



# Waganakising Odawak

Little Traverse Bay Bands of Odawa Indians

**Regina Gasco-Bentley, Tribal Chairperson**

7500 Odawa Circle, Harbor Springs, Michigan 49740

Phone 231-242-1418 • Fax 231-242-1411

March 22<sup>nd</sup>, 2023

**RE: Executive Veto of WOS 2023-XXX Amendment Waganakising Odawak Statute #2021-004 Domestic Violence Statute**

I am vetoing the amendments to the Domestic Violence Statute because the law can do more to protect Tribal Citizens, tribal employees, and their families. In the Violence Against Women Act Reauthorization Act of 2013 (VAWA 2013), Congress affirmed the inherent sovereign authority of Indian tribes to exercise criminal jurisdiction over non-Indians who commit dating or domestic violence or violate personal protection orders on tribal lands. This authority is referred to as Special Domestic Violence Criminal Jurisdiction (SDVCJ). I am proud that LTBB was one of the first tribes to authorize SDVCJ in 2015.

Since that time, tribes have lobbied Congress to restore more of their criminal jurisdiction. These efforts paid off when the VAWA Reauthorization of 2022 affirmed Indian tribes' sovereign authority over non-Indian persons who perpetrate crimes in Indian country related to assault of Tribal justice personnel, child violence, obstruction of justice, sexual violence, sex trafficking, and stalking. I am pleased that the Tribal Council moved so quickly to assume jurisdiction as to these crimes, known as Special Tribal Criminal Jurisdiction (STCJ).

VAWA 2022 removed some of the limitations imposed by VAWA 2013, including the requirement that a defendant have "sufficient ties" to the Tribe. Prior to the enactment of VAWA 2022, tribes could exercise criminal jurisdiction only as to non-Indian persons who were employed by the tribe, resided in a tribe's territorial jurisdiction, or were a spouse, intimate partner, or dating partner of a Tribal citizen. The DV Statute as amended continues to allow a non-Indian defendant to avoid prosecution unless all three ties are satisfied. I ask the Council to remove this restriction. Another SDVCJ limitation, that a victim must be an Indian, was not extended to assault of Tribal justice personnel and does not apply to obstruction of justice. I believe the DV Statute should protect our law enforcement and justice personnel, Indian and non-Indian alike.

As a Tribal leader, I disagree with the paternalistic premise of the Supreme Court decision in *Oliphant v. Suquamish Tribe*—that Indian tribes' dependency on the federal government implicitly divested tribes of their inherent authority to enforce their laws against non-Indians who commit crimes on tribal lands. One day this injustice will be corrected in full but until then, we must exercise sovereign authority to the full extent permitted by federal law. I encourage the Tribal Council to revisit the DV Statute and present for my signature amendments that exercise the full scope of STCJ.



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*Regina Gasco Bentley*

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**WAGANAKISING ODAWAK STATUTE # 2023-\_\_\_\_\_**  
**AMENDMENT TO WAGANAKISING ODAWAK STATUTE # 2021-004**  
**DOMESTIC VIOLENCE STATUTE**

**SECTION I. REPEALS AND REPLACES**

**A. REPEAL.**

**SECTION IV. JURISDICTION**

**B. Special Domestic Violence Criminal Jurisdiction.** Based on the Tribe's inherent sovereignty and jurisdiction and the Violence Against Women Reauthorization Act of 2013, 25 USC 1304, the Tribe exercises special domestic violence criminal jurisdiction over all persons whom LTBB does not have jurisdiction over pursuant to section A for crimes of domestic violence as defined in Section VII occurring within the territorial jurisdiction of LTBB.

1. The following are the only exceptions to LTBB's special domestic violence criminal jurisdiction:

a. Neither the victim nor the defendant is an Indian.

b. Defendant lacks ties to LTBB. The defendant lacks ties to LTBB when the defendant:

i. Does not reside in the territorial jurisdiction of LTBB; or

ii. Is not employed within the territorial jurisdiction of LTBB;

or

iii. Is not a spouse, intimate partner, or dating partner of an LTBB citizen; or an Indian who resides in the territorial jurisdiction of LTBB.

2. The burden of proving an exception to LTBB's jurisdiction is upon the defendant and must be raised as an affirmative legal defense in a pre-trial motion in accordance with Court Rule 1.318(B). The Court shall decide whether the exception to jurisdiction has been proven as a matter of law, prior to trial. If there is evidence weighing both in favor and against the exception, and the Court deems it a matter of factual dispute rather than law, it may allow the jury to decide the question at trial.



## SECTION VII. CRIMES OF DOMESTIC VIOLENCE

**A. Dating Violence.** This crime occurs when violence 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.

**B. Domestic Violence.** This crime occurs when violence is committed by a current or former spouse, or intimate partner, of the victim; by a person with whom the intimate partner of the victim shares a child in common; by a person who is cohabitating with, or has cohabitated with the victim as a spouse or intimate partner; or by a person similarly situated to a spouse of the victim under the domestic violence laws of LTBB when the violence occurs within the territorial jurisdiction of LTBB.

**C. Definition of Violence.** Violence is defined as the act of causing actual physical or mental harm, or causing the fear of imminent physical or mental harm, or engaging in a course of conduct that causes a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed or controlled.

**D. Other Acts Admissibility.**

1. In a criminal action under this section, in which the defendant is accused of an offense involving domestic or dating violence, evidence of the defendant's commission of other acts of domestic or dating 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, they shall disclose the evidence, including any existing statements of witnesses or a summary of the substance of any testimony that is expected to be offered, to the defendant not less than 10 days before the scheduled date of trial or at a later time as allowed by the court for good cause shown.

**E. Hearsay Admissibility**

1. Evidence of a statement by an alleged domestic or dating violence victim is admissible 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 action in which the evidence is offered under this section is an offense involving domestic or dating violence.
- c. The statement was made under circumstances that would indicate the statement's trustworthiness.
- d. The statement was made to a law enforcement officer.
- e. 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, they shall disclose the evidence, including the statements of witnesses or a summary of the substance of any testimony that is expected to be offered, to the defendant not less than 10 days before the scheduled date of trial or at a later time as allowed by the Court for good cause shown.

4. Nothing in this section shall be construed to abrogate any privilege conferred by law.

**F. Violation of Protection Order.** This crime occurs when the defendant acts within the territorial jurisdiction of LTBB and violates the portion of a protection order that:

1. 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;
2. Was issued against the defendant;
3. Is enforceable by the participating tribe; and
4. Is consistent with 18 U.S.C. § 2265(b). Full faith and credit given to protection orders.

**B. REPLACE**

**SECTION IV. JURISDICTION**

**B. Special Domestic Violence Criminal Jurisdiction.** Based on the Tribe's inherent sovereignty and jurisdiction and the Violence Against Women Reauthorization Act of 2022, 25 USC §1304, the Tribe exercises special domestic violence criminal jurisdiction over all persons whom LTBB does not have jurisdiction over pursuant to section A for Covered Crimes listed in 25 USC §1304 and defined in Section VII occurring within the territorial jurisdiction of LTBB.

1. The following are the only exceptions to LTBB's special domestic violence criminal jurisdiction:
  - a. Neither the victim nor the defendant is an Indian.
  - b. Defendant lacks ties to LTBB. The defendant lacks ties to LTBB when the defendant:
    - i. Does not reside in the territorial jurisdiction of LTBB; or
    - ii. Is not employed within the territorial jurisdiction of LTBB;  
or
    - iii. Is not a spouse, intimate partner, or dating partner of an LTBB citizen; or an Indian who resides in the territorial jurisdiction of LTBB.



2. The burden of proving an exception to LTBB's jurisdiction is upon the defendant and must be raised as an affirmative legal defense in a pre-trial motion in accordance with Court Rule 1.318(B). The Court shall decide whether the exception to jurisdiction has been proven as a matter of law, prior to trial. If there is evidence weighing both in favor and against the exception, and the Court deems it a matter of factual dispute rather than law, it may allow the jury to decide the question at trial.

## SECTION VII. CRIMES OF DOMESTIC VIOLENCE

### A. Covered Crime. Covered Crime means:

1. Assault of Tribal Justice Official which means any violation of the criminal law of LTBB 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 LTBB 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 which means the use, threatened use, or attempted use of violence against a child proscribed by the criminal law of LTBB or as may provide the grounds for out-of-home placement under the Child Protection Statute, 2022-001, as may be amended.
3. Dating Violence which means any violation of the criminal law of LTBB 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 which means any violation of the criminal law of LTBB that is committed which means

- 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 which means any violation of the criminal law of LTBB that involves interfering with the administration or due process of the laws of LTBB, including any Tribal criminal proceeding or investigation of a crime.

6. Sexual Violence which means any nonconsensual sexual act or contact proscribed by the criminal law of LTBB including in any case in which the victim lacks the capacity to consent to the act, any crime set out in the LTBB Sexual Offenses Statute (WOS 2018-012), and any act defined as rape or sexual assault under 10 U.S.C. §920.

7. Sex Trafficking which means conduct within the meaning of 18 USC §1591(a), or crimes set out in the LTBB Human Trafficking Statute (WOS 2018-011).

8. Stalking which means engaging in a course of conduct directed at a specific person proscribed by the criminal law of LTBB 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. Tribal Justice Official has the same meaning as in 25 U.S.C. § 2801(10) being:

- a. a Tribal prosecutor,



- b. a Tribal Law Enforcement Officer, and
- c. any other person responsible for investigating or prosecuting an alleged criminal offense in Tribal Court.

10. A Violation of a Protective Order which means an act that--

- a. occurs in the Indian country of LTBB; and
- b. 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 section 18 USC §2265(b), the criteria for the granting of full faith and credit.

**B. Definition of Violence.** Violence is defined as the act of causing actual physical or mental harm, or causing the fear of imminent physical or mental harm, or engaging in a course of conduct that causes a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or controlled.

## SECTION II. EFFECTIVE DATE

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

## CERTIFICATION

As the Tribal Council Legislative Leader and Tribal Council Secretary, we certify that this Statute was duly adopted by the Tribal Council of the Little Traverse Bay Bands of Odawa Indians at a regular meeting of the Tribal Council held on February 23, 2023 at which a quorum was present, by a vote of 8 in favor, 0 opposed, 0 abstentions, and 1 absent as recorded by this roll call:

	In Favor	Opposed	Abstained	Absent
Fred Kiogima	X	_____	_____	_____
Tamara Kiogima	X	_____	_____	_____
William Ortiz	X	_____	_____	_____
Aaron Otto	_____	_____	_____	X
Melissa Pamp	X	_____	_____	_____
James Pontiac	X	_____	_____	_____
Leroy Shomin	X	_____	_____	_____
Marcella R. Reyes	X	_____	_____	_____
Emily Proctor	X	_____	_____	_____

Date: 02/24/2023

Emily Proctor  
Emily Proctor, Legislative Leader

Date: 02/24/2023

Marcella R. Reyes  
Marcella R. Reyes, Tribal Council Secretary

Received by the Executive Office on 2-24-2023 by Sakata Worthington

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

Date: 03-22-2023

**VETO**  
Regina Gasco Bentley, Tribal Chairperson

Received from the Executive on

03.23.2023 by Frank Baker