

WAGANAKISING ODAWAK STATUTE # 2023-\_\_

SPECIAL JURISDICTION OVER DOMESTIC VIOLENCE AND RELATED CRIMES

SECTION I. 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.

SECTION II. 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.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35

**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.

1 **SECTION III. JURISDICTION**

2  
3 **A. General Criminal Jurisdiction.** The general criminal jurisdiction of the Tribe extends to  
4 LTBB citizens and all other Indians.

5  
6 **B. Special Tribal Criminal Jurisdiction.**

7  
8 **1.** Based on the Tribe’s inherent sovereignty and statutory authorization in the  
9 Violence Against Women Reauthorization Acts of 2013 and 2022, 25 U.S.C. § 1304, the  
10 Tribe’s jurisdiction over the covered crimes in Section VI extends to all persons.

11  
12 **2.** The Tribe may not exercise special tribal criminal jurisdiction over an alleged  
13 offense, other than obstruction of justice or assault of Tribal justice personnel, if neither  
14 the defendant nor the alleged victim is an Indian.

15  
16 **3.** In this paragraph and with respect to a criminal proceeding in which the Tribe  
17 exercises special tribal criminal jurisdiction based on a violation of a protection order, the  
18 term “victim” means a person specifically protected by a protection order that the  
19 defendant allegedly violated.

20  
21 **C.** The Tribal Court has full jurisdiction and authority to issue and enforce protection orders  
22 against all persons regarding matters arising within the territorial jurisdiction of LTBB, or  
23 otherwise within the authority of LTBB.

24  
25  
26 **SECTION IV. DUE PROCESS**

27  
28 **A. Rights of the Accused.** In all prosecutions for crimes arising under this statute, the  
29 accused shall have the following rights:

30  
31 **1.** To be secure in one’s houses, papers, and effects against unreasonable search and  
32 seizures, or issue warrants, unless based upon probable cause, and supported by oath or  
33 affirmation, and particularly describing the place to be searched and the person or thing  
34 to be seized;

35  
36 **2.** To be free from being put twice in jeopardy for the same offense;

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34

- 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           **1.** Tribal Courts are the Courts of Record and the Clerk must certify under seal as to  
2 the accuracy and validity of the files and records of all proceedings before the LTBB  
3 Courts.

4  
5           **2.** The Clerk shall take, preserve and certify under seal to the accuracy of a verbatim  
6 record of the proceedings before the Tribal Courts. The record may be created and  
7 recorded by a stenographic, electronic, mechanical, or other recording devices approved  
8 by the Chief Judge of the Tribal Court as a trustworthy means of creating a permanent  
9 verbatim record of all proceedings.

10  
11           **3.** The Chief Judge shall proscribe the length of time verbatim transcripts must be  
12 preserved by the Clerk, unless otherwise addressed by Statute.

13  
14           **4.** It is a criminal offense, punishable by penalties and under the laws of LTBB for  
15 the Clerk of the Tribal Courts to knowingly make or keep a false file, record or certificate  
16 or to alter, amend or destroy any file, record or transcript without lawful authority.

17  
18 **C. Court Appointed Attorneys.** By December 1 of each year, the Chief Judge shall submit  
19 to Tribal Council an annual report on the average cost of defending offenses under this  
20 statute. The Judiciary may adopt a court rule that modifies the appointment of court-  
21 appointed attorneys based on standards for indigent defendants. A court appointed  
22 attorney may petition the court to withdraw as attorney of record and the court may grant  
23 the petition whenever private counsel has been retained on the defendant’s behalf.

24  
25  
26 **SECTION V. JUDGE, COUNSEL AND JURY REQUIREMENTS**

27  
28 **A. Tribal Court Judges.** All judges presiding over cases in which special tribal criminal  
29 jurisdiction is asserted must be admitted to practice before the Supreme Court of the United  
30 Sates, or any United States Circuit Court of Appeals, or the Supreme Court of any state; and  
31 have sufficient legal training to preside over criminal trials.

32  
33 **B. Counsel.** All attorneys appearing in Tribal Court must be licensed to practice law by the  
34 state or federal bar, be a member in good standing and be admitted to practice in Tribal Court.

1 **C. Formation of Jury.** Where the defendant is charged with a crime under this statute, the  
2 defendant has a right to be tried by a jury selected from a jury pool that represents a fair cross-  
3 section of the community, and in cases involving a covered crime by a non-Indian defendant  
4 under Section VI., that includes non-Indians.

5  
6 **1. Juror Qualifications.** The basic qualifications of a juror are any person:

7  
8 **a.** Who is at least 18 years of age;

9  
10 **b.** Who does not have a mental or physical condition rendering them  
11 incapable of performing jury service;

12  
13 **c.** Who has not been convicted of a felony in any jurisdiction in the last ten  
14 (10) years or convicted of a crime of domestic violence;

15  
16 **d.** Who is a LTBB Citizen or a citizen of another federally recognized tribe  
17 living within the territorial jurisdiction of LTBB; and

18  
19 **e.** Who, in the case of a covered crime involving a non-Indian defendant, is a  
20 LTBB citizen or a citizen of another federally recognized tribe living within the  
21 territorial jurisdiction of LTBB, employed by LTBB or any of its entities, or lives  
22 in tribal housing.

23  
24 **2. Jury Selection Process.** In cases involving a covered crime by a non-Indian  
25 defendant, the jury pools shall represent a fair cross-section of the community, and  
26 include non-Indians that live on trust land, are employed by LTBB or any of its entities,  
27 or live in tribal housing.

28  
29 **D. Civil Jurisdiction.** The Tribal Court has full jurisdiction and authority for the purposes  
30 of carrying out the Jury Selection Process to exercise civil jurisdiction over any person who lives  
31 or works within the territorial jurisdiction of LTBB.

32  
33 **E. Imprisonment.** Any defendant sentenced to greater than one-year imprisonment, must  
34 serve the sentence in a federal or state facility, or a tribal facility that is approved by the Bureau  
35 of Indian Affairs.

1 **SECTION VI. COVERED CRIMES**

2  
3 **A. Covered Crimes.** The following offenses are covered crimes under this statute:

4  
5 **1. “Assault of Tribal Justice Personnel”** means any violation of LTBB’s criminal  
6 laws where a violation occurs that involves the use, attempted use, or threatened use of  
7 physical force against an individual authorized to act for, or on behalf of LTBB, or  
8 serving the Tribe during, or because of, the performance or duties of that individual in:

9  
10 **a.** Preventing, detecting, investigating, making arrests relating to, making  
11 apprehensions for, or prosecuting a covered crime;

12  
13 **b.** Adjudicating, participating in the adjudication of, or supporting the  
14 adjudication of a covered crime;

15  
16 **c.** Detaining, providing supervision for, or providing services for persons  
17 charged with a covered crime; or

18  
19 **d.** Incarcerating, supervising, providing treatment for, providing  
20 rehabilitation services for, or providing reentry services for persons convicted of a  
21 covered crime.

22  
23 **2. “Child Violence”** means any violation of LTBB’s criminal laws involving the  
24 use, threatened use or attempted use of violence against a child.

25  
26 **3. “Dating Violence”** means any violation of LTBB’s criminal laws that is  
27 committed by a person who is or has been in a social relationship of a romantic or  
28 intimate nature with the victim, as determined by the length of the relationship, the type  
29 of relationship, and the frequency of interaction between the persons involved in the  
30 relationship.

31  
32 **4. “Domestic Violence”** means any violation of LTBB’s criminal laws that is  
33 committed by:  
34

- 1           **a.**     A current or former spouse or intimate partner of the victim;
- 2
- 3           **b.**     A person with whom the victim shares a child in common;
- 4
- 5           **c.**     A person who is cohabitating with or who has cohabitated with the victim
- 6           as a spouse or intimate partner; or
- 7
- 8           **d.**     A person similarly situated to a spouse of the victim under the domestic-
- 9           or family-violence laws of LTBB.

10

11       **5.     “Obstruction of Justice”** means any violation of LTBB’s criminal laws that

12       involves interfering with the administration or due process of the laws of the Tribe,

13       including any Tribal criminal proceeding or investigation of a crime.

14

15       **6.     “Sex Trafficking”** means conduct within the meaning of 18 U.S.C. § 1591(a).

16

17       **7.     “Sexual Violence”** means any nonconsensual sexual act or contact proscribed by

18       LTBB’s criminal laws, including in any case in which the victim lacks the capacity to

19       consent to the act.

20

21       **8.     “Stalking”** means engaging in a course of conduct directed at a specific person

22       proscribed by LTBB’s criminal laws that would cause a reasonable person:

- 23
- 24           **a.**     To fear for the person’s safety or the safety of others; or
- 25
- 26           **b.**     To suffer substantial emotional distress.

27

28       **9.     “Violation of a Protection Order”** means an act that:

- 29
- 30           **a.**     Occurs within the territorial jurisdiction of LTBB; and
- 31
- 32           **b.**     Violates a provision of a protection order that:
- 33
- 34               **i.**     Prohibits or provides protection against violent or threatening acts
- 35               or harassment against, sexual violence against, contact or communication
- 36               with, or physical proximity to, another person;



- 1                    **ii.**        Was issued against the defendant;
- 2                    **iii.**        Is enforceable by LTBB; and
- 3                    **iv.**        Is consistent with 18 U.S.C. § 2265(b).

4

5 **B.     Other Acts Admissibility.**

6

7            **1.**        In a criminal action under this section in which the defendant is accused of a  
8 covered crime, evidence of the defendant’s commission of similar acts of violence is  
9 admissible for any purpose for which it is relevant, including propensity, if it is not  
10 otherwise excluded.

11

12           **2.**        If the prosecutor intends to offer evidence under this section, such evidence,  
13 including any existing statements of witnesses or a summary of the substance of any  
14 testimony that is expected to be offered, shall be disclosed to the defendant not less than  
15 ten (10) days before the scheduled date of trial or     at a later time as allowed by the  
16 Tribal Court for good cause shown.

17

18 **C.     Hearsay Admissibility**

19

20           **1.**        Evidence of a statement by an alleged victim of a covered crime is admissible for  
21 purposes of this subsection if all of the following apply:

22

23           **a.**        The statement purports to narrate, describe or explain the infliction or  
24 threat of physical injury upon the declarant.

25

26           **b.**        The statement was made under circumstances that would indicate the  
27 statement’s trustworthiness.

28

29           **c.**        The statement was made to a law enforcement officer.

30

31           **d.**        The statement was made at, or near, the time the conduct alleged in the  
32 statement occurred.

33

1           **2.**     For purposes of this subsection, circumstances relevant to the issue of  
2           trustworthiness include, but are not limited to all of the following:

3  
4           **a.**     Whether the statement was made in contemplation of pending or  
5           anticipated litigation in which the declarant was interested.

6  
7           **b.**     Whether the declarant has a bias or motive for fabricating the statement,  
8           and the extent of any bias or motive.

9  
10          **c.**     Whether the statement is corroborated by evidence other than statements  
11          that are admissible only under this section.

12  
13          **3.**     If the prosecutor intends to offer evidence under this section, such evidence,  
14          including the statements of witnesses or a summary of the substance of any testimony  
15          that is expected to be offered, shall be disclosed to the defendant not less than ten (10)  
16          days before the scheduled date of trial or at a later time as allowed by the Tribal Court for  
17          good cause shown.

18  
19          **4.**     Nothing in this section shall be construed to abrogate any privilege conferred by  
20          law.

21  
22  
23   **SECTION VII.        PENALTIES**

24  
25   **A.**     A defendant who is found guilty of a crime under this statute is subject to incarceration  
26   for up to one (1) year, a fine of up to \$5,000.00, and any appropriate rehabilitative or  
27   probationary terms, unless aggravating circumstances exist and the Tribal Law and Order Act  
28   (“**TLOA**”) has been enacted by the Tribe.

29  
30   **B.     Aggravating Circumstances.** A defendant who is found guilty of a crime under this  
31   statute, where aggravating circumstances were present is subject to imprisonment for up to two  
32   years, a fine of up to \$10,000.00, and any appropriate rehabilitative or probationary terms, if the  
33   Tribe has enacted TLOA. “Aggravating circumstances” include circumstances where:  
34

- 1           **1.**     The defendant has a prior conviction in any court for a crime involving conduct  
2 prohibited by this statute;
- 3
- 4           **2.**     The defendant knew that the victim was vulnerable or incapable of resistance;
- 5
- 6           **3.**     The victim was pregnant and the defendant knew of the pregnancy;
- 7
- 8           **4.**     The defendant was under the influence of controlled substances or alcohol; or
- 9
- 10          **5.**     The attack took place in the presence of a child.
- 11

12 **C.     Serious Aggravating Circumstances.** A defendant who is found guilty of a crime under  
13 this statute, and who has two (2) or more prior convictions for a crime involving conduct that is  
14 prohibited by this statute, or who uses a dangerous weapon to commit the offense, or who causes  
15 serious bodily injury as a result of the offense is subject to incarceration for up to three (3) years,  
16 a fine of up to \$15,000.00, and any appropriate rehabilitative or probationary terms, if the Tribe  
17 has enacted TLOA.

18

19 **D.     “Dangerous weapon”** means any object which can inflict serious bodily harm on a  
20 victim.

21

22 **E.     “Serious bodily harm”** means any bodily injury resulting in the need for medical  
23 treatment, whether or not such treatment was sought, or which seriously harms or impairs the  
24 normal health or functioning of the body

25

26 **F.     Forfeiture of Weapons.** The Court may order forfeiture of any firearms and ammunition  
27 upon a conviction under this section.

28

29

30 **SECTION VIII.     DUTIES OF LAW ENFORCEMENT**

31

32 **A.     To Victims.** A law enforcement officer responding to a claim that may be covered under  
33 this statute must use all reasonable means to protect the victim and children to prevent further  
34 violence. This may include, but is not limited to, the following:

- 1           **1.**     Taking any necessary action to provide for the safety of the victim and household  
2           members;
- 3
- 4           **2.**     Confiscating any weapons involved;
- 5
- 6           **3.**     Assisting victims in obtaining medical treatment;
- 7
- 8           **4.**     Assisting victims in removing essential personal effects;
- 9
- 10          **5.**     Transporting the victims and any children to a shelter or other safe place;
- 11
- 12          **6.**     Giving the victims immediate notice of rights, remedies, and services available;  
13          and:
- 14
- 15          **7.**     Notifying the appropriate agency or agencies that can provide assistance.
- 16

17 **B.     To Children Present.** A law enforcement officer who responds to claim that may be  
18 covered under this statute where children are present must use all reasonable means to protect  
19 them and prevent further acts of violence in their presence. This includes taking necessary  
20 actions to provide for the safety of the children, ensuring the children have adequate supervision  
21 after the perpetrator is removed and any other necessary actions.

22

23 **C.     Arrests.**

24

25           **1.     Crimes of Domestic Violence.** Where a law enforcement officer has probable  
26 cause to believe that a person has committed a crime under this statute, the officer may,  
27 without or with a warrant, arrest and charge the perpetrator with the appropriate crime.

28

29           **2.     Violations of Protection Orders.** Where a law enforcement officer has probable  
30 cause to believe that the perpetrator violated a Protection Order, the officer may arrest the  
31 perpetrator.

32

33 **D.     Seizing Weapons.** Law enforcement officers have the authority to seize weapons  
34 incident to arrest and in the course of securing a crime scene. The law enforcement officer shall:

1           **1.**       Seize all weapons alleged to have been involved or threatened to be used in the  
2           commission of a crime or any weapon in the immediate vicinity of the alleged  
3           commission of the offense; and  
4

5           **2.**       Seize a weapon that is in plain view or that is located during a search authorized  
6           by a person entitled to consent to the search. All such weapons including those the officer  
7           concludes were used in the commission of a crime must be confiscated regardless of  
8           ownership.  
9

10  
11   **SECTION IX.           DUTIES OF PROSECUTOR**  
12

13   **A.**       In every case in which a person is arrested for or charged with a criminal offense under  
14   this statute, the Prosecutor’s Office must maintain contact with the victim throughout the  
15   criminal proceedings.  
16

17   **B.**       The Prosecutor’s Office must confer with the victim regarding the need for any civil  
18   protection orders, bonds and other restraints to assure the safety of the victim and the victim’s  
19   family or household members.  
20

21   **C.**       The Prosecutor’s Office must inform the victim of all hearing dates, continuances, and  
22   rights of the victim. The Prosecutor’s Office shall make available to the victim all reports  
23   received by the Prosecutor at the conclusion of the case.  
24

25   **D.**       The Prosecutor’s Office must inform the victim of major prosecutorial decisions  
26   including decisions not to file charges under this statute when the victim has reported the offense  
27   or the perpetrator has been arrested for a criminal offense under this statute, or decisions to enter  
28   into a plea agreement relating to a charge under this statute.  
29

30   **E.**       The Prosecutor’s Office must obtain information from the victim regarding costs and  
31   losses sustained as a result of the perpetrator’s offense and must seek restitution for the victim  
32   and provide opportunity to complete a victim’s impact statement that will be presented to the  
33   Tribal Court.  
34  
35

1   **SECTION X           SEVERABILITY**

2  
3   If any section, subsection, paragraph, sentence, phrase or portion of this statute is, for any reason,  
4   held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be  
5   deemed a separate, distinct and independent provision and such holding shall not affect the validity  
6   of the remaining portions thereof.

7  
8

9   **SECTION XI.       EFFECTIVE DATE**

10  
11   Effective upon signature of the Executive or 30 days from Tribal Council approval whichever  
12   comes first or, if the Executive vetoes the legislation, then upon Tribal Council override of the  
13   veto.

14  
15  
16  
17  
18

19  
20                                   **CERTIFICATION**

21  
22