WAGANAKISING ODAWAK STATUTE 1997014

INTERIM CRIMINAL CODE

TABLE OF CONTENTS

I. JURISDICTION 1
- A. Definition. 1
- B. Power Implemented. 1
- C. Territorial Extent. 1
- D. Persons Under LTBB Criminal Jurisdiction. 1

II. DEFINITIONS 2
- A. Indian. 3
- B. Mental State: Malice. 3
- C. Mental State: Intent. 3
- D. Mental State: Knowledge. 3
- E. Mental State: Wanton or Reckless. 3
- F. Mental State: Negligent. 3
- G. Minor. 3
- H. Adult. 3
- I. Motor vehicle. 3

III. REQUIREMENTS FOR CONVICTION 4
- A. Culpability. 4
- B. Proof. 4
- C. Intoxication. 4
- D. Statute of Limitations. 4
- E. Multiple Counts. 4

IV. AFFIRMATIVE DEFENSES AND ALIBI 5
- A. Duress. 5
- B. Protection of Self, Property, or Other Person. 5
- C. Alibi. 6
- D. Procedures for raising affirmative defense. 6

V. COUNSEL 6
- A. Right to Counsel. 6
- B. Persons Licensed to Practice in LTBB Courts. 6

VI. SENTENCING 7
- A. Types of Sentences. 7
- B. Delayed Sentencing. 7
- C. Taking Jurisdiction Over Family or Household. 7
- D. Probation. 7
- E. Victim's Impact Statement. 8
- F. Sentencing considerations. 8

G. Motion to Impose a Penalty of Imprisonment. 8

VII. OFFENSES 8
A. Contempt of Court and Perjury. 9
1. Contempt of Court. 9
2. Perjury. 9
B. Scheming and Planning Offenses. 9
1. Solicitation. 9
2. Conspiracy. 10
3. Attempt. 10
4. Contributing to the delinquency of a minor. 10
5. Aiding and Abetting. 11
C. Offenses Against the Person. 11
1. Assault. 11
2. Assault with a weapon. 11
3. Battery. 11
4. Sexual assault. 12
5. Sexual assault of a child. 12
6. Child Sexual Abuse. 12
7. Unlawful imprisonment. 12
8. Harassment. 13
D. Weapons and Explosives. 13
1. Carrying of a deadly weapon without a license. 13
2. Unlawful use of a weapon. 13
3. Dangerous use of explosives. 14
4. Negligent use of explosives. 14
E. Theft and Related Crimes. 15
1. Theft of Property. 15
2. Robbery. 15
3. Theft of services. 15
4. Unauthorized Use of a Vehicle. 16
5. Receiving Stolen Property. 16
F. Burglary and Arson. 16
1. Burglary. 16
2. Arson. 17
G. Forgery and Related Crimes. 17
1. Forgery. 17
2. Obtaining a Signature by Deception. 17
3. Criminal Impersonation. 17
H. Bribery and Related Crimes. 18
1. Bribery of Officials. 18
2. Improper Influence of Official. 18
3. Abuse of office. 18
I. Obstruction of Tribal Administration. 19
1. Resisting or obstructing an officer of the Little Traverse Bay Bands of

Odawa Indians or any other law enforcement officer. 19
2. Escape from lawful custody. 19
3. Helping a person to escape from lawful custody. 19
4. Tampering with a public record. 20
5. Malicious Criminal Prosecution. 20
6. Interfering with an Election. 21
G. Criminal Damage to Property and Trespass. 21
1. Vandalism. 21
2. Littering. 21
3. Dumping of hazardous material. 22
4. Trespass. 22
H. Offenses Against the Family. 22
1. Court's jurisdiction expanded. 22
2. Abandonment of a Child. 23
3. Failure to support a dependent. 23
4. Sexual conduct with a foster child or stepchild. 23
5. Incest. 24
6. Child abuse. 24
7. Spouse abuse. 24
I. Riot and Related Offenses. 25
1. Riot. 25
2. Disorderly conduct. 25
3. Obstructing a highway or other public thoroughfare. 26
4. Creating false alarm. 26
5. Public Intoxication. 26
6. Curfew. 27
7. Truancy. 27
J. Traffic Offenses. 27
1. Reckless driving. 27
2. Driving while under the influence of intoxicating liquor or other drug. 27
3. Driving with an open alcohol container. 28
4. Driving with a loaded firearm. 28
5. Operation of motor vehicle without proof of insurance. 28
K. Criminal Homicide. 28
L. Alcohol-Related Offenses. 29
1. Possession or consumption of alcohol by a person under 21 years of age. 29
2. Furnishing alcohol to a person under 21 years of age. 30
3. Allowing a person under 21 years of age to consume alcohol. 30
M. Controlled Substances. 30
1. Possession, Use, Sale, Manufacture and/or Distribution. 30
2. Youth and tobacco. 30
N. Animal Control. 31
1. Failure to have a dog properly licensed. 31

2. Allowing a dog to be a public nuisance. 31
3. Allowing a dog to run at large. 31
4. Animal abuse. 32
O. Violation of a Tribal Ordinance. 32
P. Habitual offender. 32

VIII. EFFECTIVE DATE 33

WAGANAKISING ODAWAK STATUTE 1997014

INTERIM CRIMINAL CODE

I. 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 lands and waters described in Article 1 Third and Article 1 Fourth of the Treaty of Detroit of July 31, 1855, 11 Stat. 621;

2. 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;

3. 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 and

2. all other Indians present within the areas described in Section I (C) of this Code.

3. 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 insure 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."

II. 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.

III. 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.

IV. 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 defense. 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 in not held criminally liable. For instance, if a person raises a 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.

V. 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

3. 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.

VI. SENTENCING

A. Types of Sentences. The Court may suspend the imposition of sentence of a person who has been convicted of a crime, may order any appropriate rehabilitative treatment, may order the offender to be committed in lieu of sentence to a hospital or other institution for medical, psychiatric, or other rehabilitative treatment, or may sentence him/her as follows:

1. to perform community service work;

2. to pay restitution or provide services of restitution to the injured parties;

3. to be placed on probation;

4. to imprisonment for a definite period up to the term authorized only if imprisonment is allowed by pre-trial motion pursuant to VI (G) below; and/or

5. to fine and probation, or fine and imprisonment.

B. Delayed Sentencing. The judge may delay final sentencing for a period of up to one (1) year, and order community service and/or rehabilitative services during that time. At the end of the specified time, the judge may, if appropriate, dismiss the charges and expunge them from the Court Record.

C. Taking Jurisdiction Over Family or Household. When an offense has been committed against the family under Section VII (H)of this Code, the Court may take jurisdiction over the family or household, make child victims wards of the Court, and issue such orders as are necessary to ensure the safety and welfare of family members.

D. Probation. The Court shall have the discretion in any case except where prohibited by this Code or by tribal statute, to suspend all or any part of an offender's sentence and release the defendant on probation. The offender shall sign a probationary pledge, the conditions and limitations of which shall be clearly set forth by the Court.

E. Victim's Impact Statement. Prior to sentencing, the Court 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 judge, in his/her discretion, may allow oral testimony to be taken regarding such damages, in addition to, or in lieu of, the written statement.

F. Sentencing considerations. Before imposing sentence, the court shall take into consideration the offender's prior record, family circumstances, employment status, and any other circumstance which will aid in imposing a just and fair sentence, paying particular attention to the victim's impact statement described above. Restitution and community service work should generally be preferred over incarceration.

G. Motion to Impose a Penalty of Imprisonment. Upon motion of either party, or upon motion by the Court, before commencement of trial, the Court may, in its discretion, consider imprisonment for the amount of time specified as a possible punishment in the event that the accused is convicted. The procedure for making and hearing such motion shall be specified by Court Rule. A person convicted of a crime cannot be sentenced to imprisonment absent such pre-trial motion and determination by the Court. In the event the motion is granted, the defendant shall be advised of his/her right to a trial by jury.

COMMENTS

The Tribal Court Judge has considerable discretion in fashioning an appropriate sentence for a person convicted of an offense. However, as was noted above, the maximum jail term and fine that a Tribal Judge may sentence a criminal to is one year or $5,000 or both.

Keeping someone in jail is very expensive, and thus drains tribal resources. Incarceration has not been proven to have significant rehabilitative value. Therefore, it is recommended that other forms of punishment, such as community service work, which will benefit the Tribe, or restitution to help the victim recover from his/her injuries, be preferred over incarceration. It is suggested that incarceration be utilized when the circumstances, such as violent propensity of the offender, make it the only viable alternative.

The ICRA gives the accused a right to a jury trial any time imprisonment is a possibility. Section VI (G) allows the Court, prior to trial, to rule that imprisonment will be considered in the case. In all other cases, imprisonment will not be a potential punishment and thus the accused will not have the right to a jury trial.

VII. 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 when under oath in a proceeding before the Tribal Court shall be guilty of perjury.

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

B. Scheming and Planning Offenses.

1. Solicitation.

a. **Offense.** A person commits solicitation if, with intent that another person engage 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.

8. Harassment.

a. **Offense.** A person who verbally harasses another, including obscene or threatening phone calls, with the intent of causing that person physical or emotional harm, shall be guilty of an offense.

b. **Sentence.** A person convicted of harassment 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.

COMMENTS

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

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 obstructs, impairs or hinders:

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 or 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 hundred eighty (180) days or to a fine not to exceed five thousand dollars ($5,000.00) or to both.

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.

G. **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.

H. 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.

I. 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;

iii. makes loud and unreasonable noise; or

iv. 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, f ire, crime or other emergency knowing such report to be false or baseless and knowing that:

i. it will cause action by an official or voluntary agency organized to deal with emergencies;

ii. it will place a person in fear or imminent serious bodily injury; or

iii. 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.

J. **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.

K. 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

An 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).

L. 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.

M. **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.

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.

2. **Youth and tobacco.**

a. **Offense.** It shall be unlawful for any minor to possess, use or purchase any 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.

N. 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 its 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.

O. 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.

P. Habitual offender.

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

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

a. **2nd Offense:** One and one half (1 ½) 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.

VIII. EFFECTIVE DATE

This Interim Criminal Code will be in effect from the date of enactment through December 31, 1997.

Certification

As Tribal Chairman and Tribal Secretary, the undersigned certify that this Interim Criminal Code was duly enacted by the Tribal Council of the Little Traverse Bay Bands of Odawa Indians at a regular meeting of the Tribal Council held on June 22, 1997, at which a quorum was present, by a vote of 5 in favor, 0 opposed, and 0 abstentions as recorded by this roll call.

	In Favor	Opposed	Abstained	Absent
George Anthony	✓			
Patricia Dyer-Deckrow				
Frank Ettawageshik	✓			
Barry Laughlin				
Shirley Oldman	✓			
Janet Shomin	✓			
Alice Yellowbank	✓			

Date: 6-22-97

Frank Ettawageshik, Tribal Chairman

Barry Laughlin, Tribal Secretary