration offense.
3. When an offender is convicted and/or sentenced in another state, territory, tribe or country, or in a federal or military court, and chooses to reside, work, or attend school within the Tribe's jurisdiction, the registration must occur within three (3) business days of the sex offender establishing residence, employment or school attendance within the jurisdiction.

D. Duties of Department. The Department shall ensure the following:

1. Any sex offender incarcerated or sentenced by Tribal Court shall complete their initial registration with the Tribe.

2. Any sex offender initially registering with the Tribe is informed of their duties under SORNA and this Statute to register and such other duties under SORNA and this Statute are explained.
3. The sex offender reads and signs a form stating that the duty to register has been explained to them and that the sex offender understands the registration requirement.
4. That the sex offender is registered and shall enter the sex offender's information into the registry and NCIC/MSOR.
5. That upon entry of the sex offender's information in to the registry, that information is immediately forwarded to all other jurisdictions in which the sex offender is required to register due to the sex offender's residency, employment, or student status.

(Source: WOS 2012-008, August 5, 2012, Section X)

9.811 RETROACTIVE CLASSES OF OFFENDERS

A. The following sex offenders shall be required to register with the Department:

1. Sex offenders that are currently incarcerated or under supervision, either for the predicate sex offense or for some other crime.
2. Sex offenders that are already registered or subject to a pre-existing sex offender registration requirement under the Tribe's jurisdiction.
3. Sex offenders who have reentered the Tribe's criminal justice system because of a conviction for some other felony crime, (whether or not it is a sex offense).

B. The initial registration of these sex offenders shall take place in accordance with the following, upon enactment of this Statute:

1. Tier I: within one (1) year.
2. Tier II: within six (6) months.
3. Tier III: within three (3) months.

(Source: WOS 2012-008, August 5, 2012, Section XI)

9.812 UPDATES AND CHANGE OF INFORMATION

A. Residence Jurisdiction:

1. Sex offenders who reside within the Tribe's jurisdiction shall immediately appear in person to update any of the following information if it changes:

- a. Name.
- b. Residence.
- c. Employment.
- d. School attendance.
- e. Termination of residence.

2. Sex offenders who reside within the Tribe's jurisdiction shall immediately contact the Tribe and update any of the following information if it changes:

- a. E-mail addresses.
- b. Instant Message (IM) addresses.
- c. Any other designations used in internet communications, postings, or

telephone communications.

d. Vehicle information.

e. Temporary lodging information.

3. The Department shall immediately notify any other jurisdiction where the sex offender is either registered, or is required to register the sex offender's intent to relocate to another country. The Department shall also notify the U. S. Marshals Service and immediately update NCIC/MSOR.

B. Employer Jurisdiction: When a sex offender is employed within the Tribe's jurisdiction, but neither resides nor attends school within the Tribe's jurisdiction, the sex offender shall immediately appear in person to update any of the following:

1. Employment related information.

2. Termination of employment.

C. School Jurisdiction: When a sex offender attends school within the Tribe's jurisdiction, but neither resides nor works within the Tribe's jurisdiction, the sex offender shall immediately appear in-person to update the following:

1. School related information.

2. Termination of school.

(Source: WOS 2012-008, August 5, 2012, Section XII)

9.813 REGISTRY WEBSITE

A. Website. The Department or designee shall use and maintain a public sex offender registry website. The registry website shall also include links to sex offender safety and

education resources.

B. Instructions. The registry website shall include instructions on how a person can seek correction of information that the individual contends is erroneous.

C. Warnings. The registry website shall include a warning that the information contained on the website should not be used to unlawfully injure, harass, or commit a crime against any individual named in the registry or residing or working at any reported addresses and that any such action could result in civil or criminal penalties.

D. Search Capabilities. The registry website shall have the capability of conducting searches by name, county, city, zip code, and geographic radius.

(Source: WOS 2012-008, August 5, 2012, Section XIII)

9.814 REQUIRED AND PROHIBITED INFORMATION

A. Required Information. The following information shall be made available to the public on the sex offender registry website:

- 1.** Notice that an offender is in violation of their registration requirements or cannot be located if the sex offender has absconded.
- 2.** All sex offenses for which the sex offender has been convicted.
- 3.** The sex offense(s) for which the offender is currently registered.
- 4.** The address of the sex offender's employer(s).
- 5.** The name of the sex offender including all aliases.
- 6.** A current photograph of the sex offender.

7. A physical description of the sex offender.
8. The residential address and, if relevant, a description of a habitual residence of the sex offender.
9. All addresses of schools attended by the sex offender.
10. The sex offender's vehicle license plate number along with a description of the vehicle.

B. Prohibited Information. The following information shall not be available to the public on the sex offender registry website:

1. Any arrest that did not result in conviction.
2. The sex offender's social security number.
3. Any travel and immigration documents.
4. The identity of the victim.
5. Internet identifiers.

C. Witness Protection. For sex offenders who are under a witness protection program, the Tribal police may honor the request of the United States Marshal Service or other agency responsible for witness protection by not including the original identity of the offender on the publicly accessible sex offender registry website.

(Source: WOS 2012-008, August 5, 2012, Section XIV)

9.815 FAILURE TO APPEAR FOR REGISTRATION AND ABSCONDING

A. Failure to Appear. In the event a sex offender fails to register with the tribe as required by

this Statute shall be deemed an absconded sex offender, the Department shall immediately inform the jurisdiction that provided notification that the sex offender was to commence residency, employment, or school attendance with the tribe that the sex offender failed to appear for registration.

B. Absconded Sex Offenders. If the Department receives information that a sex offender has absconded the Department shall make an effort to determine if the sex offender has actually absconded.

1. In the event no determination can be made, the Department shall ensure any other appropriate law enforcement agency is notified.

2. If the information indicating the possible absconding came through notice from another jurisdiction or federal authorities, the Department shall be informed that the sex offender has failed to appear and register.

3. If an absconded sex offender cannot be located then the Department shall take the following actions:

a. Update the registry to reflect the sex offender has absconded or is otherwise not capable of being located.

b. Seek a Show Cause and Warrant for the sex offender's arrest.

c. Notify the U.S. Marshals Service.

d. Update NCIC/MSOR to reflect the sex offender's status as an absconder, or is otherwise not capable of being located.

C. Failure to Register. In the event a sex offender who is required to register due to their residency, employment or school attendance status fails to do so or otherwise violate a registration requirement of this Statute shall be deemed an absconded sex offender, the Department shall take all appropriate follow-up measures to determine if the sex offender is

actually residing, employed or attending school within the Tribe's jurisdiction.

(Source: WOS 2012-008, August 5, 2012, Section XV)

9.816 VIOLATIONS AND PENALTIES

- A.** No person, required to register as a sex offender, shall knowingly fail to register as a sex offender with the Department and shall be deemed an absconded sex offender.
- B.** No person, required to register as a sex offender, shall knowingly fail to update their information as a sex offender with the Department as required by this Statute shall be deemed an absconded sex offender.
- C.** No person, required to register as a sex offender, shall knowingly fail to notify the Department of any changes of jurisdiction or the leaving of the Tribal jurisdiction.
- D.** No person shall knowingly furnish, or cause to be furnished, any false or misleading information to be included on the Sex Offender Registry.
- E.** No person shall, without prior approval of the Department, remove, alter, mutilate or destroy any notice to the Tribal community or Sex Offender Registry information.
- F.** A person found in violation of this Statute will be issued a civil infraction ticket to appear before the Tribal Court.
- G.** The Tribal Court may assess such fines and costs and other remedies as deemed appropriate, not to exceed five-thousand dollars (\$5,000).
- H.** If a sex offender fails to register after receiving adequate notice, the Tribal Court may issue a Civil Bench Warrant for the personal appearance before the Court and may detain the person until any fines, costs or other remedies are satisfied.
- I.** The Tribal Court may determine if a parent or legal guardian of a sex offender that is a

minor child shall be responsible for any fines, costs or other remedies.

(Source: WOS 2012-008, August 5, 2012, Section XVI)

9.817 IMPLEMENTATION

This Statute shall be implemented within one hundred eighty days (180) days from the Effective Date of this Statute.

(Source: WOS 2012-008, August 5, 2012, Section XVII)

9.818 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.

(Source: WOS 2012-008, August 5, 2012, Section XVIII)

9.819 EFFECTIVE DATE

Effective upon the signature of the Executive, or 30 days from submission to the Executive branch, or if the Executive vetoes the legislation, then upon Tribal Council override of the veto.

(Source: WOS 2012-008, August 5, 2012, Section XIX)

Chapter 9. Liquor and Tobacco License Violations Statute

(As required under 18 U.S.C. § 1161, the Department of the Interior published the Liquor Violations Statute in the Federal Register on April 2, 2015, 80 FR 17779-01)

9.901 SHORT TITLE

This Statute may be cited as the “License Violation Statute.” This Statute repeals and replaces Waganakising Odawak Statute 1999-008 and previous Statute WOS 1997-021, and any and all previous Statutes.

(Source: WOS 2014-006, June 16, 2014, Section I)

9.902 PURPOSE

The purpose of this Statute is to provide for violations of Liquor and Tobacco Licenses issued by the Liquor and Tobacco Licensing Board that may impair the issuance or renewal of a liquor or tobacco licenses or may cause such licenses to be suspended or revoked in order to protect the rights and interest of the Tribe and Tribal Citizens.

(Source: WOS 2014-006, June 16, 2014, Section II)

9.903 AUTHORITY

Tribal Council has the power and authority to regulate the liquor and tobacco sales and violations as set forth in this Statute in accordance with the Constitution, Article VII D(1), D(16), D(19), and D(24).

(Source: WOS 2014-006, June 16, 2014, Section III)

9.904 DEFINITIONS

The following definitions apply in this Statute:

- A.** “Alcoholic Liquor” means the four varieties of liquor (alcohol, spirits, wine and beer) and all fermented, spirituous, vinous, or malt liquor, or combinations thereof, and mixed liquor, a part of which is fermented, spirituous, vinous or malt liquor, or otherwise intoxicating; and every liquor or solid or semi-solid or other substance, patented or not, containing alcohol, spirits, wine or beer, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption, and any liquid, semi-solid, solid, or other substance, which contains more than one percent of alcohol by weight shall be conclusively deemed to be intoxicating.
- B.** “Board” means the Liquor and Tobacco Licensing Board.
- C.** “Cigarette” means any roll for smoking, made wholly or in part of tobacco, irrespective of size or shape and irrespective of whether the tobacco is flavored, adulterated or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any material, except where such wrapper is wholly or in the greater part made of natural leaf tobacco in its natural state.
- D.** “Licensee” means any person or entity, includes any employee or agent of the Licensee, licensed by the Tribe to sell alcohol or tobacco on Tribal trust lands.
- E.** “LTBB” or “Tribe” means the Waganakising Odawak Nation, also known as the Little Traverse Bay Bands of Odawa Indians.
- F.** “Person” or “Entity” means any individual, firm, partnership, co-partnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, receiver, trustee, syndicate or any other group or combination acting as a unit.
- G.** “Tobacco Products” means all forms of tobacco prepared in such a manner as to be suitable for chewing or smoking including cigarettes, cigars, smoking tobacco, snuff, chewing tobacco.
- H.** “Tribal Court” means the Little Traverse Bay Bands of Odawa Tribal Court.

(Source: WOS 2014-006, June 16, 2014, Section IV)

9.905 LIQUOR AND TOBACCO LICENSING BOARD

The Liquor and Tobacco Licensing Board established by WAGANAKISING STATUTE, LIQUOR AND TOBACCO LICENSING BOARD STATUTE, is an Executive Board and is authorized to implement this statute, as may be amended.

(Source: WOS 2014-006, June 16, 2014, Section V)

9.906 LIQUOR VIOLATIONS

Citations may be issued for the violations of the following:

A. Under the age of Twenty-one (21).

1. A licensee shall not directly, individually, or by a clerk, agent, or servant knowingly sell, furnish, or give alcoholic liquor to a person under the age of twenty-one (21) or fails to make diligent inquiry as to whether the person is of age.
2. A licensee shall not allow any person who is less than eighteen (18) years of age to sell or serve alcoholic liquor.

B. Intoxicated Persons.

1. A licensee shall not directly or indirectly, individually or by a clerk, agent, or servant sell, furnish, or give alcoholic liquor to a person who is visibly intoxicated.
2. A licensee shall not allow an intoxicated person to consume alcoholic liquor on the licensed premises.

C. Hours of Sales.

1. A licensee shall not sell at retail, give away, or furnish alcoholic liquor between the

following hours: 2 a.m. and 7 a.m. of any day

2. Variations:

The except as modified by an intergovernmental agreement that may apply to a specific Tribal enterprise and 4 a.m. and 7 a.m. on January 1 (New Year's Day)

D. Extended Hours.

An extended hour(s) permit is required for an on-premises licensee to allow for the sale or consumption of alcoholic liquor at any time other than the legal hours for the sale and consumption of alcoholic liquor.

E. Sale of Adulterated or Mislabeled Liquor.

1. A licensee by himself or by his agent or employee, shall not sell, offer for sale, or possess any alcoholic liquor that is adulterated or misbranded or any alcoholic liquor in bottles that have been refilled.

2. Alcoholic liquor shall be deemed adulterated if it contains any liquids or other ingredients not placed there by the original manufacturer or bottler. For the purposes of this Section, alcoholic liquor shall be deemed misbranded when not plainly labeled, marked or otherwise designated.

3. Alcoholic liquor bottles shall be deemed to be refilled when the bottles contain any liquid or other ingredient not placed in the bottles by the original manufacturer.

F. Premises.

1. A Licensee shall not allow alcoholic liquor sold for on-premises consumption to be removed from premises.

2. A Licensee that sells wine on the premises may allow an individual who has purchased a meal and who has purchased and partially consumed a bottle of wine with the

meal, to remove the partially consumed bottle from the premises upon departure, provided that the licensee or the licensee's clerk, agent, or employee shall reinsert a cork so that the top of the cork is level with the lip of the bottle.

3. This section does not allow for the removal of any additional unopened bottles of wine unless the licensee is licensed off premises sales.

4. This section does not prevent a hotel from allowing its invitees or guests to possess or consume, or both, on or about its premises, alcoholic liquor purchased by the invitee or guest from an off-premises retailer, and does not prevent a guest or invitee from entering and exiting the licensed premises with alcoholic liquor purchased from an off-premises retailer.

5. An off-premise licensee who is not licensed as an on-premise licensee shall not have open containers of alcoholic liquor on the premises.

6. An off-premise licensee who is not licensed as an on-premise licensee shall not allow the consumption of alcoholic liquor on the licensed premises, except as allowed in G(2).

7. An off-premise licensee shall not give bottle or can openers to purchasers and shall not open bottles or cans of alcoholic liquor for purchasers on the licensed premises.

8. An off-premise licensee shall not knowingly allow a person to consume alcoholic liquor on property owned, leased, or possessed by the licensee adjacent to the licensed premises.

G. Giving away alcoholic liquor

1. A Licensee shall not give away any alcoholic liquor of any kind or description at any time in connection with his or her business, except manufacturers for consumption on the premises only.

2. Exceptions:

- a. If the licensee is a hotel, the licensee may give away alcoholic liquor to an invitee or guest in connection with a business event or as a part of a room special or promotion for overnight accommodations.
- b. Licensee may allow samplings or tastings of any alcoholic liquor for which monetary gain or other remuneration could reasonably be expected.
- c. Tasting of alcoholic liquor as part of a bona fide market research organization that is conducted for a product before it is approved for sale.
- d. Licensee may allow giving a sampling or tasting of alcoholic liquor to an employee of the licensee during the legal hours for consumption for the purpose of educating the employee regarding 1 or more types of alcoholic liquor so long as the employee is at least 21 years of age.

H. Quantity of Alcohol.

- 1. An on-premise licensee shall not sell, offer to sell, or advertise the sale of, an unlimited quantity of alcoholic liquor at a specific price.
- 2. No licensee shall sell, offer to sell, or advertise the sale of, 2 or more identical drinks containing alcoholic liquor to a person for their consumption for 1 price. When 2 or more identical drinks containing alcoholic liquor are served to a person at 1 time, the price charged for the second drink shall be the same price as for the first drink.

I. Prizes, alcohol use.

A licensee shall not participate in or sponsor any contest that requires the use or consumption of alcoholic liquor or features alcoholic liquor as a prize in connection with a contest. Sponsored events that involve the purchase of alcoholic liquor for eligibility are exempt.

J. Controlled substances / drug paraphernalia.

A licensee shall not allow the sale, possession, or consumption on the licensed

premises of any controlled substances which are prohibited by Tribal, State of Michigan or Federal Law.

K. Fights and Weapons.

1. A licensee shall not allow fights on or in the licensed premises, other than promotional events such as boxing, cage fights, etc. Nor shall a licensee, or the clerk, servant, agent, or employee of the licensee, allow, on the licensed premises, the annoying or molesting of customers or employees by other customers or employees.

2. A licensee shall not allow for the unlawful possession or use of firearms, knives, or other weapons on the premises.

L. Improper or no display of liquor license/permits

Licenses issued by the commission shall be signed by the licensee, shall be framed under transparent material, and shall be prominently displayed in the licensed premises.

M. Suspension of License.

1. A licensee shall not sell, offer for sale, furnish, consume, or allow the consumption of, alcoholic liquor on the licensed premises during the period that the license is suspended by the Board.

2. During the time of suspension of a license by the Board, the notice of the suspension shall be continuously posted in a conspicuous place on the licensed premises in full view of the public.

N. Cooperation with officers.

A licensee, or clerk, servant, agent or employee of the licensee, shall not hinder or obstruct a law enforcement officer or commission inspector or investigator in the course of investigating or inspecting the premises and shall not refuse, fail or neglect to cooperate with a law enforcement officer, commission inspector or investigator in the performance of his or her duties to enforce

the act or commission rules.

(Source: WOS 2014-006, June 16, 2014, Section VI)

9.907 TOBACCO VIOLATIONS

A. Prohibited Places. Smoking or carrying lighted tobacco in any form is prohibited in the following areas:

1. Public areas designated as “non-smoking”;
2. Passenger elevators;
3. Tribal Governmental Buildings;
4. School Buildings;
5. Child Care Centers; smoking is permitted on these premises during the time these facilities are not in operation, but the operator of the facility must inform parents or guardians that smoking on the premises may occur during these times.
6. Health Facilities; smoking is prohibited in the common and treatment areas of health facilities, including hospitals, health clinics, and doctors' offices. Patients may be permitted to smoke if the medical staff determines that this prohibition would be detrimental to treatment. Smoking areas provided in these cases must be separately ventilated to ensure that there is a smoke-free environment in other patient care and common areas.
7. Licensed nursing homes and licensed homes for the aged must adopt a policy that regulates smoking to provide patients with the option of no-smoking rooms, and restrict patient smoking to private or semiprivate rooms or designated smoking areas. Visitors and staff are permitted to smoke in designated smoking areas only. Tobacco sales are prohibited in nursing homes, except as provided for by owners. Notices must be posted for smoking and non-smoking areas.

8. Restaurants; food service establishments seating fifty (50) or more persons must reserve a seating area for a nonsmoking. All food service establishments seating fewer than fifty (50) people are not required to provide for a non-smoking section. Public areas in restaurants must be smoke-free. These areas include, but are not limited to, restrooms, coatrooms, and entrances. Public areas do not include lobbies, waiting rooms, hallways, or lounges.

B. Under the Age of Eighteen (18).

1. A person shall not sell or furnish any tobacco product to a person less than eighteen (18) years of age.

2. It is an affirmative defense that the defendant had, and continues to have in force, a written policy to prevent the sale of tobacco products to minors and enforces said policy.

3. This does not apply to the handling or transportation of a tobacco product by a person under the age of eighteen (18) under the terms of employment.

4. This does not interfere with the right of a parent or legal guardian in the rearing and management of their minor children within the bounds of their private premises.

C. Sign Posting. A person who sells tobacco products at retail shall post, in a place close to the point of sale, conspicuous to both employees and customers, a sign produced by the Department of Community Health that states: *"THE PURCHASE OF TOBACCO PRODUCTS BY A MINOR UNDER 18 YEARS OF AGE AND PROVISION OF TOBACCO PRODUCTS TO A MINOR ARE PROHIBITED BY LAW. A MINOR UNLAWFULLY PURCHASING OR USING TOBACCO PRODUCTS IS SUBJECT TO PENALTIES."*

D. Internet Sales. All sales conducted through the Internet, by telephone, or in a mail-order transaction shall prohibited.

E. Single Cigarettes. A person who sells tobacco products at retail shall not sell a cigarette separately from its package. This does not apply to tobacco specialty stores or other retail stores that deal exclusively in the sale of tobacco products and smoking paraphernalia.

F. Vending Machines Placement. Vending machines are restricted to areas that are not easily accessible to persons under the age of eighteen (18) and are within the direct visual supervision of an adult.

G. Improper or no display of license/permits

Licenses issued by the commission shall be signed by the licensee, shall be framed under transparent material, and shall be prominently displayed in the licensed premises.

H. Suspension of License.

1. A licensee shall not sell, offer for sale, and furnish, tobacco on the licensed premises during the period that the license is suspended by the Board.
2. During the time of suspension of a license by the Board, the notice of the suspension shall be continuously posted in a conspicuous place on the licensed premises in full view of the public.

I. Cooperation with officers.

A licensee, or clerk, servant, agent or employee of the licensee, shall not hinder or obstruct a law enforcement officer or commission inspector or investigator in the course of investigating or inspecting the premises and shall not refuse, fail or neglect to cooperate with a law enforcement officer, commission inspector or investigator in the performance of his or her duties to enforce the act or commission rules.

(Source: WOS 2014-006, June 16, 2014, Section VII)

9.908 RELIGIOUS FREEDOM

Nothing in this Statute shall prohibit American Indians from practicing any recognized religious ceremony, ritual or activity in accordance with their Religious Freedom.

(Source: WOS 2014-006, June 16, 2014, Section VIII)

9.909 MARKETING

A licensee shall not intentionally market for profit tobacco or tobacco productions to persons under the age of eighteen (18).

(Source: WOS 2014-006, June 16, 2014, Section IX)

9.910 APPLICATION OF STATE LAW

Per the United States Code (USC), 18 U.S.C. 1161, all acts or transactions regarding liquor control shall conform to this Statute or the laws of Michigan, whichever is more stringent. Nothing in this section or Statute is intended to allow the State of Michigan to exercise any jurisdiction over the Tribe, its members, or any persons or transactions within jurisdiction of the Tribe. Nothing in this section or statute is intended to in any way waive or limit the sovereign immunity of the Tribe.

(Source: WOS 2014-006, June 16, 2014, Section X)

9.911 ENFORCEMENT

- A.** The Tribal Law Enforcement Department is authorized to issue citations for violations of this Statute.
- B.** Any inspectors and/or investigators hired by the Board are authorized to issue citations of violations of this Statute.

(Source: WOS 2014-006, June 16, 2014, Section XI)

9.912 SAVINGS CLAUSE

In the event that any section, subsection or phrase of this Statute is found by a court of competent jurisdiction to violate the Constitution or laws of the Little Traverse Bay Bands of Odawa

Indians, such part 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 so long as the overall intent of the Statute remains intact.

(Source: WOS 2014-006, June 16, 2014, Section XII)

9.913 EFFECTIVE DATE

Effective upon the signature of the Executive, or 30 days from submission to the Executive branch, or if the Executive vetoes the legislation, then upon Tribal Council override of the veto.

(Source: WOS 2014-006, June 16, 2014, Section XIII)

Chapter 10. Law Enforcement Department Statute

9.1001 SHORT TITLE AND PURPOSE

This Statute shall be known as the “Law Enforcement Department Statute”

(Source: WOS 2009-021, July 26, 2009, Sections I)

9.1002 PURPOSE

The Purpose of this Statute is to provide for the regulation of law enforcement through the creation of the “Tribal Law Enforcement Department” as an Executive Department to promote peace and safety.

(Source: WOS 2009-021, July 26, 2009, Sections II)

9.1003 DEFINITIONS

The definitions apply in this Statute, unless the context otherwise requires.

- A.** “Agreement” means the signed agreement between the “United States Secretary of the Interior and LTBB” that is a specific contract for law enforcement and provides for the Authority, Purpose, Service and Appropriations of how the department conducts business and provides law enforcement services, pursuant to provision of the Indian Self-Determination and Education Assistance Act, (25 U.S.C. 450 et seq.).
- B.** “Department” means the Law Enforcement Department.
- C.** “Director” means the Chief of the Law Enforcement Department.
- D.** “Firearm” means a weapon from which dangerous projectiles may be propelled by use of explosives, gas, or air as a means of propulsion.

- E.** “Law Enforcement” means law enforcement/ dispatch department of the Tribe.
- F.** “Law Enforcement Officer” means a person who is properly commissioned, deputized and authorized to enforce Tribal, Federal and State of Michigan laws.
- G.** “LTBB Reservation” means all lands and waters as described in the LTBB Constitution Article III (H).
- H.** “Tribe” or “LTBB” means the Waganakising Odawa, also known as the Little Traverse Bay Bands of Odawa Indians.

(Source: WOS 2009-021, July 26, 2009, Sections III)

9.1004 CREATION OF THE DEPARTMENT

The Law Enforcement Department is hereby created within the Executive Branch to carry out the responsibilities of law enforcement within the Tribe’s jurisdiction including the enforcement of criminal and civil law, both Tribal and Federal as applicable and the promotion and protection of the health, safety and welfare of the Tribe and its Tribal Citizens.

(Source: WOS 2009-021, July 26, 2009, Sections IV)

9.1005 TRIBAL LAW ENFORCEMENT DIVISION

- A.** The Department shall include a Law Enforcement Division to aid in the enforcement of Tribal laws and regulations concerning the protection and promotion of peace.

Primary and secondary duties of the Division include, but are not limited to:

1. Primary Duties:

- a) promote and protect the peace and safety through community policing, general patrol, traffic control, and assisting other departments and agencies;

- b) provide enforcement of violations of criminal law to the extent that Law Enforcement Officers are authorized through Tribal Council approved deputization, special commissions, agreements, or memoranda of understanding/agreements (MOU/MOA);
- c) provide enforcement of violations of civil law as designated by Tribal Council.
- d) provide primary responsibility for investigations, arrests, court appearances, crime prevention, evidence collection and submits incident reports to a prosecutor for adjudication in the appropriate court of jurisdiction.
- e) provide primary services such as homeland security, court officer, sex offender registry, dispatching/ criminal history and traffic enforcement.

2. Secondary Duties:

- a) provide aid or assistance to other law enforcement agencies when requested by a law enforcement agency;
- b) perform and participate in emergency management activities when requested by the Executive or designee;
- c) to take necessary and appropriate actions to enforce violations of civil or criminal law whether or not directly related to natural resource protection when in the course of carrying out their primary duties its officers encounter situations requiring law enforcement intervention to protect the public safety;
- d) participate in homeland security activities as requested by the Executive or designee;

- e) request aid of other law enforcement agencies when prudent to do so to address situations encountered in the course of carrying out primary duties.

B. Tribal Law Enforcement Officers. The Department shall employ Tribal Law Enforcement Officer(s) to carry out the duties and functions of the Division. Law Enforcement Officers of LTBB possess all of the privileges, powers and immunities of any such officer.

1. Oath of Office.

Officers shall be sworn in by a Tribal judge to support, uphold, and defend the Constitution of the Tribe and to enforce the laws and regulations of the Tribe in accordance with this Statute.

2. Firearms.

Officers are authorized to carry firearms in the performance of their duties and are required to qualify semi-annually at a score of 80% (240) or better under the direction of a certified firearms instructor in accordance with Federal Law Enforcement Training Center firearm standards.

C. Authorities. Officers shall have the following authority in their enforcement of criminal and civil violations within the jurisdiction of the Tribe:

1. Execute any process for enforcement of criminal or designated civil Statutes;
2. Issue citations for civil violations;
3. Execute warrants issued for the arrest of violators;
4. Arrest, without warrant, any person committing a criminal violation in his/her presence;

5. Make arrests and issue citations for any violation within LTBB jurisdiction when in the course of carrying out their primary duties they encounter people with outstanding warrants, or who commit violations in their presence.
6. Serve subpoenas or other legal documents;
7. Execute searches with or without a warrant as allowable under law;
8. Apprehension of Suspected Violators
9. Use force only to a level which is necessary, reasonable and appropriate to achieve the desired legal objective or to protect himself/herself or others from an immediate threat of death or serious physical injury using the force continuum.

d) All reported use of force incidents shall be reviewed by the appropriate supervisor to determine whether:

- i. any laws or departmental rules, policies were violated. All incidents involving the use of force that causes death shall be subject to both an administrative and criminal investigation.
- ii. the relevant rule or policy was clearly understandable and effective to cover the situation.
- iii. training is currently adequate.

D. Regulations. The Department shall have in place and adhere to written enforcement regulations as approved by Tribal Council.

E. Agreements. The Department shall abide by all terms and conditions set out in the Agreement between the United States Secretary of Interior and the Tribe.

F. Handbook. The Department and Law Enforcement Division shall abide by all processes and procedures set out in the United States Department of Interior, Bureau of Indian Affairs,

Justice Services Handbook, July 1, 2008 or as amended.

(Source: WOS 2009-021, July 26, 2009, Sections V)

9.1006 CRIMINAL INVESTIGATIONS

The Chief of Police shall be notified of any and all criminal investigation that potential may involve violations of tribal law, including investigations by federal, state or local authorities.

(Source: WOS 2009-021, July 26, 2009, Sections VI)

9.1007 SOVEREIGN IMMUNITY

Nothing in this Statute shall forfeit Sovereign Immunity and personal liability immunity offered in any other Statute or Resolution for law enforcement employees while acting within the scope of their authority.

(Source: WOS 2009-021, July 26, 2009, Sections VII)

9.1008 SAVINGS 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.

(Source: WOS 2009-021, July 26, 2009, Sections VIII)

9.1009 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.

(Source: WOS 2009-021, July 26, 2009, Sections IX)

Chapter 11. Personal Protection Orders and No Contact Orders and Violations of Protective

9.1101 PURPOSE

The purpose of this Statute is to provide for Personal Protection Orders. This Statute repeals and replace WOS 2015-008 Personal Protection Orders and No Contact Orders and Violations of Protective Orders.

(Source: WOS 2020-014, May 22, 2020, Section I)

9.1102 DEFINITIONS

- A.** “Course of conduct” means a pattern of conduct composed of a series of two (2) or more separate non-continuous acts or an ongoing continuous act.

- B.** “Emotional distress” means significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling.

- C.** “Harassment” means conduct directed toward a victim that includes, but is not limited to, repeated or continuing un-consented contact that would cause a reasonable individual to suffer emotional distress and that actually causes the victim to suffer emotional distress.

- D.** “Minor” or “Juvenile” means an individual who has not attained the age of 18 years.

- E.** “Non-Domestic Protection Order” or “NDPO” means an order issued by Tribal Court or a Court of Competent Jurisdiction to address or prevent stalking. Such orders are not intended for disputes between neighbors.

- F.** “Stalking” means a willful course of conduct involving repeated or continuing harassment of another individual that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested and that actually causes the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

- G.** “Territorial Jurisdiction of the Little Traverse Bay Bands of Odawa Indians” means all land that is held in trust by the United States government for the benefit of the Tribe.
- H.** “Tribal Court” means the Little Traverse Bay Bands of Odawa Indians Tribal Court.
- I.** “Tribal Member” means a person who is an enrolled Citizen a federally recognized Tribe.
- J.** “Tribe” or “LTBB” means the Little Traverse Bay Bands of Odawa Indians.
- K.** “Unconsented contact” means any contact with another individual that is initiated or continued without that individual's consent or in disregard of that individual's expressed desire that the contact be avoided or discontinued. Unconsented contact includes, but is not limited to, the following:
- 1.** Following or appearing within the sight of that individual.
 - 2.** Approaching or confronting that individual in a public place or on private property.
 - 3.** Appearing at that individual's workplace or residence.
 - 4.** Entering onto or remaining on property owned, leased, or occupied by that individual.
 - 5.** Contacting that individual by telephone.
 - 6.** Sending mail or electronic communications to that individual.
 - 7.** Placing an object on, delivering an object, or causing an object to be delivered to the victim’s residence, place of work or property owned, leased, or occupied by that individual.

(Source: WOS 2020-014, May 22, 2020, Section II)

(Source: WOS 2023-014, October 10, 2023, Section II(B)(4), Jurisdictional Adjustment Statute, See (G) in this Section)

9.1103 CIVIL JURISDICTON

Civil Jurisdiction. The Tribal Court has full jurisdiction and authority to issue and enforce Protection Orders against all persons who are Indians; who live or work within the territorial jurisdiction of LTBB; or who are a spouse, intimate partner or dating partner of an Indian.

(Source: WOS 2020-014, May 22, 2020, Section III)

9.1104 PROTECTION ORDERS

- A. Types of Personal Protection Orders.** There are two types of Personal Protection Orders (PPO), non-domestic and domestic. A PPO shall clearly indicate whether it is a domestic or non-domestic PPO.
- B. Issuance of PPO.** PPOs may be granted either ex parte or after a hearing. If a hearing is requested the Tribal Court shall provide at least a seven (7) days notice of the hearing to the Petitioner and the Respondent. Notice of the hearing shall be personally served upon the parties. If personal service cannot be accomplished, then the court shall accomplish service in a manner consistent with the Tribal Court Rules of Civil Procedure.
- C. Criteria for issuance of PPO.** The Tribal Court, upon finding that the Respondent has engaged in one or more of the following acts, shall issue a PPO:
1. Stalking the Petitioner;
 2. Making threats of physical violence directed at the Petitioner and/or the Petitioner's minor child(ren), whether or not the threat was part of a pattern of conduct;
 3. Making threats to destroy, damage, or cause harm to the Petitioner's property, whether or not the threat was part of a pattern of conduct;
 4. Inflicting emotional distress on the Petitioner as part of a pattern of conduct to

control and/or isolate the Petitioner;

5. Where the Respondent was convicted under tribal, federal or state law, of perpetrating one or more of the following crimes against the Petitioner:

- a.** criminal sexual conduct;
- b.** assault;
- c.** battery;
- d.** domestic violence;
- e.** kidnapping;
- f.** rape;
- g.** trafficking;
- h.** torture;
- i.** any crime involving the use, or threatened use, of a weapon;
- j.** any crime involving the use, or threatened use, of force and/or violence;
- k.** Making threats to take, remove, harm, abduct, kidnap, or conceal the Petitioner's minor child(ren).

D. Required findings to enter PPO ex parte. Prior to entering a PPO ex parte, the Tribal Court must make a finding based on testimony and/or other relevant evidence from the Petitioner that:

- 1.** Petitioner requested an ex parte PPO; and
- 2.** Respondent committed one or more of the acts listed in subsection (C); and
- 3.** The delay caused by failing to grant the PPO ex parte would result in irreparable injury, loss, or damage to the Petitioner or notice of a hearing or of the request itself would precipitate adverse action before the PPO could be issued.

E. Evidence for ex parte PPO; Consideration by Tribal Court. The Tribal Court may consider the following when determining whether to grant or deny an ex parte PPO:

- 1.** Medical reports of injuries;

2. Police reports;
3. Pictures of injuries;
4. Evidence of damage to household, personal items or vehicles;
5. Copies of relevant criminal convictions of the Respondent;
6. A personal diary or calendar documenting abuse;
7. Email, social media or text messages;
8. Affidavits from witnesses.

F. Provisions applicable to ex parte PPOs. An ex parte PPO is effective when it is signed by the judge and is immediately enforceable whether or not the Respondent has received notice of the PPO. The following information shall be noted in bold or capital letters on the *ex parte* order “Advising the Respondent that”:

1. "You have the right to request a hearing to contest the ex parte PPO or any condition of the PPO, within 14 days”.
2. “The *ex parte* order shall remain in effect until it expires or is dismissed by the Court.”
3. "If you fail to request a hearing regarding the PPO, then you lose any right to contest the ex parte PPO”.
4. “When the hearing is set, if you fail to appear, the ex parte PPO will stay in effect.”

G. Conditions of PPO. After determination that a PPO should be issued, the Tribal Court

may impose any of the following conditions as part of a PPO:

- 1.** Prohibit the Respondent from threatening to physically harm, injure or kill Petitioner and/or the Petitioner's minor child(ren)
- 2.** Prohibit the Respondent from threatening to commit, or committing, acts of harassment against the Petitioner or other family or household members;
- 3.** Prohibit the Respondent from harassing, annoying, telephoning, contacting, or otherwise communicating with the Petitioner, either directly or indirectly through a third-party including minor children, except as otherwise required or permitted by court order;
- 4.** Prohibit the Respondent from appearing at, or entering the home of the Petitioner and/or the Petitioner's minor child(ren);
- 5.** Prohibit the Respondent from appearing at any location where the Petitioner is likely to be, including:
 - a.** the Petitioner's school;
 - b.** the school where the Petitioner's minor child(ren) attend;
 - c.** the Petitioner's place of employment;
 - d.** a specified place frequented regularly by the Petitioner.
- 6.** Prohibit the Respondent from approaching, confronting, or following the Petitioner in a public place or on private property;
- 7.** Prohibit the Respondent from placing an object on, or delivering an object to, property owned, rented, leased, or occupied by the Petitioner or the Petitioner's workplace;
- 8.** Prohibit the Respondent from interfering with the Petitioner at her/his place of employment or education or engaging in conduct that impairs her/his employment or educational relationship or environment;

9. Prohibit the Respondent from purchasing or possessing a firearm;
10. Prohibit the Respondent from having access to information in records concerning a minor child of Petitioner and Respondent that will reveal Petitioner's address, telephone number, or employment address or other contact information or that will reveal the child's address, telephone number, or other contact information;
11. Prohibit the Respondent from interfering with or destroying property owned by the Petitioner.

H. Additional conditions for domestic PPOs. The Tribal Court may impose the following additional conditions in domestic PPO orders:

1. Prohibit the Respondent from entering the joint residence;
2. Prohibit the Respondent from removing property from the joint residence, unless otherwise ordered by the Court;
3. Prohibit the Respondent from taking, hiding or destroying joint property;
4. Prohibit the Respondent from denying Petitioner access to minor child(ren) of the Respondent and Petitioner;

I. Required Notifications. PPOs issued by the Tribal Court shall contain the following notices:

1. Inform the Respondent that a violation of these conditions may result in her/his immediate arrest. Responding to contact or invitation initiated by the Petitioner may result in the Respondent violating the PPO and the Respondent may be arrested for the violation.

2. Inform the Respondent that as a result of this order, federal, tribal and/or state law may prohibit her/him from possessing or purchasing ammunition or a firearm.
3. Inform the Respondent that he/she may file a motion to modify or terminate this order. This particular notice must inform the Respondent that if the order was entered ex parte, the motion must be filed within 14 days after being served with or receiving actual notice of the order. This particular notice must inform the Respondent that forms and instructions are available from the court clerk.
4. State clearly the effective date of the order and when the order expires.
5. State clearly the potential penalties for violation of the order.
6. State clearly that the PPO is effective until the expiration date or until further order of the Tribal Court.

J. Transmission of PPO to law enforcement agencies, explanation of PPO to parties; notification. Following the issuance of a PPO the Tribal Court shall do the following:

1. Cause the order to be delivered to Tribal Law Enforcement or other appropriate person(s) and/or agency for service and entry into the Law Enforcement Information System (LEIN) system;
2. Make reasonable efforts to ensure that the PPO is understood by the Petitioner, and if present, the Respondent; and
3. Transmit, by the end of the next business day after the order is issued, a copy of the PPO to the local law enforcement agency or other agencies designated by the Petitioner.
4. Notify the Petitioner upon receipt of the proof of service of the PPO.

(Source: WOS 2020-014, May 22, 2020, Section IV)

9.1105 HEARINGS

A. Notice. Upon receiving any request for a hearing, either requesting a PPO or contesting a PPO, the Tribal Court shall hold a hearing with 10 business days. The Tribal Court shall provide at least seven (7) days' notice of any hearing held pursuant to this Statute. Notice shall be provided in accordance with the Tribal Court Rules of Civil Procedure unless otherwise provided for in this Statute.

B. Presentation of witnesses, evidence; right to cross examine. The Petitioner and Respondent will each have the opportunity to present testimony and evidence, including witness testimony. The Petitioner and the Respondent may have the court issue and serve subpoenas for witnesses to attend the hearing.

C. Attendance of parties not required. The Tribal Court may proceed with the hearing in the absence of either party.

D. After the Hearing the Court may confirm the terms of the ex parte order; or modify or amend the order. Additionally, the Court may order civil assistance, or a mutually agreed upon third party involvement so that either the Petitioner or Respondent may be able to access personal property or property of the minor children as appropriate. The order shall include reasonable dates, times, and locations for transfer of possessions.

(Source: WOS 2020-014, May 22, 2020, Section V)

9.1106 ARREST FOR VIOLATIONS OF ORDERS

A. When a law enforcement officer has probable cause to believe that a Respondent has violated a court Protection Order or No Contact Order, the officer may, without a warrant, arrest the apparent violator whether or not the violation was committed in the presence of the officer.

(Source: WOS 2020-014, May 22, 2020, Section VI)

9.1107 IMMUNITY

A. Any law enforcement officer shall have immunity from any liability, civil or criminal, in making arrests or exercising any other authority granted under this Statute, if the law enforcement officer acts within the scope of his/her authority.

B. Law enforcement officers shall have the same immunity with respect to participation in any court proceedings resulting from arrests made for any crimes or violations involving a PPO.

(Source: WOS 2020-014, May 22, 2020, Section VII)

9.1108 CONFIDENTIALITY OF PETITIONER'S ADDRESS

A. The address of a Petitioner is confidential. Law enforcement, criminal justice personnel, probation and advocates shall not reveal the Petitioner's address

B. A Petitioner may omit her or his address from all documents filed with the Court. If a Petitioner omits her or his address, the Petitioner must provide the Court a mailing address or, in the event the Petitioner is utilizing advocacy services, the name of an advocate that has the ability to contact the Petitioner. If disclosure of Petitioner's address is necessary to determine jurisdiction the Court may order the disclosure to be made:

- 1.** After receiving the Petitioner's consent;
- 2.** Orally and in chambers, out of the presence of the Respondent and a sealed record may be made; or
- 3.** After a hearing, if the Court takes into consideration the safety of the Petitioner and finds such disclosure is in the interest of justice.

(Source: WOS 2020-014, May 22, 2020, Section VIII)

9.1109 MUTUAL PROTECTION ORDERS PROHIBITED

The Court shall not grant mutual Protection Orders. This does not preclude each of the parties from pursuing a PPO individually against the other party.

(Source: WOS 2020-014, May 22, 2020, Section IX)

9.1110 PETITIONER CANNOT VIOLATE THEIR OWN PROTECTION ORDER

A Petitioner cannot be considered by any invitation as having violated, or be subject to arrest for a violation of, their own Protection Order.

(Source: WOS 2020-014, May 22, 2020, Section X)

9.1111 TRIBAL REGISTRY FOR PROTECTION ORDERS

A. To ensure the proper and timely enforcement of all LTBB Tribal Protection Orders, and any foreign orders falling within its purview and jurisdiction, the LTBB Tribal Court shall provide for a registry that shall be a record of all Protection Orders issued by or registered with the LTBB Tribal Court. The Court Clerk shall provide the law enforcement dispatch centers with certified copies of Protection Orders within the same day of issuance.

B. The Court shall coordinate with, and ensure that any LTBB Tribal Protection Orders are submitted to any other registries, whether federal, state, Tribal, or local, for the purpose of enhancing full faith and credit enforcement of all Protection Orders, including provisions to enter the Protection Orders in the National Crime Information Center (NCIC) database.

C. The Court Clerk shall also immediately provide the dispatch centers and designated registry with certified copies and information concerning any modifications, revocations, withdrawals, and/or expired, Protection Orders.

D. The Court shall provide that information contained in the registry shall be available on a 24-hour basis to any court, law enforcement agency, or domestic violence program.

(Source: WOS 2020-014, May 22, 2020, Section XI)

9.1112 DURATION, VIOLATIONS OF PPO, SANCTIONS, HEARING

A. PPOs may be issued for up to 1 year in duration. Petitioner may file a Petition to renew the PPO towards the end of the period if circumstances exist warranting an extension. Except as provided in Section VII. C and Section VIII. (Domestic Violence PPOs), violations of non-domestic violence PPOs are punishable as criminal contempt of court and are to be heard by the court.

B. There is no right to a jury trial.

C. An individual found violating a non-domestic violence PPO by the court may be sentenced to a maximum of ninety (90) days in jail and/or a \$500.00 fine for each violation. Domestic Violence PPO violations in Section VII. C and Section VIII. are considered crimes, punishable up to a year in jail and up to a \$5,000 fine, with the right of a jury trial attaching.

D. The standard of proof at any PPO violation hearing is beyond a reasonable doubt, and the rules of evidence apply.

(Source: WOS 2020-014, May 22, 2020, Section XII)

9.1113 REGULATIONS REQUIRED

Regulations shall be developed by the Executive Branch and presented to Tribal Council for approval in accordance with the Administrative Procedures Act that includes, but not limited to, clearly defining the rights, responsibilities, and requirements of the Petitioner and Respondent during the issuance, continuation and termination of a PPO.

(Source: WOS 2020-014, May 22, 2020, Section XIII)

9.1114 SEVERABILITY CLAUSE

If any clause, section or part of this Statute is found to be unconstitutional, such a finding shall not render invalid the remainder thereof, but shall be confined in its operation to the offending section.

(Source: WOS 2020-014, May 22, 2020, Section XIV)

9.1115 EFFECTIVE DATE

This Statute is effective upon the signature of the Executive, or 30 days from submission to the Executive branch, or if the Executive vetoes the legislation, then upon Tribal Council override of the veto.

(Source: WOS 2020-014, May 22, 2020, Section XV)

9.1116 OTHER RELATED STATUTES

See WOS 2009-009 Sex Offense, Crime and Criminal Code, Victims' Rights Statute, Domestic Violence, or as may be amended.

(Source: WOS 2020-014, May 22, 2020, Section XVI)

Chapter 12. Medical Marijuana Patient Protection

9.1201 SHORT TITLE

This Statute shall be cited as the ‘LTBB Medical Marijuana Patient Protection Act.

(Source: WOS 2011-002, February 8, 2011, Sections I)

9.1202 PURPOSE

The purpose of this Statute is to provide protection for LTBB Tribal Citizens or others that would otherwise be approved under State of Michigan law for patient utilization of medical marijuana.

(Source: WOS 2011-002, February 8, 2011, Sections II)

9.103 DEFINITIONS

- A.** “Qualifying patient” means a person who has been diagnosed by a physician as having a debilitating medical condition and who has been issued and possesses a State of Michigan registry identification card.
- B.** “Tribal Lands” means property either owned or leased by the Tribe or property that is held in trust for the benefit of the Tribe.
- C.** The “Tribe or LTBB” shall mean the Little Traverse Bay Bands of Odawa Indians.

(Source: WOS 2011-002, February 8, 2011, Sections III)

9.1204 LTBB TRIBAL CODE

- A.** It shall be legal for Tribal Citizens and others on Tribal lands to obtain, possess, transport, manufacture or use medical marijuana, provided the following:

1. The individual is a qualifying patient and has been issued and possesses a registry identification card under applicable laws of the State of Michigan;
2. The individual is a caregiver as authorized under State of Michigan law, to obtain, possess, transport within the State of Michigan, or manufacture medical marijuana from obtaining, possessing, transporting within Tribal Lands, or manufacturing medical marijuana on an qualifying patient's behalf; or
3. Is a pharmacy or other entity authorized under State of Michigan law, to distribute medical marijuana to qualifying patients from obtaining, possessing or distributing medical marijuana to such qualifying patients on Tribal Lands.

B. No provision of the Tribal Code shall prohibit or otherwise restrict an entity authorized by the State of Michigan, in which medical marijuana may be prescribed or recommended by a physician for medical use, for the purpose of producing medical marijuana for prescription or recommendation by a physician for medical use from producing, processing, or distributing medical marijuana for such purpose.

(Source: WOS 2011-002, February 8, 2011, Sections IV)

9.1205 RELATION TO CERTAIN PROHIBITIONS OF SMOKING

This Statute does not affect any Tribal law regulating or prohibiting smoking in public.

(Source: WOS 2011-002, February 8, 2011, Sections V)

9.1206 REGULATIONS

The Executive may develop regulations necessary to carry out the intent of this Statute; such regulations may allow Tribal entities, Tribal employers and other entities within the Tribe's jurisdiction to place appropriate limits or prohibitions on the use or possession of medical marijuana. Such regulations shall be submitted to Tribal Council for approval.

(Source: WOS 2014-003, March 21, 2014, Sections VI)

9.1207 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.

(Source: WOS 2011-002, February 8, 2011, Sections VII)

9.1208 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.

(Source: WOS 2011-002, February 8, 2011, Sections VIII)

Chapter 13. Contempt of Court

9.1301 SHORT TITLE

This Statute shall be known and cited as the Little Traverse Bay Bands of Odawa Indians “Contempt Statute” and repeals and replaces WOS 2010-004 Contempt of Court.

(Source: WOS 2018-001, February 13, 2018, Section I)

9.1302 PURPOSE

The purpose of this Statute is to provide the Court with statutory authority to adjudicate persons or corporations who may have committed a contemptible act in the presence of the Court or outside of the presence of the Court, which is a civil infraction.

(Source: WOS 2018-001, February 13, 2018, Section II)

9.1303 DEFINITIONS

- A. “Contemnor” means a person or corporation who is responsible for Contempt of Court.
- B. “Direct Contempt” or “Direct Contempt of Court” means a contempt committed in the presence of the Judge presiding in Court or so near to the Judge as to interrupt the Court's proceedings.
- C. “Indirect Contempt” or “Indirect Contempt of Court” means a contempt committed outside of the presence of a Judge.
- D. “Contempt to Compel” is when a Court finds a person or corporation responsible for failure to comply with a Court order and seeks to compel compliance through contempt remedies.

- E.** “Indigent person” means a person who qualifies for public assistance.
- F.** “LTBB Reservation” means all lands and waters as described in the LTBB Constitution Article III (H).
- G.** “Officer of the Court” means any person who has an obligation to promote justice and effective operation of the judicial system, including, but not limited to, attorneys who appear in Court, bailiffs, clerks, law enforcement officers, bail bondsmen/women, coroners, other Court personnel, and all persons in any manner elected or appointed to perform any judicial or ministerial services.
- H.** “Movant” means the party who files a motion to request a hearing to determine if a person or corporation shall be held in Contempt.
- I.** “Tribe” or “LTBB” means the Waganakising Odawa, also known as the Little Traverse Bay Bands of Odawa Indians.
- J.** “Tribal Court” or “Court” means the LTBB Court created under Article IX of the LTBB Constitution.

(Source: WOS 2018-001, February 13, 2018, Section III)

9.1304 JURISDICTION

This Statute shall apply to all persons or corporations over whom the Tribe exercises jurisdiction.

(Source: WOS 2018-001, February 13, 2018, Section IV)

9.1305 CONTEMPT OF COURT

- A.** Contempt of Court shall include any of the following:

1. Willful behavior committed during the sitting of a Court with the intent to interrupt its proceedings.
2. Willful behavior committed during the sitting of a Court and in the Court's presence that is disrespectful to either the Judge, the Court, any juror or witness, or any Officer of the Court.
3. Willful disobedience of, resistance to, or interference with a lawful Court process, order, directive, or instruction or the execution of same.
4. Willful refusal to be sworn or affirmed as a witness, or, when so sworn or affirmed, willfully refuses to answer any legal and proper question when the refusal is not legally justified.
5. Willful or grossly negligent failure by an Officer of the Court to perform his or her duties in an official transaction.
6. Willful or grossly negligent failure to comply with schedules and practices of the Court resulting in substantial interference with the business of the Court.
7. Failure to comply with an order of a Court.

B. In order to find Contempt of Court, the Court must find that the act or omission was willfully or negligently contemptuous by clear and convincing evidence; or the act or omission was preceded by a clear warning by the Court that the conduct is improper.

C. Unless otherwise indicated in this statute, the Court must use the least restrictive measures the Court believes is appropriate which may include, but are not limited to a fine, compensatory remedies, community service or confinement to jail for a period of no longer than seven (7) days.

(Source: WOS 2018-001, February 13, 2018, Section V)

9.1306 CORPORATION IN CONTEMPT

An order against a corporation for willful disobedience may be enforced by one or more of the following:

- A.** Imposition of a fine upon the corporation.
- B.** Imprisonment of one or more directors or officers of the corporation;
- C.** Imposition or a fine upon one or more directors or officers of the corporation.

(Source: WOS 2018-001, February 13, 2018, Section VI)

9.1307 PROCEEDINGS FOR CONTEMPT

A. Direct Contempt. The presiding Judge may summarily impose measures in response to Direct Contempt when necessary to restore order or to maintain the dignity and authority of the Court.

- 1.** The measures should be imposed substantially contemporaneously with the contempt.
- 2.** Before imposing measures, the Judge must give the person or corporation charged with contempt summary notice of the charges, warn them of the potential legal sanctions, and give a summary opportunity to respond, unless doing so would compromise the safety of the Court.
- 3.** A contempt order must recite the facts, be signed by the Judge, and served upon the Contemnor.
- 4.** The Court must give notice to the Contemnor of their right to a show cause hearing to be held within forty-eight (48) hours of confinement to jail or any

place of confinement that a person cannot leave on their own volition.

5. The Court shall hold a show cause hearing within forty-eight (48) hours of confinement to jail or any place of confinement that a person cannot leave on their own volition, unless waived by the Contemnor. If the Contemnor does not waive their right to a show cause hearing, and a show cause hearing is not held within forty-eight (48) hours, the Contemnor shall be immediately be released from confinement to jail or any place of confinement that a person cannot leave on their own volition.

B. Indirect Contempt. The presiding Judge may, after a show cause hearing, impose measures in response to Indirect Contempt of the Court.

1. **Movant.** A motion to request a that a person be held in contempt may be brought forth by any of the following:
 - a. A party whose interests are harmed by the alleged Contemnor.
 - b. The Court.
 - c. A Prosecutor.
 - d. Other lawful officer of the Court.
2. The Court must provide written notice of the alleged Indirect Contempt and possible ramifications.
3. A separate hearing (Show Cause Hearing), with written notice of the hearing, must be held to determine if the person or corporation shall be held in Contempt.

C. Indirect Contempt of the Court Proceedings. All alleged Contemnors retain the right of legal representation at his or her own expense at a Show Cause Hearing unless the Court is considering jail time. In that instance, if the alleged Contemnor is indigent, the Court shall appoint an attorney to represent him/her at the Court's expense.

1. The alleged Contemnor may not be compelled to be a witness against himself or herself in the hearing.
2. All alleged Contemnors have the right to make a statement to the Court in their defense.
3. No right to a jury trial exists under this Ordinance.
4. At the conclusion of the hearing, the Judge must enter a finding as to whether the person or corporation is responsible for Indirect Contempt of Court. If a person or corporation is found to be responsible for Indirect Contempt of Court, the Judge must make findings of fact and enter a judgment.
5. A contempt order must recite the facts, be signed by the Judge, and served upon the Contemnor.

D. Contempt to Compel- Failure to Comply with an Order of a Court

1. The Movant must demonstrate the presence of an otherwise valid process, order, or directive of the Court.
2. The Movant must show that the alleged Contemnor had actual or constructive knowledge of the process, order, or directive, or failed to have notice due to his/her own negligence.
3. The Movant must demonstrate that the authority, process, order, or directive of the Court has been violated by the alleged Contemnor through clear and convincing evidence.
4. The Movant must show that either that the act or omission was willfully or negligently contemptuous by clear and convincing evidence; or the act or omission was preceded by a clear warning by the Court that the conduct is improper.

- 5.** The Judge presiding over the hearing may appoint a member of the bar to represent the Court in hearings for indirect contempt.
- 6.** The alleged Contemnor may move to dismiss the order.
- 7.** If the Court finds a person or corporation responsible for failure to comply with a Court Order and seeks to compel compliance through contempt, the Court must use the least restrictive measures that the Court believes will be effective which may include, but are not limited to a fine, compensatory remedies, community service or confinement to jail.
- 8.** If Contemnor is confined to jail for Contempt to Compel it shall only be for the purpose to coerce compliance with an order of the Court.
- 9.** The Contemnor must be released when his or her contempt no longer continues.
- 10.** The order of the Court must specify how the Contemnor may purge himself or herself of the contempt.
- 11.** The Judge may at any time withdraw, terminate, or reduce a sentence of imprisonment, or remit or reduce a fine imposed as punishment for contempt, if warranted.
- 12.** A person or corporation who fails to comply with a Court Order and is found responsible under Contempt to Compel may be held in contempt as long as:

 - a.** The order remains in force;
 - b.** The purpose of the order may still be served by compliance with the order; and

- c. The person to whom the order is directed is able to comply with the order or is able to take reasonable measures that would enable him to comply with the order.

13. The Contemnor must be released when his or her contempt no longer continues. The order of the Court holding a person in contempt must specify how the person may purge himself or herself of the contempt.

- a. Upon finding compliance with the specifications, the Judge should order the release of the person as soon as it is reasonably possible.

14. On motion of the Contemnor, the Court must determine if he or she is subject to release and, on an affirmative determination, order the release. The motion must be directed to the Judge who found contempt. If that Judge is unavailable, another Judge of the Court can approve release.

(Source: WOS 2018-001, February 13, 2018, Section VII)

9.1308 UNIFORMITY CLAUSE

Any other provision of Tribe's law providing for the exercise of contempt shall comply with the substantive and procedural requirements of this law.

(Source: WOS 2018-001, February 13, 2018, Section VIII)

9.1309 APPEALS

A. Any Order of Contempt is automatically appealable.

B. Appeal of Contempt Order.

- 1.** Applicable Law. All appeals of a finding of contempt shall follow the Court's Rules of Appellate Procedure.

2. Limited Issues on Appeal. In the event the alleged Contemnor fails to respond or challenge the merits of underlying process, order, or directive to the Court which issued the contempt, a challenge to the validity of the process, order, or directive is barred on appeal.

3. The only appealable question in such cases shall be the validity of the contempt order itself.

C. Representation.

1. The Contemnor shall retain all rights to legal representation upon appeal at his or her own expense.

2. The Court which issued the Order of Contempt shall be represented on appeal by legal counsel appointed by the Legislature.

(Source: WOS 2018-001, February 13, 2018, Section IX)

9.1310 STATUTE OF LIMITATIONS

Any finding of Contempt must be within one (1) year of the Contemptuous act.

(Source: WOS 2018-001, February 13, 2018, Section X)

9.1311 SAVINGS 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.

(Source: WOS 2018-001, February 13, 2018, Section XI)

Chapter 14. Human Trafficking Statute

9.1401 SHORT TITLE

This Statute may be cited as the “Human Trafficking Statute”.

(Source: WOS 2018-011, August 15, 2018, Section I)

9.1402 PURPOSE

The purpose of this Statute is to set forth the Tribe’s jurisdiction and sovereign right to exercise its power to deem certain acts as criminal and prohibit Human Trafficking.

(Source: WOS 2018-011, August 15, 2018, Section II)

9.1403 DEFINITIONS

- A.** “Adult” means any person over eighteen (18) years of age for purposes of criminal jurisdiction.
- B.** “Business entity” means a person other than an individual.
- C.** “Coercion”, for the purposes of this Statute, means any of the following:
 - 1.** the use or threat of force against, abduction of, serious harm to, or physical restraint of an individual;
 - 2.** the use of a plan, pattern, or statement with intent to cause an individual to believe that failure to perform an act will result in the use of force against, abduction of, serious harm to, or physical restraint of an individual;
 - 3.** the abuse or threatened abuse of law or legal process;

4. controlling or threatening to control an individual's access to a controlled substance. "Controlled substance" is defined and described in the Uniform Controlled Substances Act, 21 U.S.C. Section 812, as updated, and any controlled substance defined in that Act that is mixed with or contains any of the following unless use and/or possess is defined or reclassified by federal or Tribal law;
5. the destruction of, taking of, or the threat to destroy or take an individual's identification document or other property;
6. use of debt bondage;
7. the use of an individual's physical or mental impairment, where such impairment has substantial adverse effects on the individual's cognitive or volitional functions;
8. threat of loss of reputation by threatening exposure of sexually explicit image or images; or
9. the commission of civil or criminal fraud.

D. "Commercial sexual activity" means sexual activity for which anything of value is given to, promised to, or received by a person.

E. "Debt bondage" means inducing an individual to provide:

1. commercial sexual activity in payment toward or satisfaction of a real or purported debt; or
2. labor or services in payment toward or satisfaction of a real or purported debt if:
 - a. the reasonable value of the labor or services is not applied toward the liquidation of the debt; or
 - b. the length of the labor or services is not limited and the nature of the

labor or services is not defined.

- F.** “Identification document” means a passport, driver’s license, immigration document, travel document, or other government-issued identification document, including a document issued by a foreign government.
- G.** “Indian” means a person who is a citizen of a federally recognized Indian Tribe.
- H.** “Indian Tribe” means any federally recognized Tribe.
- I.** “Labor or services” means activity having economic value.
- J.** “Minor” or “Juvenile” means an individual who has not attained the age of eighteen (18) years.
- K.** “Person” means an individual, estate, business or nonprofit entity, or other legal entity. The term does not include a public corporation, government or governmental subdivision, agency, or instrumentality.
- L.** “Non-Indian” means any person who is not a citizen of a federally recognized Indian Tribe.
- M.** “Public corporation” means an entity that is:
- 1.** owned by a government, or a governmental subdivision, agency, or instrumentality; or
 - 2.** created to perform a governmental function or to operate under the control of a government or governmental subdivision, agency, or instrumentality.
- N.** “Serious harm” means harm, whether physical or nonphysical, including psychological, economic, or reputational, to an individual which would compel a reasonable

individual of the same background and in the same circumstances to perform or continue to perform labor or services or sexual activity to avoid incurring the harm.

O. “Sexual activity” or “Sexual act” means:

1. contact between the penis and the vulva or the penis and the anus, and for purposes of this subparagraph contact involving the penis occurs upon penetration, however slight;
2. contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus;
3. the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or
4. the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person;

P. “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

Q. “Territorial Jurisdiction of the Little Traverse Bay Bands of Odawa Indians” means all land that is held in trust by the United States government for the benefit of the Tribe.

R. “Tribal Court” means the Little Traverse Bay Bands of Odawa Indians Tribal Court.

S. “Tribal Citizen” means a person who is an enrolled citizen of the Little Traverse Bay Bands of Odawa Indians.

T. “Tribe” means the Little Traverse Bay Bands of Odawa Indians or LTBB.

U. “Victim” means an individual who is subjected to human trafficking or to conduct that would have constituted human trafficking had this Statute been in effect when the conduct occurred, regardless of whether a perpetrator is identified, apprehended, prosecuted, or convicted.

V. “Youth in transition” or “YIT” means a youth who has been placed in a supervised foster care placement after his/her 14th birthday, and meets all other criteria, is eligible for YIT-funded goods and services until his/her twenty-first (21st) birthday.

(Source: WOS 2018-011, August 15, 2018, Section III)

(Source: WOS 2023-014, October 10, 2023, Section II(B)(5), Jurisdictional Adjustment Statute, See (Q) in this Section)

9.1404 CRIMINAL JURISDICTION

A. Criminal jurisdiction of the Tribe extends to adult LTBB citizens and adult citizens of Federally Recognized Tribes, however, upon motion of the Tribal Prosecutor the Judge has the discretion to try a minor as an adult.

B. The Indian Civil Rights Act (ICRA), 25 U.S.C. Section 1302, was enacted by Congress in 1968. The Tribe’s jurisdiction is limited to punishments that may impose up to a one (1) year jail term and a fine up to \$5,000.00.

C. TLOA, PL 111-211, was enacted by Congress in 2013. The Tribe’s jurisdiction is extended to punishments that may impose up three (3) years imprisonment and a fine up to \$15,000.00, up the enactment of a Tribal Council Resolution.

D. Minor Immunity. An individual who was a minor at the time of the offense is not criminally liable or subject to a juvenile delinquency proceeding for committing acts of sexual servitude or commercial sexual activity and other non-violent offenses committed as a direct result of being a victim of human trafficking such as forgery, possession of stolen property, shoplifting, or uttering worthless checks and shall be presumed to be a child in need of services

under Child Welfare Statutes. The immunities granted does not apply in a prosecution for patronizing a victim of sexual servitude.

(Source: WOS 2018-011, August 15, 2018, Section IV)

9.1405 TRAFFICKING AN INDIVIDUAL

A. A person commits trafficking an individual if the person knowingly facilitates, directs, arranges, recruits, transports, transfers, harbors, receives, provides, obtains, isolates, maintains, or entices an individual in furtherance of:

- 1.** forced labor in violation of Section VI; or
- 2.** sexual servitude in violation of Section VII.

B. Trafficking of an individual is a crime that is punishable up to the Tribe's maximum jurisdiction and is a felony.

(Source: WOS 2018-011, August 15, 2018, Section V)

9.1406 FORCED LABOR

A person commits forced labor if the person knowingly uses coercion to compel an individual to provide labor or services, except where such conduct is permissible under federal law or Tribal law.

(Source: WOS 2018-011, August 15, 2018, Section VI)

9.1407 SEXUAL SERVITUDE

A. A person commits sexual servitude if the person knowingly:

- 1.** maintains or makes available a minor for the purpose of engaging the minor in

commercial sexual activity; or

2. uses coercion or deception to compel an adult to engage in commercial sexual activity.

B. It is not a defense in a prosecution under subsection A.1 that the minor consented to engage in commercial sexual activity or that the defendant believed the minor was an adult.

(Source: WOS 2018-011, August 15, 2018, Section VII)

9.1408 PATRONIZING A VICTIM OF SEXUAL SERVITUDE

A. A person commits patronizing a victim of sexual servitude if the person knowingly gives, agrees to give, or offers to give anything of value so that an individual may engage in commercial sexual activity with another individual and the person knows that the other individual is a victim of sexual servitude.

B. A person commits patronizing a minor if:

1. with the intent that an individual engages in commercial sexual activity with a minor, the person gives, agrees to give, or offers to give anything of value to a minor or another person so that the individual may engage in commercial sexual activity with a minor; or

2. the person gives, agrees to give, or offers to give anything of value to a minor or another person so that an individual may engage in commercial sexual activity with a minor.

C. Patronizing a victim of sexual servitude is a crime that is punishable up to the Tribe's maximum jurisdiction and is a felony.

(Source: WOS 2018-011, August 15, 2018, Section VIII)

9.1409 BUSINESS ENTITY LIABILITY

- A.** A business entity may be prosecuted for an offense under this Statute if:
- 1.** the entity knowingly engages in conduct that constitutes human trafficking; or
 - 2.** an employee or nonemployee agent of the entity engages in conduct that constitutes human trafficking and the commission of the offense was part of a pattern of illegal activity under this Statute for the benefit of the entity, which the entity knew was occurring and failed to take effective action to stop.
- B.** The court may consider the severity of a business entity's offense under this Statute and order penalties in addition to those otherwise provided for the offense, including:
- 1.** a fine of the maximum amount allowed under the Tribe's jurisdiction;
 - 2.** disgorgement of profit from illegal activity in violation of this Statute; and
 - 3.** debarment from Tribal government or enterprise contracts.

(Source: WOS 2018-011, August 15, 2018, Section IX)

9.1410 AGGRAVATING CIRCUMSTANCE

An aggravating circumstance during the commission of an offense of trafficking an individual, forced labor, or sexual servitude of this Statute occurs when the defendant recruited, enticed, or obtained the victim from a shelter designed to serve victims of human trafficking, victims of domestic violence, victims of sexual assault, runaway youth, youth in transition, a ward of the court, foster children, or the homeless. If the trier of fact finds that an aggravating circumstance occurred, the defendant may be punished up to the Tribe's maximum jurisdiction and is a felony.

(Source: WOS 2018-011, August 15, 2018, Section X)

9.1411 RESTITUTION

A. The court may order a person convicted of an offense of trafficking an individual, forced labor, or sexual servitude of this Statute to pay restitution to the victim even if the victim is unavailable to accept payment of restitution. Such restitution may be directed to tribal victim programs that help human trafficking victims

B. The court may also allow for a separate civil cause of action for the following:

- 1.** Non-monetary loss of pain and suffering;
- 2.** reasonable attorney's fees and costs; and
- 3.** an amount equal to the greatest of the following, with no reduction for expenses the defendant incurred to maintain the victim:
 - a.** the gross income to the defendant for, or the value to the defendant of, the victim's labor or services or sexual activity;
 - b.** the amount the defendant contracted to pay the victim; or
 - c.** the value of the victim's labor or services or sexual activity, calculated under the minimum wage and overtime provisions of the WOS 2008-011 Fair Employment Statute, as amended, even if the provisions do not apply to the victim's labor or services or sexual activity.

C. Damages awarded to the victim under a civil cause of action must be offset by any restitution paid to the victim pursuant to section A.

(Source: WOS 2018-011, August 15, 2018, Section XI)

9.1412 STATUTE OF LIMITATIONS

- A.** There is no statute of limitations on criminal prosecution for an offense under this Statute.

- B.** Any civil cause of action must be commenced not later than ten (10) years after the later of the date on which the victim:
 - 1.** was freed from the human trafficking situation; or

 - 2.** attained 18 years of age.

(Source: WOS 2018-011, August 15, 2018, Section XII)

9.1413 VICTIM'S PROTECTIONS

- A.** In an investigation of or a prosecution for an offense under this Statute, Law Enforcement officers and Prosecutor shall keep the identity and pictures or images of the victim and the victim's family confidential, except to the extent that disclosure is necessary for the purpose of investigation or prosecution; is required by law or court order; or is necessary to ensure provision of services and benefits for the victim and the victim's family.

- B.** In order to convict a person of any offense defined in this Statute it shall not be necessary that the testimony of the alleged victim be corroborated.

- C.** Evidence of the victim's past sexual behavior including but not limited to: the victim's marital history, divorce history, or general reputation for promiscuity, non-chastity, or sexual mores contrary to tribal community standards is inadmissible on the issue of credibility and is inadmissible to prove the victim's consent except as follows:
 - 1.** The perpetrator and the victim have engaged in sexual intercourse with each other in the past, and when the past behavior is material to the issue of consent, evidence concerning the past behavior between the perpetrator and the victim may be admissible on the issue of consent to the offense.

2. The Tribal Court shall hold a hearing out of the presence of the jury, if any, and the hearing shall be closed except to the necessary witnesses, the defendant, counsel, and those who have a direct interest in the case or in the work of the court.

3. Nothing in this section shall be construed to prohibit cross-examination of the victim on the issue of past sexual behavior when the Prosecution presents evidence in its case in chief tending to prove the nature of the victim's past sexual behavior, but the court may require a hearing concerning such evidence.

D. If the victim is a minor, the Tribal shall provide victim services to the minor if such services are available.

E. Any other rights as provided by the Tribe's Victim's Rights Statute.

(Source: WOS 2018-011, August 15, 2018, Section XIII)

9.1414 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.

(Source: WOS 2018-011, August 15, 2018, Section XIV)

9.1415 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.

(Source: WOS 2018-011, August 15, 2018, Section XV)

9.1416 OTHER RELATED STATUTES

See Crimes Statute; Sex Offense Statute; Sex Offender Registration and Notification Statute; Felony Defined Statute; Domestic Violence Statute; Victim's Rights Statute; Personal Protection Orders and No Contact Orders and Violations of Protective Order; or as may be amended.

(Source: WOS 2018-011, August 15, 2018, Section XVI)

Chapter 15. Protection of Employees From Supervisors That Have Committed A Crime of Domestic Violence or Sexual Harassment Statute

9.1501 PURPOSE

The purpose of this statute is to protect employee from persons in supervisory or management positions that have committed a domestic violence crime or Sexual Harassment. The Tribe recognize employees working for the Tribal government or enterprise may be harmed from persons in management or supervisory positions who have committed a crime of domestic violence or an act of Sexual Harassment.

(Source: WOS 2019-003, April 24, 2019, Section I)

9.1502 DEFINITIONS

- A. “Crimes of Domestic Violence”** means such crimes as set forth in WOS 2015-018, Domestic Violence Statute.

- B. “Enterprise or Business”** means an economic enterprise, including related ancillary enterprises and activities that is wholly owned by the Little Traverse Bay Bands of Odawa Indians.

- C. “Sexual Harassment”** means such acts as set forth in WOS 2008-011, Fair Employment Statute.

- D. “Tribal Government”** means the Executive, Legislative and Judicial branches of the Little Traverse Bay Bands of Odawa Indians government.

- E. “Tribe” or “LTBB”** shall mean the Little Traverse Bay Bands of Odawa Indians.

(Source: WOS 2019-003, April 24, 2019, Section II)

9.1503 APPLICATION

A. Any person who has been convicted of a crime of domestic violence in any competent jurisdiction shall not be hired or promoted to a position of manager or supervisor, or a position that has managerial or supervisory duties over another person within the Tribal government or enterprises within seven (7) years of such conviction.

B. Any person, if known, who has been held responsible for sexual harassment by either a formal proceeding which may include an agency hearing, mediation or arbitration, or in a court of competent jurisdiction shall be not be hired or promoted to a position of manager or supervisor, or a position that has managerial or supervisory duties over another person within Tribal government or enterprises, within seven (7) years of such finding.

(Source: WOS 2019-003, April 24, 2019, Section III)

9.1504 BACKGROUND CHECKS

Any person or department who has the authority or duty to hire, assess, promote, investigate or license an employee, shall immediately complete a background check of all persons who are either being promoted or hired as a manager or supervisor to determine whether or not they are prohibited from holding such position in accordance with this Statute and shall take necessary actions to comply with this Statute.

(Source: WOS 2019-003, April 24, 2019, Section IV)

9.1505 REGULATIONS

Any regulations promulgated or required in accordance with this Statute shall follow the Administrative Procedures Act and be submitted to Tribal Council for approval.

(Source: WOS 2019-003, April 24, 2019, Section V)

9.1506 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.

(Source: WOS 2019-003, April 24, 2019, Section VI)

9.1507 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.

(Source: WOS 2019-003, April 24, 2019, Section VII)

9.1508 OTHER RELATED STATUTES

See Waganakising Odawak Statute (WOS) 2015-007 Tribal Government Human Resources Department, Waganakising Odawak Statute (WOS) 2011-005 Gaming Regulatory Statute, WOS 2014-005 Ziibimijwang, Inc. Statute, WOS 2009-018 Tribal Traditional Burial Board Statute, WOS 2018-014 Odawa Construction Corporation Statute, WOS [2009-024 Odawa Economic Development Management](#) Inc. Statute, WOS 2015-018, Domestic Violence Statute, WOS 2008-011, Fair Employment Statute, or as may be amended.

(Source: WOS 2019-003, April 24, 2019, Section VIII)

Chapter 16. Jurisdiction Adjustment Statute

Codification Note: Each Subsections Repealed in Section II. have also been codified in the respective Sections and Subsections of all Chapters located in the WOTCL.

9.1601 PURPOSE

The purpose of this statute is to adjust the territorial jurisdictional of the Little Traverse Bay Bands of Odawa Indians in multiple Tribal laws in response to *Little Traverse Bay Bands of Odawa Indians v. Whitmer*, 998 F.3d 269, 272 (6th Cir. 2021), *cert. denied*, 212 L. Ed. 2d 215, 142 S. Ct. 1206 (2022). In this case, the U.S. Court of Appeals for the Sixth Circuit affirmed the district court’s determination that the 1855 Treaty of Detroit did not create a reservation for the Tribe under federal law. Although this decision substantially diminishes the Tribe’s legal jurisdiction over the lands within the Tribe’s 1855 reservation, this region has always been and remains our home.

(Source: WOS 2023-014, October 10, 2023, Section I)

9.1602 JURISDICTIONAL ADJUSTMENT

A. REPEAL

1. Sex Offense Statute, WOS 2018-012, Section III.N: “Territorial Jurisdiction of the Little Traverse Bay Bands of Odawa Indians” means “areas referenced in Public Law 103-324, 25 USC Section 1300k-2(b)(2)(A) as the boundaries of the reservations for the Little Traverse Bay Bands as set out in Article I, paragraphs ‘third and fourth’ of the Treaty of 1855, 11 Stat.621.” Little Traverse Bay Bands Constitution, Article V(A)(1)(a);
2. Civil Traffic Statute, WOS 2010-011, Section IV.HHH: “Territorial Jurisdiction of the Little Traverse Bay Bands of Odawa Indians” means “areas referenced in Public Law 103-324, 25 USC Section 1300k-2(b)(2)(A) as the boundaries of the reservations for the Little Traverse Bay Bands as set out in Article I, paragraphs ‘third and fourth’ of the Treaty of 1855, 11 Stat.621.” Little Traverse Bay Bands Constitution, Article V(A)(1)(a).

3. Sex Offender Registry Statute, WOS 2012-008, Section III.Q: “Territorial Jurisdiction of the Little Traverse Bay Bands of Odawa Indians” means “areas referenced in Public Law 103-324, 25 U.S.C. Section 1300k-2(b)(2)(A) as the boundaries of the reservations for the Little Traverse Bay Bands as set out in Article I, paragraphs ‘third and fourth’ of the Treaty of 1855, 11 Stat.621.” Little Traverse Bay Bands Constitution, Article V(A)(1)(a).

4. Personal Protection Orders and No Contact Orders and Violations of Protective Orders Statute, WOS 2020-014, Section II.G: “Territorial Jurisdiction of the Little Traverse Bay Bands of Odawa Indians” means “areas referred to in Public Law 103-324, 25 U.S.C. Section 1300k-2(b)(2)(A), as the boundaries of the reservations for the Little Traverse Bay Bands as set out in Article I, paragraphs ‘third and fourth’ of the Treaty of 1855, 11 Stat. 621”, including all land which is held in trust by the United States government for the benefit of the Tribe or an individual member of the Tribe and/or as otherwise described by applicable federal law or court opinion.

5. Human Trafficking Statute, WOS 2018-011, Section III.Q: “Territorial jurisdiction of the Little Traverse Bay Bands of Odawa Indians” means “areas referenced in Public Law 103-324, 25 U.S.C. Section 1300k-2(b)(2)(A) as the boundaries of the reservations for the Little Traverse Bay Bands as set out in Article I, paragraphs ‘third and fourth’ of the Treaty of 1855, 11 Stat. 621.” Little Traverse Bay Bands Constitution, Article V(A)(1)(a).

B. REPLACE

1. Sex Offense Statute, WOS 2018-012, Section III.N: “Territorial Jurisdiction of the Little Traverse Bay Bands of Odawa Indians” means all land that is held in trust by the United States government for the benefit of the Tribe.

2. Civil Traffic Statute, WOS 2010-011, Section IV.HHH: “Territorial Jurisdiction of the Little Traverse Bay Bands of Odawa Indians” means all land that is held in trust by the United States government for the benefit of the Tribe.

3. Sex Offender Registry Statute, WOS 2012-008, Section III.Q: “Territorial Jurisdiction of the Little Traverse Bay Bands of Odawa Indians” means all land that is held in trust by the United States government for the benefit of the Tribe.

4. Personal Protection Orders and No Contact Orders and Violations of Protective Orders Statute, WOS 2020-014, Section II.G: “Territorial Jurisdiction of the Little Traverse Bay Bands of Odawa Indians” means all land that is held in trust by the United States government for the benefit of the Tribe.

5. Human Trafficking Statute, WOS 2018-011, Section III.Q: “Territorial Jurisdiction of the Little Traverse Bay Bands of Odawa Indians” means all land that is held in trust by the United States government for the benefit of the Tribe.

(Source: WOS 2023-014, October 10, 2023, Section II)

9.1603 SAVINGS 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 or laws of LTBB, 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.

(Source: WOS 2023-014, October 10, 2023, Section III)

9.1604 EFFECTIVE DATE

This statute shall be effective upon the signature of the Executive, or 30 days from Tribal Council approval, or if the Executive vetoes the legislation, then upon the date on which Tribal Council overrides the veto.

(Source: WOS 2023-014, October 10, 2023, Section IV)