WAGANAKISING ODAWAK STATUTE 2015-003
DOMESTIC VIOLENCE

SECTION I. SHORT TITLE

This statute may be cited as the "Domestic Violence Statute."

SECTION II. PURPOSE

The Little Traverse Bay Bands of Odawa Indians (LTBB) Waganakising Odawak Statute, Domestic Violence is construed to promote the following:

This Statute addresses domestic violence that involves persons of the same household, family members or persons in an intimate or in a dating relationship. It is the expectation that the criminal justice system respond to victims of domestic violence with fairness, respect, compassion, and in a prompt and effective manner.

SECTION III. DEFINITIONS

A. **"Clerk"** means the clerk of the Tribal Court.

B. **"Family member and Household member"** means any adult or minor children who reside in the household or are persons who are related by blood, adoption or marriage.

C. **"Indian"** means a person who is a member of a federally recognized Indian Tribe.

D. **"Indian Tribe"** means any federally recognized Indian Tribe.

E. **"LTBB or Tribe"** means the Little Traverse Bay Bands of Odawa Indians.

F. **"Minor"** means a person less than eighteen (18) years of age, who has not been emancipated.

G. **"Non-Indian"** means any person who is not a member of a federally recognized Indian Tribe.

H. **"Perpetrator"** means the person who allegedly committed an act of domestic violence.

I. **"Protection Order"** means:

1. 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; and

2. Any temporary or final order issued by a civil or criminal court, whether obtained by filing an independent action or as a pendent lite 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.

J. **"Spouse, Dating or Intimate Relationship"** 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.

K. **"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.*" Little Traverse Bay Bands Constitution, Article V(A)(1)(a).

L. **"Tribal Citizen"** means a person who is an enrolled member of the Little Traverse Bay Bands of Odawa Indians.

M. **"Tribal Court"** means the Little Traverse Bay Bands of Odawa Indians Tribal Court.

N. **"Tribal Police or Law Enforcement"** means any law enforcement officer of the Little Traverse Bay Bands of Odawa Indians Police Department.

O. **"Tribal Prosecutor or Prosecutor"** means the prosecutor for the Little Traverse Bay Bands of Odawa Indians, assistance prosecutor(s) and Special Prosecutor.

P. **"Tribal Judge or Judge"** means a judge for the Little Traverse Bay Bands of Odawa Indians.

Q. **"Victim"** means a person who has suffered actual physical or mental harm, as a result of domestic violence.

SECTION IV. JURISDICTION

A. **General Criminal Jurisdiction.** In domestic violence cases, the 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, provided the minor has attained the age of sixteen (16).

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

2. The Tribal Law and Order Act of 2010 (TLOA), Public Law. 111-211, was amended by Congress in 2013. TLOA shall become effective when Tribal Council adopts TLOA, by resolution, and the Tribe's jurisdiction shall allow for punishments up to a three-year jail term and a fine up to $15,000.00.

B. **Special Domestic Violence Criminal Jurisdiction.** The Violence Against Women Reauthorization Act of 2013 (VAWA), S.47, 113th Congress, 2013-2015, was reauthorized and amended by Congress in 2013 affirming the tribes' inherent power to exercise "special domestic violence criminal jurisdiction" (SDVCJ) over all persons, regardless of their Indian or non-Indian status. Under VAWA LTBB has limited criminal jurisdiction over non-Indian defendants only for the following crimes: dating violence, domestic violence, violations of protection orders, and other crimes when committed in the context of a dating or domestic relationship. The limited

jurisdiction applies where the victim is an Indian, the defendant lives or works in the territorial jurisdiction of LTBB, or the defendant's spouse, intimate partner, or dating partner is an Indian. Such special jurisdiction may only be exercised when the defendant is charged with one of the crimes in this Statute and may be imprisoned up to three years, a fine of up to $15,000.00.

C. **Civil Jurisdiction.** The Tribal Court has full jurisdiction and authority to issue and enforce protection orders against all persons who are Indians; live or work in the territorial jurisdiction of LTBB; or are a spouse, intimate partner or dating partner of an Indian regarding matters arising within the territorial jurisdiction of LTBB as set out in VAWA, Title IX, Section 905.

SECTION V. DUE PROCESS GUARANTEES

A. **Rights of the Accused.** In all domestic violence criminal prosecutions, the accused has the following rights:

1. To be secure in their persons, houses, papers, and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;

2. Not to be subjected to the same offense twice to be put in jeopardy;

3. To compel any person in any criminal case to be a witness against himself or herself;

4. To deny any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him or her, to have compulsory process for obtaining witnesses in his or her favor.

5. To require excessive bail, impose excessive fines, or inflict cruel and unusual punishments.

6. To deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law.

7. To pass any bill of attainder or ex post facto law.

8. To deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons.

9. To be notified of the right to file a petition for a writ of *habeas corpus* in a court of the United States.

10. That LTBB's criminal laws, rules of evidence, and rules of criminal procedure are publicly available prior to charging the defendant.

11. Right to Counsel. When a defendant is charged with a crime of domestic violence, the defendant has the right to receive a court-appointed attorney. Upon order of the court, the attorney must defend, advise, and counsel without expense to the defendant, any person who is subject to domestic violence criminal jurisdiction.

a. All court-appointed attorneys must be admitted to practice law before any State Supreme Court or U.S. District Court and must be in good standing.

b. All court-appointed attorneys must keep a record of all services rendered by the attorney in that capacity and file the report with the Tribal Council.

c. 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.

d. A court-appointed attorney may petition the court to withdraw as attorney of record and the court may grant that petition whenever private counsel is employed either by the defendant or by any other person to represent that defendant accepts the counsel.

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 Courts. The record may be created and recorded by a stenographic, electronic, mechanical, or other recording devices approved by the Chief Judge of the 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.

SECTION VI. JUDGE AND JURY REQUIREMENTS

A. Tribal Court Judges. All judges presiding over cases in which domestic violence criminal jurisdiction is asserted, must be admitted to practice before the Supreme Court of the United Sates, 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. 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 that represents a fair cross section of the community.

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

   a. Who is at least 18 years of age;

   b. Is not under any legal disability;

   c. Who has not been convicted of a felony in any jurisdiction in the last ten years or convicted of a crime of domestic violence; and

d. Who is a LTBB Citizen and lives within the territorial jurisdiction of LTBB; is a family member of a LTBB Citizen and lives within the territorial jurisdiction of LTBB; or is person employed by LTBB or any of its entities.

2. **Jury Selection Process.** LTBB ensures that juries represent a fair cross section of the community and do not systematically exclude any distinctive group in the community, including non-Indians.

C. Civil Jurisdiction. The Tribal Court has full jurisdiction and authority for the purposes of carrying out the Jury Selection Process to exercise civil jurisdiction against any persons who lives or works within the territorial jurisdiction of LTBB.

D. 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

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 former spouse or intimate partner of the victim, by a person with whom the intimate partner of the victim, by a person with whom 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. 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.

E. Possession of Firearm while Subject to Order of Protection. A perpetrator is guilty of the crime, if the person is in possession, shipping/transporting, or receiving any firearm or ammunition and has been subjected to a court order that was issued after a hearing in which the person participated, which order restrains the person from harassing, stalking, or threatening an intimate partner or partner's child, and which order includes a finding that the person is a credible threat to such partner or partner's child, or by its terms prohibits the use, attempted use or threatened use of such force against such partner or partner's child.

F. Possession of Firearm after Conviction of Misdemeanor Crime of Domestic Violence. A perpetrator is guilty of the crime, if the person is in possession, shipping/transporting, or receiving any firearm or ammunition and has been convicted of a misdemeanor of domestic violence crime where the perpetrator either used or attempted to use physical force or the threatened use of a deadly weapon or has been convicted of a second or subsequent misdemeanor offense of a domestic violence crime.

G. Other Domestic Violence Crimes. A perpetrator is guilty of a crime of domestic violence if the person commits any of the following against that person's Family member, Household member, spouse, former spouse, another person to whom the perpetrator is related to by blood or marriage, another person with whom the perpetrator is or was actually residing, another person with whom the perpetrator had or is having a dating relationship, another person

with whom the perpetrator has a child in common, the minor child of any of the preceding persons, the perpetrator's minor child, or another person who has been appointed the custodian or legal guardian for the person's minor child.

1. Assault, Aggravated Assault, or Sexual Assault
2. Battery, Battery by strangulation or suffocation, Aggravated Battery
3. Homicide Crimes
4. Stalking
5. **Other Conduct.** A knowing, purposeful, or reckless course of conduct intended to harass the other person, including but not limited to the following:

i. Arson
ii. Destruction of Property
iii. Carrying a Concealed Weapon without a Permit
iv. Larceny
v. Injuring an Animal
vi. False Imprisonment
vii. Interstate Travel to Commit Domestic Violence
viii. Interstate Stalking
ix. Interstate Travel to Violate an Order of Protection
x. Trespassing

SECTION VIII. PENALTIES

A. First Offense. A perpetrator who is found guilty of a crime under this Statute is subject to imprisonment of up to one year, a fine of up to $5,000.00, and any appropriate rehabilitative or probationary terms.

B. Second Offense. A perpetrator who is found guilty of a crime under this Statute and the crime is the perpetrator's second offense, is subject to imprisonment of up to two years, a fine of up to $10,000.00, and any appropriate rehabilitative or probationary terms.

C. Third or Subsequent Offense. A perpetrator who is found guilty of a crime under this Statute and the crime is the perpetrator's third offense, is subject to imprisonment of up to three years, a fine of up to $15,000.00, and any appropriate rehabilitative or probationary terms.

D. Aggravating Circumstances. Where there are aggravating circumstances, the Judge may increase a sentence above the proscribed range. Aggravating circumstances include, but are not limited to, the following:

1. Where the victim suffers serious bodily injury from the attack;

2. Where the perpetrator is a repeat offender;

3. Where the perpetrator used a dangerous weapon or used an object as a dangerous weapon during the attack;

4. Where the perpetrator was under the influence of drugs or alcohol;

5. Where the attack took place in the presence of minor children;

6. Where the perpetrator knew or should have known that the victim was particularly vulnerable or incapable of resistance; or

7. Where the victim was pregnant and the perpetrator knew of the pregnancy.

E. The Court shall order the perpetrator to pay restitution based on the needs of the victim and the ability to pay by the perpetrator and any other relevant factors.

F. The Court shall develop sentencing guidelines to be approved and published by the Judiciary that provide a range of minimum to maximum time of imprisonment, along with minimum and maximum range of fines. Additionally, the Court may include in the guidelines appropriate rehabilitative or probationary terms as remedial measures, such as batter's intervention, inpatient or outpatient drug treatment or participation in a drug treatment court, probation with any probation conditions required or authorized by law, residential probation, probation with jail, probation with special alternative incarceration, mental health treatment, mental health or substance abuse counseling, jail with work or school release, jail with or without authorization for day parole, participation in a community corrections program, community service, house arrest, or electronic monitoring, provided that it defines what facts and circumstances would allow for the remedial measures to be taken into consideration.

G. When making sentencing determinations, the Court shall follow the sentencing guidelines and consider the type and seriousness of the crime, including any aggravating circumstances, as well as the potential helpfulness of rehabilitative services. Deviation from the sentencing guidelines would only occur if the Court has a substantial and compelling reason for that departure and states on the record the reasons for departure from the guidelines.

H. Forfeiture of Weapons. The Court may order forfeiture of the firearms and ammunition.

SECTION IX. RESPONSIBILITIES OF TRIBAL POLICE

A. To Victims. A law enforcement officer responding to a domestic violence situation must use all reasonable means to protect the victim and minor 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 minor 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 a domestic violence situation where minor children are present must use all reasonable means to protect the minor children 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 of domestic violence, 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.

SECTION X. DUTIES OF TRIBAL 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 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 act of domestic violence and must seek restitution for the victim and provide opportunity to complete a victim's impact statement that will be presented to the court.

SECTION XI. 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.

SECTION XII. 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, provided that the Statute shall not be implement or jurisdiction exercised until March 7, 2015.

SECTION XIII. OTHER RELATED STATUTES

See WOS 2009-009 Sex Offense, Crime and Criminal Code, Victim's Rights Statute, Personal Protection Orders and No Contact Orders and Violations Of Protective Orders, or as may be amended.

CERTIFICATION

As the Tribal Council Treasurer and Tribal Council Secretary, we certify that this Statute was duly passed by the Tribal Council of the Little Traverse Bay Bands of Odawa Indians at a regular meeting of the Tribal Council held on March 05, 2015 at which a quorum was present, by a vote of 5 in favor, 3 opposed, 0 abstentions, and 0 absent as recorded by this roll call:

	In Favor	Opposed	Abstained	Absent
Bill A. Denemy	X			
John W. Keshick III		X		
Beatrice A. Law	X			
Michael J. Naganashe		X		
Aaron Otto	X			
Winnay Wemigwase	X			
Julia A. Shananaquet		X		
Marcella R. Reyes	X			

Date: 3.6.2015 Marcella R. Reyes

Marcella R. Reyes, Treasurer

Date: 03-06-15 Julie Shananaquet

Julia A. Shananaquet, Secretary

Received by the Executive Office on 3/6/15 by

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 with this action of the Tribal Council.

Date: 3-6-2015 Regina Gasco Bentley