

# WAGANAKISING ODAWAK STATUTE 2006-013

## Juvenile Justice

### SECTION I PURPOSE

The Little Traverse Bay Bands of Odawa Indians, referred to in this Statute as “the Tribe”, has determined that:

- A. Juveniles are valuable Tribal resources, and that the welfare of juveniles is a vital concern of the Tribe;
- B. It is essential that Tribal resources, identity, and culture be preserved by providing for enhancement and strengthening of the family as the primary means of securing a vital Tribal community.
- C. The best interests of the Tribe and its juveniles are served when the juveniles of the Tribe receive the care and guidance necessary for their spiritual, emotional, mental, and physical development, all of which will prepare them to become contributing members of the Tribe;
- D. When concerns involving juveniles arise the Tribal Court, with advice from the Tribal Community Justice Coordinator and the Child Welfare Commission, is best able to resolve the concerns and provide juveniles with the care and guidance that is necessary for their well-being;
- E. Tribal Court, whenever practical, is preferable to state court for consideration of matters involving juveniles;
- F. When the Court must make a placement outside of the home, the best interests of the Tribe and its juveniles are served by providing for their care and placement in an environment which will ensure that juveniles receive the care and guidance necessary for their spiritual, emotional, mental, and physical development; and
- G. When concerns involving juveniles arise, the best interests of the community are served if the Tribal Court has jurisdiction over all persons in the family or household who is a part of the concern giving rise to the jurisdiction, or who may be part of the solution to the concerns.

## SECTION II

## DEFINITIONS

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

- A. "Adult" means a person eighteen (18) years of age or older.
- B. "Child Welfare Commission" means a commission created by Tribal Statute and appointed by Tribal Council to protect and promote the welfare of Tribal children and families.
- 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 III

### 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 the 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 VI(H) of this Statute; or
  5. Not a member of the 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 Alternative. 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;
  - f. The Judge or Justices involved in the case; and
  - g. The Child Welfare Commission

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. Contempt of Court.

1. Willful disobedience of, or willful interference with an order of the Court constitutes contempt of court.
2. The Court may punish an adult for contempt of court with a fine not to exceed one hundred dollars (\$100.00), a jail term not to exceed thirty days, or both.
3. A juvenile may be punished for contempt of court with extension of probation, additional probation conditions, and a fine not to exceed three hundred dollars (\$300.00), a jail term/detention not to exceed one (1) week or any combination thereof.

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 IV PROCEDURAL RIGHTS; NOTICE REQUIREMENTS

A. Applicability. The notice and procedural rights listed in this Chapter shall be afforded parties in each of the following proceedings:

1. Preliminary Hearing under Section VI(G);
2. Transfer to the Adult Division of Tribal Court under Section VI(H);
3. Trial under Section VI(J); and
4. Disposition Hearing under Section VI(N).

B. Notice.

1. Notice of proceedings shall be given to:
  - a. The juvenile;
  - b. The juvenile's parent(s), guardian, custodian or legal representative; and
  - c. All legal counsel of record.
2. Notice shall be given when a time for the proceedings has been established; provided at least ten (10) days is given before any non-preliminary hearing except in cases of emergency; provided further that notice is given as soon as possible in the case of a preliminary hearing or in the event of an emergency.
3. The notice shall contain:

- a. The name of the Court;
- b. The title of the proceeding;
- c. A brief statement of the substance of the allegations against the juvenile;
- d. The date, time, and place of the proceeding; and
- e. A statement of the right to counsel, as set forth in Section IV(D) of this Statute.

C. Summons.

- 1. At least ten (10) days prior to a trial or disposition hearing, the Court shall issue summons to:
  - a. The juvenile;
  - b. The juvenile's parent(s), guardian, legal representative, or custodian;
  - c. Any person the Court believes necessary for proper adjudication of the matter(s) before the Court; and
  - d. Any person the juvenile believes necessary for proper adjudication of the matter(s) before the Court; subject to the Court's discretion.
- 2. The summons shall contain the name of the Court and title of the proceedings; and the date, time, and place of the hearing.
- 3. A copy of the juvenile Petition shall be attached to the summons.
- 4. The summons shall be served in the following order of preference:
  - a. Hand delivery to the person, by a Tribal Law Enforcement Officer or appointee of the Court;
  - a. First (1<sup>st</sup>) Class mail, if the summons cannot be served upon the person; or
  - b. By the following method[s], if the Tribal Court feels it would be likely to provide actual notice to the Respondent:
    - i. Service upon relatives, neighbors, friends, or others who are likely to know the Respondent's whereabouts. If the person, who receives the summons, denies knowledge of the party's whereabouts, such service shall not be deemed adequate;

- ii. Service by legal notice in a daily publication or mailing of the Tribe circulated to the Tribal membership; and by posting the legal notice at the Tribal center; or
    - iii. Service by legal notice in a daily newspaper in the county of Respondent's last known residence for a three (3) day period, the last day of which is at least ten (10) days prior to the hearing; and by posting the legal notice at the Tribal center.
  - 5. If a person who has been issued a summons fails to appear at the hearing, the Court shall hold the person in contempt of court, unless good cause is shown why that person did not appear.
- D. Rights of Parties.
- 1. Right to Counsel:
    - a. The Judge shall inform the juvenile, the juvenile's parent(s), guardian, or custodian of their right to retain counsel by reading the following statement: "you have a right to have an attorney represent you at this hearing. However, you or your family must pay any fees for such representation."
    - b. If the parties are unable to pay for an attorney, the Judge shall make known to them any available services providing representation of which the Judge is aware.
    - c. If the parties appear at the hearing without an attorney, the Judge may grant a continuance if they need additional time to seek an attorney.
  - 2. The right to a trial by a Judge (bench trial).
  - 3. The juvenile need not be a witness against him/herself and no inferences can be made if the juvenile exercises the right to remain silent.
  - 4. A parent, guardian, or custodian may not be compelled to give testimony against him/herself or against the juvenile, consistent with the Tribal Constitution and the Indian Civil Rights Act.
  - 5. The Court shall give the juvenile, the juvenile's parent(s), legal representative, or custodian, the opportunity to introduce evidence, to be heard on their, own behalf, and to examine all witnesses.

## SECTION V PARENTAL RESPONSIBILITY

### A. Parental Responsibility.

1. The parent of any juvenile has a continuous responsibility to exercise reasonable control and supervision over the juvenile and prevent the juvenile from committing or participating in the commission of any delinquent act.
2. The parental responsibility to exercise reasonable control includes, but not limited, to the following duties:
  - a. To keep drugs out of the home and out of the possession of the juvenile, except those drugs duly prescribed by a licensed physician or other authorized medical professional;
  - b. To keep firearms out of the possession of the juvenile except those used for hunting in accordance with Tribal, local and state law governing juveniles hunting under the supervision of an adult;
  - c. To know the curfew law of the Little Traverse Bay Bands of Odawa Indians and require the juvenile to observe the curfew laws;
  - d. To require the juvenile to attend regular school sessions and to prevent the juvenile from being absent from school without parental or school permission;
  - e. To prevent the juvenile from maliciously or willfully damaging, defacing or destroying real or personal property belonging to others, including that belonging to any governmental entity of the Tribe;
  - f. To prevent the juvenile from engaging in theft of property or keeping in his or her possession property known to be stolen;
  - g. To ensure the juvenile adheres to the rules of safety and regulation regarding use of any four or two-wheeled recreational vehicles; and
  - h. To make reasonable efforts to prevent the juvenile from possession or consumption of alcohol.

- B. Notification of Parent and Court. If a juvenile is arrested or detained by Tribal Law Enforcement, Tribal Law Enforcement shall notify the juvenile's parent, guardian, or custodian and the Court as soon as reasonably possible. Tribal Law Enforcement shall maintain a record of their notification efforts.
- C. Violation and Penalty.
1. If the juvenile of a parent residing within the jurisdiction of the Tribe commits a delinquent act, the parent shall be guilty of a violation of this Section if:
    - a. It is proven that any action, word or non-exercise of parental responsibility by the parent encouraged, caused or allowed to occur the commission of the delinquent act by the juvenile; or
    - b. It is proven that the parent knew or reasonably should have known that the juvenile was likely to commit a delinquent act, but failed to take timely and appropriate action to prevent the commission of the delinquent act by the juvenile. If at any time within forty-five (45) days following the giving of notice as provided in section C. above, the juvenile to whom said notice related or applied commits a delinquent act as provided in this article, it shall be presumed that the juvenile committed the delinquent act with the knowledge, allowance, permission or sufferance of the parent.
  2. Any person in violation of any subsection of the Article shall be guilty of a misdemeanor, and upon conviction shall be subject to a fine not to exceed five hundred (\$500) or ninety days in jail, or both fine and jail in the discretion of the Court.
- D. Recovery of Damages from Parents. Any party aggrieved by the actions of a juvenile, who has not been emancipated, may recover reasonable compensatory damages in Tribal Court against the parents or parent of the juvenile, living with his or her parents or parent, who has maliciously or willfully destroyed real, personal, or mixed property of a party, or who has maliciously or willfully caused bodily harm or injury to a person or an animal.

## SECTION VI JUVENILE PROCEDURE

- A. Incident Report. Tribal Law Enforcement may file an Incident Report with the Tribal Prosecutor. The Incident Report shall contain:

1. Name, age, date of birth, address, name of custodial parent or guardian, Tribal affiliation, Tribal ID # if applicable;
  2. A concise statement of the facts upon which the allegations are based, including the date, time, and location at which the alleged act(s) occurred; and
  3. A list of witnesses known to the person who files the complaint.
- B. Juvenile Petition. Proceedings under this Statute shall commence upon the filing of a juvenile petition by the Tribal Prosecutor on behalf of the Tribe. The juvenile petition shall include:
1. The name, birth date, address, Tribal affiliation and ID# if applicable.
  2. The names and addresses of the juvenile's parent(s), guardians, or custodian;
  3. Citation to the specific provision(s) of this Statute which gives the Court jurisdiction of the proceedings;
  4. Citation to the Tribal criminal statutory provision(s) which the juvenile is alleged to have violated;
  5. If the juvenile is in detention or shelter care, the place of detention or shelter care and the time he/she was taken into custody;
  6. A statement of the facts which brings the juvenile within the jurisdiction of the Court; and
  7. A list of witnesses known to the Tribe upon filing of the juvenile petition.
- C. Warrant. The Court may enter an order called a warrant, directing that a juvenile be taken into custody if:
1. The Court finds probable cause to believe that the juvenile committed the delinquent act alleged in the petition and there is probable cause to believe that the juvenile will fail to appear for a hearing on the matter; or
  2. The juvenile is not taken into custody she/he is likely to endanger himself/herself or others.
- D. Custody. A juvenile may be taken into custody by a law enforcement officer if:
1. The officer has reasonable cause to believe that a delinquent act has been committed and that the juvenile has committed the delinquent act; or
  2. A warrant pursuant to Section VI (C) of this Statute has been issued for the juvenile.

- E. Law Enforcement Officer's Duties. A law enforcement officer who takes a juvenile into custody, pursuant to Section VI (D) of this Statute, shall proceed as follows:
1. Explain the following rights to any juvenile taken into custody prior to questioning:
    - a. The juvenile has a right to remain silent;
    - b. Anything the juvenile says can be used against the juvenile in court; and
    - c. The juvenile has the right to the presence of his parent or guardian, and/or attorney during questioning.
    - d. Release the juvenile to the juvenile's parent(s), guardian, or custodian and give such counsel and guidance as may be appropriate, unless shelter care or detention is necessary because:
      - i. The juvenile is in danger of injury;
      - ii. Is pending placement; or
      - iii. The juvenile is under the influence of alcohol or controlled substances; or
      - iv. The juvenile will not cease illegal conduct and release is likely to result in injury to the juvenile or others.
    - e. If the juvenile is not released, an officer shall make immediate and recurring efforts to notify the juvenile's parent(s), guardian, or custodian to inform them that the juvenile has been taken into custody.
    - f. If the juvenile is not released, the juvenile shall be placed in detention or shelter.
- F. Detention. A juvenile alleged to be a juvenile offender or juvenile in need of supervision may be detained pending a court hearing in an approved Tribal or State of Michigan detention facility.
1. A juvenile who is sixteen (16) years of age or older may be detained in a jail or other licensed detention facility, used for the detention of adults only if:
    - a. A facility in Section 1.606 is not available or would not assure adequate supervision of the juvenile;
    - b. Detention is in a cell separate from adults; and

- c. Adequate supervision is provided twenty-four (24) hours a day.
- 2. A juvenile who is sixteen (16) years of age or older may also be detained in a jail or other licensed detention facility used for the detention of adults if that juvenile is intoxicated, provided that:
  - a. A juvenile detention facility is not immediately available or is not equipped to hold/supervise the intoxicated youth;
  - b. Detention is in a cell separate from adults; and
  - c. The juvenile is released as soon as he or she is sober, unless further detention under Section VI (E) is warranted.
- G. Preliminary Hearing.
  - 1. If a juvenile has been released to his/her parent(s), guardian, or custodian, the Court shall conduct a preliminary hearing within ten (10) days of the filing of the juvenile petition to determine whether probable cause exists to believe that the juvenile committed the alleged delinquent act(s).
  - 2. If a juvenile is placed in custody or detention the Court shall conduct a preliminary hearing within seventy-two (72) hours of the placement for the purpose of determining:
    - a. Whether probable cause exists to believe that the juvenile committed the alleged delinquent act; and
    - b. Whether continued detention is necessary pending further proceedings.
    - c. If the juvenile's parent(s), guardian, or custodian is not present at the preliminary hearing, the Court shall make an inquiry into what efforts have been made to notify and to obtain the presence of the parent(s), guardian, or custodian. If it appears that further efforts are likely to produce the appearance of the juvenile's parent(s), guardian, or custodian, the Court shall recess for not more than twenty-four (24) hours and direct the Tribal Prosecutor to make continued efforts to obtain the presence of the juvenile's parent(s), guardian, or custodian, if it does not appear that further efforts are likely to produce the parent(s), guardian, or custodian, or if it appears that the parent(s), guardian, or custodian is/are unable or unwilling to provide effective support or guidance to the juvenile during the pendency of the juvenile offender or juvenile in need of supervision proceedings, the Court shall appoint an attorney to serve until adjudication and disposition of the petition.

3. The Court shall advise the juvenile as follows:
  - a. Explain the nature of the proceedings.
  - b. Read the allegations in the petition unless waived.
  - c. Advise the juvenile of right to an attorney.
  - d. Advise the juvenile of the privilege against self-incrimination and that any statement by the juvenile may be used against the juvenile.
  - e. Advise the juvenile that parents, guardians, or custodians may not be compelled to give testimony against himself or herself or the juvenile.
  - f. Advise the juvenile that he or his legal representative may introduce evidence, to examine (confront) witnesses against him or her, and be heard on their own behalf.
  - g. The circumstances that gave rise to the juvenile petition and/or the taking of the juvenile into custody; and
4. If the juvenile admits the allegations in the juvenile petition, the Court shall proceed to the disposition hearing only if the Court finds:
  - a. The juvenile fully understands his/her rights as set forth in Section IV(D) of this Statute and fully understands the potential consequences of his/her admission; and
  - b. The juvenile voluntarily, knowingly, and intelligently admits to all facts necessary to constitute a basis for Court jurisdiction.
5. If the juvenile denies the allegations in the juvenile petition, the Court shall hear testimony concerning:
  - a. The circumstances that gave rise to the juvenile petition and/or the taking of the juvenile into custody; and
  - b. The need for detention.
6. If the Court finds that probable cause exists to believe that the juvenile committed the delinquent act:
  - b. The juvenile shall be ordered to appear at a trial on a date and at a time set by the Court; and
  - c. The juvenile shall be released to his/her parent(s), guardian, or custodian unless the alleged act is serious enough to require detention. The Court may order the juvenile to detention, if:

- i. There is reasonable cause to believe that the juvenile will run away and/or be unavailable for further proceedings; or
  - ii. There is reasonable cause to believe that the juvenile will commit a serious act causing damage to persons or property.
7. If a juvenile is released to his parent(s), guardian, or custodian, the Court may impose conditions on the release which may include but not limited to: the posting of a bond; electronic monitoring; house arrest; travel restrictions; mandatory attendance at school; no contact with named individuals; or a juvenile may be prohibited from participating in non-essential Tribal programs or entering designated Tribal property.
8. The Court may release a juvenile to a relative or other responsible adult Tribal member, if the parent(s), guardian, or custodian consents to the release. If the juvenile is fourteen (14) years of age or older, the juvenile and the juvenile's parent(s), guardian, or custodian must consent to the release.
9. If the juvenile pleads guilty to the charges, the Court may take the plea under advisement and refer the juvenile to the Community Justice Coordinator for a pre-disposition investigation report. The Court will proceed with the disposition and place the juvenile on probation. If the juvenile successfully completes the terms and conditions of probation within the prescribed time, the Court may dismiss the matter without entering a judgment of disposition. If the juvenile does not successfully complete probation the Court will then enter a judgment of disposition into the records of the Court.
10. If the Court does not find probable cause to believe that the juvenile committed the alleged delinquent act, the petition shall be dismissed and the juvenile released.

H. Transfer to the Adult Division of Tribal Court.

1. If the juvenile is sixteen (16) years of age at the time of the alleged delinquent act, the Prosecutor shall have the option of filing the action as a juvenile offender proceeding or as an adult criminal matter. If the juvenile is between the ages of fourteen (14) and sixteen (16) and is alleged to have committed an act that would have been considered a crime if committed by an adult, the Prosecutor may file a petition requesting the Court to transfer the juvenile to the Adult Division of the Court
2. The Court shall conduct a hearing to determine whether jurisdiction of the juvenile should be transferred to the Adult Division of the Court.

3. The Court shall hold a transfer hearing within ten (10) days after the petition to transfer to the adult division is filed.
  4. Written notice of the transfer hearing shall be given to the juvenile and the juvenile's parent(s), guardian, legal representative, or custodian at least seventy-two (72) hours prior to the hearing
  5. Prior to the hearing, the Tribe's Community Justice Coordinator shall be responsible for an investigation and the preparation of a written report to be submitted to the Court and to the Child Welfare Commission. The Community Justice Coordinator shall meet with the Child Welfare Commission and formulate a written recommendation for the Court.
  6. The following factors shall be considered in determining whether to transfer jurisdiction of the juvenile to the Adult Division of the Court:
    - a. The nature and seriousness of the offense allegedly committed by the juvenile; and
    - b. The juvenile's age, mental and physical condition, past record of offenses, and responses to previous Court efforts at rehabilitation; and
    - c. The recommendation of the Child Welfare Commission.
  7. The Court may transfer jurisdiction of the juvenile to the Adult Division of the Court if the Court finds clear and convincing evidence that both of the following circumstances exist:
    - a. There are no reasonable prospects for rehabilitating the juvenile through resources available to the Court; and
    - b. The alleged offense is serious and constitutes a substantial danger to the public.
  8. When a juvenile is transferred to the Adult Division of the Court, the Court shall issue a written transfer order containing reasons for the order. The transfer order constitutes a final order for purposes of appeal
- I. Diversion.
1. The Tribal Prosecutor may choose to divert the juvenile rather than initiate a formal juvenile offender or juvenile in need of supervision proceeding.
  2. The Tribal Prosecutor shall hold an informal conference with the juvenile and the juvenile's parent(s), guardian or custodian to discuss diversion to in lieu of filing a juvenile petition if:

- a. The admitted facts bring the case within the jurisdiction of the Court;
  - b. Diversion of the matter would be in the best interests of the juvenile and the Tribe; and
  - c. The juvenile's parent(s), guardian or custodian voluntarily consents to the diversion after they have received an explanation of their rights.
3. This Section does not authorize the Tribal Prosecutor to compel involuntary action of the parties involved
4. The Tribal Prosecutor and the Community Justice Coordinator shall set forth in writing the diversion agreed to by the parties,
5. Any disposition arranged through the diversion shall be concluded within six (6) months unless an extension is agreed to by all parties
6. The Community Justice Coordinator shall file monthly progress reports with the Prosecutor. If at any time after thirty (30) days the Tribal Prosecutor concludes that positive results are not being achieved, the Prosecutor may file a juvenile petition pursuant to Section VI (B) of this Statute.
7. No statement made during the diversion process may later be admitted into evidence at a trial or any other proceeding against the juvenile under this Statute.
8. Upon successful completion of the diversion, The Community Justice Coordinator will notify the Tribal Prosecutor and no further action will be required.
- J. Trial. The Court shall conduct a bench trial for the purpose of determining whether the Court has jurisdiction over the juvenile. The trial shall be closed to the public. The Court shall hear testimony concerning the circumstances that give rise to the juvenile petition.
- K. Burden of Proof
  1. If the allegations of the juvenile petition are sustained by proof beyond a reasonable doubt, the Court shall find that the juvenile is a juvenile offender and schedule a disposition hearing.
  2. If the allegations of the juvenile petition are sustained by clear and convincing evidence, the Court shall find that the juvenile is a juvenile in need of supervision and schedule a disposition hearing.

3. A finding that the juvenile is a juvenile offender or juvenile in need of supervision shall constitute a final order for purposes of appeal.
- L. Trial Continuances. Continuances of a trial may be granted upon:
1. Motion of the juvenile for good cause shown; or
  2. Motion of the Tribal Prosecutor that material evidence or witnesses are unavailable, a finding by the Court that the Tribal Prosecutor has exercised due diligence to obtain the evidence or appearance of witnesses, and reasonable grounds exist to believe that the evidence will become available or that the witnesses will appear.
- M. Pre-disposition Report.
1. The Community Justice Coordinator shall prepare a written report describing all reasonable and appropriate alternative dispositions. The report shall contain a specific plan for the care of, and assistance to the juvenile, designed to resolve the problems presented in the juvenile petition. Each plan shall be reviewed by the Indian Child Welfare Commission; the Commission shall advise the Court in writing of the disposition which is recommended by the vote of the members.
  2. The report shall contain a detailed explanation of the necessity for the proposed disposition and its benefits to the juvenile.
  3. Preference shall be given to the disposition alternatives that are listed in Section VI (D). The alternative least restrictive of the juvenile's freedom, consistent with the interests of the Tribe, shall be selected.
  4. If the report recommends placement of the juvenile somewhere other than with the juvenile's parent(s), guardian, or custodian, it shall state the specific reasons underlying its placement recommendation.
  5. The Community Justice Coordinator shall review the pre-disposition report with the Court, the juvenile's legal representative, and the Tribal Prosecutor prior to the disposition hearing.
- N. Disposition Hearing.
1. A disposition hearing shall take place not more than twenty-eight (28) days after the trial or after the admission of responsibility at the preliminary hearing
  2. The Court shall take testimony and receive evidence concerning proper disposition at the hearing.
  3. The Court shall consider the pre-disposition report submitted by the Tribe's Community Justice Coordinator. Prior to the hearing, the affected

parties shall be given an opportunity to review all reports and supporting documentation. During the hearing, the parties shall have the opportunity to controvert the factual contents and the conclusions of any reports. The Court shall also consider the alternative predisposition report prepared by the juvenile or the juvenile's legal representative.

4. The judgment of disposition order shall constitute a final order for purposes of appeal.
- O. Disposition Alternatives. The dispositional focus of a youth depends upon whether the youth is found to be a juvenile offender as defined in Section II (K) or a juvenile in need of supervision as defined in Section II (L). The dispositional focus of a youth found to be a juvenile offender is the reformation and rehabilitation of the offender as well as the reintegration of the juvenile offender into the community. The dispositional focus of a youth deemed to be a juvenile in need of supervision is to pursue the best interest of the youth while strengthening family and community solutions to the youth misconduct. If a juvenile has been found to be a juvenile offender or juvenile in need of supervision, the Court may make the following disposition for any term until the juvenile reaches the age of nineteen (19):
1. Place the juvenile on probation subject to conditions set by the Court;
  2. Place the juvenile in a detention and/or a treatment facility with an agency designated by the Court;
  3. Order the juvenile to perform community service work at the direction of the Community Justice Coordinator;
  4. Order the juvenile to pay restitution, court fines and court costs including costs related to detention, or to provide restorative services to the injured party or parties. The Court may access the juvenile's per capita trust or distributions, if otherwise allowed by the Tribe's Revenue Allocation Plan, to provide restitution upon the motion of the Tribal Prosecutor or an aggrieved party based upon proper proofs offered at an evidentiary hearing; or
  5. Order any other measure the Court deems necessary and proper to correct the behavior of the juvenile offender or juvenile in need of supervision to insure the safety of the community.
- P. Modification of Disposition Order. A disposition order of the Court may be modified, for good cause, upon a showing of a change of circumstances. The Court may modify an order of disposition at any time, upon motion of the following:
1. The juvenile;

2. The juvenile's parent(s), guardian, or custodian;
3. The Tribal Prosecutor; or
4. The Tribal Community Justice Coordinator.

Q. Probation Supervision.

1. Probation/Diversion Responsibility. The Community Justice Office is supervised by the Court. The Community Justice Coordinator will be responsible for supervising probationers and juveniles released on pre-dispositional release. Terms of release or probation will be set by the Court upon recommendation of the Community Justice Coordinator.
2. Power to Take Into Immediate Custody for Violation of Pre-Dispositional Release. The Community Justice Coordinator may, upon direct knowledge or receipt of reliable information, take into immediate custody, a juvenile who has violated terms of pre-dispositional release.
3. Power to Take Into Immediate Custody for Probation Violation. The Community Justice Coordinator may, upon direct knowledge or reliable knowledge, take a probationer into immediate custody for violation of the terms of probation. The Community Justice Coordinator must file a motion for a Show Cause Hearing, listing the reasons for violation and the basis for violation.
4. Terms Subject to Modification. The Community Justice Coordinator or the Prosecutor may motion the Court to alter any term of probation at the discretion of the Community Justice Coordinator.
5. Facility Visits Discretionary. The Community Justice Coordinator may visit any juvenile who is in jail or in a treatment facility.

## SECTION VII SAVINGS CLAUSE

In the event that any section, subsection or phrase, this Statute is found by a court of competent jurisdiction to violate the Constitution, laws or ordinances of the Little Traverse Bay Bands of Odawa Indians, such part shall be considered to stand alone and to be deleted from this Statute, the entirety of the balance of the Statute to remain in full and binding force and effect so long as the overall intent of the Statute remains intact.

**SECTION VIII EFFECTIVE DATE**

Effective upon the signature of the Executive, or 30 days from submission to the Executive Branch, or if the Executive vetoes the legislation, then upon Tribal Council override of the veto.

**CERTIFICATION**

As the Legislative Leader 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 August 20, 2006 at which a quorum was present, by a vote of 8 in favor, 0 opposed, 0 abstentions, and 1 absent as recorded by this roll call:

	In Favor	Opposed	Abstained	Absent
Regina Gasco Bentley	X			
Fred Harrington, Jr.	X			
Dexter McNamara	X			
Mary Roberts	X			
Rita Shananaquet	X			
Alice Yellowbank	X			
Shirley Oldman				X
Melvin L. Kiogima	X			
Beatrice A. Law	X			

Date: 8/20/06

Beatrice A. Law  
Beatrice A. Law, Legislative Leader

Date: 8/20/06

Melvin L. Kiogima  
Melvin L. Kiogima, Secretary

Received by the Executive Office on 8-21-06 by Ellie Payton

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: 9-18-2006

Frank Ettawageshik  
Frank Ettawageshik, Tribal Chairperson

