

**WAGANAKISING ODAWAK STATUTE # 2023-018**  
**AMENDMENT TO WAGANAKISING ODAWAK STATUTE 2007-011**  
**JUVENILE JUSTICE**

**SECTION I. REPEAL**

The following sections are hereby repealed:

**SECTION III. DEFINITIONS**

For purposes of this Statute, the following definitions shall apply:

- A. **“Adult”** means a person eighteen (18) years of age or older.
- B. **“Citizen”** means an enrolled member of the Little Traverse Bay Bands of Odawa Indians.
- C. **“Community Justice Coordinator”** means the staff person within the Tribal Court system whose duties include those described in this Statute.
- D. **“Counsel”** means any licensed attorney admitted to practice in Tribal Court, who as an officer of the Court provides legal assistance to any party during the course of any proceeding under this Statute.
- E. **“Custodian”** means one who has physical custody of a juvenile and is providing food, shelter, and supervision to that juvenile.
- F. **“Delinquent Act”** means any act by a juvenile identified under the “Juvenile Offender” and “Juvenile in Need of Supervision” definitions of this Statute.
- G. **“Detention”** means the placement of a juvenile in a physically restrictive facility.
- H. **“Diversion”** means a method of dealing with a juvenile without the need of a formal court proceeding.
- I. **“Guardian”** means a person other than the juvenile’s parent, appointed by a court of

competent jurisdiction, who is legally responsible for that juvenile.

**J. “Incident Report”** means a report to the Prosecuting Attorney containing allegations indicating that a juvenile under the jurisdiction of the Tribe has committed a delinquent act.

**K. “Juvenile”** means a person under eighteen (18) years of age.

**L. “Juvenile Offender”** means any juvenile who commits the following acts:

1. A violation of any Tribal criminal statutes;
2. Possession or consumption of alcohol or tobacco (this does not include the use of tobacco for traditional purposes).

**M. “Juvenile in Need of Supervision”** means any juvenile who commits the following acts:

1. A juvenile who repeatedly absents himself or herself from school or other learning program intended to meet the juvenile’s educational needs, or repeatedly violates rules and regulations of the school or other learning program;
2. A juvenile who repeatedly disobeys reasonable and lawful commands or directives of his parent, legal guardian, or other custodian; or
3. A juvenile who willfully and voluntarily absents himself from his or her home without the consent of his or her parent, guardian, or other legal custodian.

**N. “Juvenile Petition”** means the formal instrument that commences proceedings in the Court.

**O. “Least Restrictive Alternative”** means restrictions placed on the juvenile must be reasonably related to the Court’s objective of correcting the delinquent behavior, and must be the least intrusive manner of achieving that objective.

**P. “Notice”** means the method by which the Court informs the parties, attorneys, and others of the date, time, and place of proceedings to be conducted by the Court.

**Q.** “**Parent**” means the mother, father or legal guardian of a juvenile who has the responsibility for the health, welfare, care, maintenance and supervision of the juvenile at the time the juvenile allegedly committed the delinquent act.

**R.** “**Reservation**” means as defined in the Constitution, “*all lands within the boundaries of the reservations for the Little Traverse Bay Bands of Odawa Indians as set out in Article I, paragraphs third and fourth of the Treaty of 1855, 11 Stat. 621, plus any lands set out in Articles Second and Third of the Treaty of March 28, 1836, 7 Stat. 491, in the event that the 1836 reservation is determined to include lands which are not included within the 1855 reservation, plus any lands outside of those boundaries which are now or in the future declared to be Little Traverse Bay Bands of Odawa Indians reservation by the U.S. Department of Interior.*”

**S.** “**Summons**” means the instrument with which the Court directs a party to appear before the Court.

**T.** “**Tribal Land**” means the Reservation, held in trust for the benefit of the Tribe by the United States, any land in which the Tribe has a beneficial ownership interest, and all land designated as Indian Country in 18 USC 1151.

#### **SECTION IV. JURISDICTION AND COURT AUTHORITY**

**A. Statement of Jurisdiction.** The Tribal Court system shall have jurisdiction over juvenile offenders and juveniles in need of supervision proceedings, if the juvenile is:

1. A member of a Federally Recognized Indian Tribe; and
2. The alleged offense occurred on Tribal land;
3. The juvenile's primary residence is on Tribal lands and the juvenile commits an offense while on a Tribally-sponsored event off Tribal lands; or
4. A case is transferred to Tribal Court from any state or tribal court, unless the Court transfers jurisdiction to the Adult Division of the Court, pursuant to Section VII(H) of this Statute; or
5. Not a member of a Federally Recognized Indian Tribe, but whose primary

residence is on Tribal trust land and the alleged offense occurred on Tribal land.

**B. Jurisdiction over the Family/Household.** The Tribal Court shall have jurisdiction over all members of the family or household who are a part of the concerns giving rise to jurisdiction, or who may be a part of the solution to the concerns.

**C. Transfers from Other Courts.** The Tribal Court may accept transfers of a case from any other court if the alleged juvenile offender or juvenile in need of supervision is a Tribal member, or is a non-member juvenile who resides on Tribal trust lands.

**D. Transfers to Other Courts.** The Tribal Court may transfer a case to another court if the alleged offense occurred on Tribal land and the alleged juvenile offender or juvenile in need of supervision does not reside on Tribal land, and the other court is willing to accept transfer.

**E. Adjudication Classification.** No adjudication of the status of any juvenile under the jurisdiction of the Court shall be deemed criminal, unless the Court refers the matter to the Adult Division of the Court.

**F. Closed Proceedings.** Juvenile proceedings shall be closed to the general public to protect the privacy interests of the individuals and families involved.

**G. Authority to Cooperate.** The Court is authorized to cooperate with any court or federal, state, tribal, public, or private agency; to participate in any diversion, rehabilitation, training programs, or other service programs; and to receive grants-in-aid to carry out the purposes of this Statute.

**H. Least Restrictive.** The least restrictive alternative applies to all placement disposition actions taken by the Court under this Statute.

**I. Court Records.**

1. A record of all hearings under this Statute shall be made and preserved.
2. All Court records shall be confidential, and shall only be open to review by the following:

- a. The juvenile or his legal representative;
- b. The juvenile's parent(s), guardian, custodians or their legal representatives;
- c. The Tribal Prosecutor;
- d. The Tribal Community Justice Coordinator;
- e. The Court staff; and
- f. The Judge or Justices involved in the case.

**J. Sealing Court Records.** When a juvenile who has been the subject of any proceeding before the Court attains his/her twenty-first (21st) birthday, the Court shall seal both the Court and law enforcement records relating to that juvenile.

**K. Civil Contempt of Court** as applicable to this Statute only

- 1. Willful disobedience of, or willful interference with an order of the Court constitutes contempt of court.
- 2. The Court may fine an adult for contempt of court with a fine not to exceed one hundred dollars (\$100.00).
- 3. A juvenile may be fined for contempt of court with extension of probation, additional probation conditions, and a fine not to exceed one hundred dollars (\$100.00).

**L. Medical Examination.** The Court may order a psychiatric or psychological examination of a juvenile who is alleged to be a juvenile offender or juvenile in need of supervision if issues of competence to stand trial or insanity are raised by the defense, or for any other reason that the Court deems appropriate. Reports shall be available to the defense and prosecuting attorney.

**M. Fingerprints.** If latent fingerprints are found during the investigation of an offense and a law enforcement officer has reasonable grounds to believe that the fingerprints are those of a juvenile in custody, the officer may fingerprint that juvenile for the purpose of immediate

comparison with the latent fingerprints; provided that the law enforcement officials have obtained the written approval of the Court prior to the taking of prints. Copies of the fingerprints shall be immediately destroyed if the comparison is negative or if a juvenile petition is not filed against the juvenile.

**N. Appeal.**

1. For purposes of appeal, a record of the proceedings shall be made available to the juvenile, the juvenile's parent (s), guardian, custodian or legal representative. The party seeking the appeal shall pay costs of obtaining this record.
2. Any party to a Court hearing may appeal a final order or disposition of a case by filing a written notice of appeal with the Court within twenty-eight (28) days of the final order of disposition.
3. All appeals shall be conducted in accordance with applicable Tribal statutes and court rules.

**SECTION II. REPLACE**

The following sections replace the repealed sections in Section I:

**SECTION III. DEFINITIONS**

For purposes of this statute, the following definitions shall apply:

- A. "Adult" means a person eighteen (18) years of age or older.
- B. "Citizen" means an enrolled member of the Little Traverse Bay Bands of Odawa Indians.
- C. "Community Justice Coordinator" means the staff person within the Tribal Court system whose duties include those described in this Statute.
- D. "Counsel" means any licensed attorney admitted to practice in Tribal Court, who as an officer of the Court provides legal assistance to any party during the course of any proceeding under this Statute.

**E.** “Custodian” means one who has physical custody of a juvenile and is providing food, shelter, and supervision to that juvenile.

**F.** “Delinquent Act” means any act by a juvenile identified under the “Juvenile Offender” and “Juvenile in Need of Supervision” definitions of this Statute.

**G.** “Detention” means the placement of a juvenile in a physically restrictive facility.

**H.** “Diversion” means a method of dealing with a juvenile without the need of a formal court proceeding.

**I.** “Guardian” means a person other than the juvenile’s parent, appointed by a court of competent jurisdiction, who is legally responsible for that juvenile.

**J.** “Incident Report” means a report to the Prosecuting Attorney containing allegations indicating that a juvenile under the jurisdiction of the Tribe has committed a delinquent act.

**K.** “Juvenile” means a person under eighteen (18) years of age.

**L.** “Juvenile Offender” means any juvenile who commits the following acts:

1. A violation of any Tribal criminal statutes; or
2. Possession or consumption of alcohol or tobacco (this does not include the use of tobacco for traditional purposes).

**M.** “Juvenile in Need of Supervision” means any juvenile who commits the following acts:

1. A juvenile who repeatedly absents himself or herself from school or other learning program intended to meet the juvenile’s educational needs, or repeatedly violates rules and regulations of the school or other learning program;
2. A juvenile who repeatedly disobeys reasonable and lawful commands or directives of the juvenile’s parent, legal guardian, or another custodian; or
3. A juvenile who willfully and voluntarily is absent from home without the consent

of the juvenile's parent, guardian, or another legal custodian.

**N.** "Juvenile Petition" means the formal instrument that commences proceedings in the Court.

**O.** "Least Restrictive Alternative" means restrictions placed on the juvenile must be reasonably related to the Court's objective of correcting the delinquent behavior, and must be the least intrusive manner of achieving that objective.

**P.** "Notice" means the method by which the Court informs the parties, attorneys, and others of the date, time, and place of proceedings to be conducted by the Court.

**Q.** "Parent" means the mother, father or legal guardian of a juvenile who has the responsibility for the health, welfare, care, maintenance and supervision of the juvenile at the time the juvenile allegedly committed the delinquent act.

**R.** "Summons" means the instrument with which the Court directs a party to appear before the Court.

**S.** "Tribal Land" means all land that is held in trust by the United States government for the benefit of the Tribe.

#### **SECTION IV. JURISDICTION AND COURT AUTHORITY**

##### **A. Jurisdiction over Juveniles.**

**1. Mandatory Jurisdiction.** The Tribal Court shall have jurisdiction over juvenile offenders and juveniles in need of supervision proceedings if the juvenile is a member of a federally recognized Indian Tribe and:

**a.** The alleged act or offense occurred on Tribal land;

**b.** The juvenile's primary residence is on Tribal lands and the juvenile commits an offense while on a Tribally-sponsored event off Tribal lands; or



c. A case is transferred to Tribal Court from any state or tribal court, unless the Court transfers jurisdiction to the Adult Division of the Court pursuant to Section VII(H) of this Statute; or

2. **Discretionary Jurisdiction.** The Tribal Court may exercise jurisdiction over a juvenile who is not a member of a federally recognized Indian Tribe if:

a. The juvenile's primary residence is on Tribal lands;

b. The alleged act or offense occurred on Tribal land; and

c. The Tribal Court determines that exercising jurisdiction is necessary to protect the Tribe's sovereign interest in the welfare of the juvenile.

**B. Jurisdiction over the Family/Household.** The Tribal Court shall have jurisdiction over all members of the family or household who are a part of the concerns giving rise to jurisdiction, or who may be a part of the solution to the concerns.

**C. Transfers from Other Courts.** The Tribal Court may accept transfer of a case from any other court if the alleged juvenile offender or juvenile in need of supervision is a Tribal member, or is a non-member juvenile who resides on Tribal trust lands.

**D. Transfers to Other Courts.** The Tribal Court may transfer a case to another court if the alleged offense occurred on Tribal land and the alleged juvenile offender or juvenile in need of supervision does not reside on Tribal land, and the other court is willing to accept transfer.

**E. Adjudication Classification.** No adjudication of the status of any juvenile under the jurisdiction of the Court shall be deemed criminal, unless the Court refers the matter to the Adult Division of the Court.

**F. Closed Proceedings.** Juvenile proceedings shall be closed to the general public to protect the privacy interests of the individuals and families involved.

**G. Authority to Cooperate.** The Court is authorized to cooperate with any court or federal, state, tribal, public, or private agency; to participate in any diversion, rehabilitation, training programs, or other service programs; and to receive grants-in-aid to carry out the purposes of this

Statute.

**H. Least Restrictive.** The least restrictive alternative applies to all placement disposition actions taken by the Court under this Statute.

**I. Court Records.**

1. A record of all hearings under this Statute shall be made and preserved.
2. All Court records shall be confidential and shall only be open to review by the following:
  - a. The juvenile or the juvenile's legal representative;
  - b. The juvenile's parent(s), guardian, custodians or their legal representatives;
  - c. The Tribal Prosecutor;
  - d. The Tribal Community Justice Coordinator;
  - e. The Court staff; and
  - f. The Judge or Justices involved in the case.

**J. Sealing Court Records.** When a juvenile who has been the subject of any proceeding before the Court turns twenty-one (21) years of age, the Court shall seal both the Court and law enforcement records relating to that juvenile.

**K. Civil Contempt of Court.** For the purposes of this Statute:

1. Willful disobedience of, or willful interference with an order of the Court constitutes contempt of court.
2. The Court may fine an adult for contempt of court with a fine not to exceed one hundred dollars (\$100.00).

3. A juvenile may be fined for contempt of court with extension of probation, additional probation conditions, and a fine not to exceed one hundred dollars (\$100.00).

**L. Medical Examination.** The Court may order a psychiatric or psychological examination of a juvenile who is alleged to be a juvenile offender or juvenile in need of supervision if issues of competence to stand trial or insanity are raised by the defense, or for any other reason that the Court deems appropriate. Reports shall be available to the defense and prosecuting attorney.

**M. Fingerprints.** If latent fingerprints are found during the investigation of an offense and a law enforcement officer has reasonable grounds to believe that the fingerprints are those of a juvenile in custody, the officer may fingerprint that juvenile for the purpose of immediate comparison with the latent fingerprints; provided that the law enforcement officials have obtained the written approval of the Court prior to the taking of prints. Copies of the fingerprints shall be immediately destroyed if the comparison is negative or if a juvenile petition is not filed against the juvenile.

**N. Appeal.**

1. For purposes of appeal, a record of the proceedings shall be made available to the juvenile, the juvenile's parent(s), guardian, custodian or legal representative. The party seeking the appeal shall pay costs of obtaining this record.

2. Any party to a Court hearing may appeal a final order or disposition of a case by filing a written notice of appeal with the Court within twenty-eight (28) days of the final order of disposition.

3. All appeals shall be conducted in accordance with applicable Tribal statutes and court rules.

### **SECTION III. EFFECTIVE DATE**

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

## CERTIFICATION

As the Tribal Council Legislative Leader and Tribal Council Secretary, we certify that this Statute was duly adopted by the Tribal Council of the Little Traverse Bay Bands of Odawa Indians at a regular meeting of the Tribal Council held on September 28, 2023 at which a quorum was present, by a vote of 9 in favor, 0 opposed, 0 abstentions, and 0 absent as recorded by this roll call:

	In Favor	Opposed	Abstained	Absent
Fred Kiogima	<u>X</u>	<u>          </u>	<u>          </u>	<u>          </u>
Tamara Munson	<u>X</u>	<u>          </u>	<u>          </u>	<u>          </u>
William Ortiz	<u>X</u>	<u>          </u>	<u>          </u>	<u>          </u>
Aaron Otto	<u>X</u>	<u>          </u>	<u>          </u>	<u>          </u>
Melissa Pamp	<u>X</u>	<u>          </u>	<u>          </u>	<u>          </u>
Jordan Shananaquet	<u>X</u>	<u>          </u>	<u>          </u>	<u>          </u>
Leroy Shomin	<u>X</u>	<u>          </u>	<u>          </u>	<u>          </u>
Emily Proctor	<u>X</u>	<u>          </u>	<u>          </u>	<u>          </u>
Marcella Reyes	<u>X</u>	<u>          </u>	<u>          </u>	<u>          </u>

Date: 10/03/23 Marcella R. Reyes  
Marcella Reyes, Legislative Leader

Date: 10/03/23 Emily Proctor  
Emily Proctor, Tribal Council Secretary

Received by the Executive Office on 10/03/2023 by Nunito Johnson

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: 10-10-2023 Regina Gasco Bentley  
Regina Gasco Bentley, Tribal Chairperson

Received from the Executive on 10.10.2023 by Quinn Baker