WAGANAKISING ODAWAK STATUTE 2006-014

DOMESTIC VIOLENCE PROTECTION

CHAPTER 1- GENERAL PROVISIONS

Purpose:

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

That violence against family members is not acceptable. It is the expectation that the criminal justice system respond to victims of domestic violence with fairness, respect, compassion, and in a prompt and effective manner. The goal of this Statute is to provide victims of domestic violence with safety and protection.

SECTION: 101. Authority to regulate domestic violence in its jurisdictional territory:

1. By treaty, the LTBB has the right to exclude non-citizens as well as an inherent authority to protect its political integrity and provide for the welfare of its citizens and others who choose to live within its territory.
2. The problem of domestic violence within the boundaries of the LTBB reservation is seriously impacting the ability of the Tribe to provide for the health and well-being of its citizens and threatens the political integrity of the Tribe.
3. Domestic violence is also being perpetrated by or against persons who are not citizens of the LTBB. These activities of non-citizens and non-Indians, who have entered into consensual relations with Tribal citizens, will be regulated under this Statute.
4. In the event that a non-Indian is accused of violating a provision of this Statute, that person shall be given a choice in the form of a written signed statement to either fully submit to the civil and criminal jurisdiction of the Tribal Court or be permanently excluded from the Reservation. Refusal to make such choice in writing shall be deemed choosing permanent exclusion. Neither submission to the jurisdiction of the Tribal Court nor exclusion shall in any way limit prosecution of federal or state charges.

SECTION: 102. Definitions:

1. "Domestic violence" means the occurrence of one or more of the following acts by a family or household member, but does not include acts of self-defense:
(a) Attempting to cause or causing physical, emotional or mental harm to another family or household member;
(b) Placing a family or household member in fear of physical harm; or
(c) Causing a family or household member to engage involuntarily in sexual activity by force, threat of force, or duress.

2. "Family or household members" include:
(a) Adults or minors who are current or former spouses;
(b) Adults or minors who are dating or who have dated;
(c) Adults or minors who are engaged in or who have engaged in a sexual relationship;
(d) Adults or minors who are related or formerly related by marriage as recognized by western or Odawa tradition;
(e) Persons who have a child in common;
(f) Minor children of a person in a relationship described in paragraphs (a) through (e) above;
(g) Any adult or minor children who reside in the household;
(h) Persons who are related by blood, adoption or marriage; and
(i) Vulnerable adults in the family or household, including adults unable to protect themselves from abuse, neglect, or exploitation.
3. "Minor" Any unmarried person who is less then eighteen (18) years of age, and has not been emancipated by order of a court of competent jurisdiction, or a person who is eighteen (18) years of age, but remains under the continuing jurisdiction of the Court.
4. "Domestic Violence Advocate" means an employee of, or volunteers for a program for victims of domestic violence and/or sexual assault.
5. "Program of intervention for perpetrators" and/or "offender's program" means a specialized program that accepts court order and voluntary participants.
6. "Program for victims of domestic violence" means a specialized program for victims of domestic violence and their children that includes but is not limited to advocacy, shelter, crisis intervention, supportive services, referrals, and specialized knowledge and expertise of elders and medicine people.
7. "Safety plan" means a written or oral outline of actions to be taken by a victim of domestic violence to secure protection and support after making an assessment of the dangerousness of the situation.
8. "Public servant" means any law enforcement officer, dispatcher, detention guard, law enforcement supervisor or administrator, judge, court clerk, prosecutor, court administrator, juvenile presenting officer~~,~~.
9. "Protection Orders" include but are not limited to the following:
(a) Civil Ex Parte
(b) Civil After Hearing
(c) Violations may result in contempt charges:
    i. Pre Adjudication Conditions of Release (Bond)
    ii. Post Adjudication Conditions of Release (Bond)
    iii. Sentencing Orders
    iv. Probation Orders

CHAPTER 2 - CRIMINAL PENALTIES AND PROCEDURES

SECTION: 201. "Crime involving domestic violence" defined.

The purpose of this Statute is to clarify that domestic violence is a separate crime punishable separate and apart from the underlying crime, and to acknowledge that when the following crimes are perpetrated against a family or household member, a finding of

such shall trigger the application of this Statute. The crime of Domestic Violence occurs when a family or household member commits one or more of the following offenses against another family or household member:
1. Arson;
2. Assault Offenses (Battery, Aggravated Assault, Simple Assault, and Intimidation);
3. Burglary, Breaking and Entering;
4. Damage to property, if intended to harm or intimidate a family or household member;
5. Homicide Offenses (1st degree murder; 2nd degree murder, and manslaughter);
6. Kidnapping, Abduction;
7. Sex Offenses, Forcible (Forcible Rape, Forcible Sodomy, Sexual Assault with an Object, and Forcible Fondling);
8. Stolen Property Offenses;
9. Weapon Law Violations;
10. Disorderly Conduct;
11. Family Offenses, Non-Violent (Deprivation of Resources, Isolation, Squandering Family Resources, Failure to Support Dependent Persons);
12. Stalking;
13. Trespass of Real Property;
14. Intoxication;
15. Harassment; or
16. Habitual or Repeat Domestic Violence Offender status.

SECTION: 202. Violation of one of the following orders issued in accordance with the Domestic Violence Statute is a misdemeanor, to be designated and charged as a Violation of Protection Orders:

1. An order enjoining the respondent from threatening to commit or committing acts of domestic violence against the petitioner or other family or household member;
2. An order prohibiting the respondent from harassing, annoying, telephoning, contacting, or otherwise communicating verbally or in writing with the petitioner directly or indirectly through family members, relations by marriage, friends, and co-workers;
3. An order removing and excluding the respondent from the residence of the petitioner;
4. An order requiring the respondent to stay away from the residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family or household member;
5. An order granting temporary custody and child support regarding children, denying visitation or outlining specific visitation conditions and restrictions, including supervised visitation;
6. An order prohibiting the respondent from using or possessing a firearm or other weapon as specified by the court and in accordance with Title 18 USC 922;
7. An order requiring the respondent to attend domestic violence classes; and
8. An order requiring the respondent to obey Tribal, state or federal laws.

Any person granted a civil or criminal Protection Order from LTBB Tribal Court or any other court of competent jurisdiction cannot be punished for a violation of that Protection Order under this Statute. It shall not be a defense to a charge of violation of a Protection Order under this section that the victim consented to the violation by encouraging contact

or a violation of the Protection Order.

SECTION: 203. Penalties; enhancement of penalty for second or subsequent crime involving domestic violence; restitution:

When a defendant makes a judicial admission, pleads guilty, or has been found guilty of a crime involving domestic violence as defined by this Statute, or violation of a Protection Order, the following minimum sentencing provisions shall apply uniformly to all offenders:

1. First Offense: Mandatory successful completion of an offender's program and a mandatory minimum of one year supervised Tribal Court probation, including all court-ordered and probation department administrative and rehabilitative conditions. In addition, the Court may impose jail time not to exceed one (1) year, fines not to exceed $5,000 and court costs as deemed appropriate.
2. Second Offense: Mandatory successful completion of an offender's program and a mandatory minimum of one year supervised Tribal Court probation, including all court-ordered and probation department administrative and rehabilitative conditions. In addition, there shall be a mandatory minimum of forty-five (45) days in jail not to exceed one (1) year, fines not to exceed $5,000 and court costs as deemed appropriate.
3. Third or Subsequent Offense: Mandatory successful completion of an offender's program and a mandatory minimum of one year supervised Tribal Court probation, including all court-ordered and probation department administrative and rehabilitative conditions. In addition, there shall be a mandatory minimum of ninety (90) days in jail not to exceed one (1) year, fines not to exceed $5,000 and court costs as deemed appropriate.
4. The Court may enhance the sentence for any domestic violence offense but shall not reduce the sentence below the minimum prescribed by this Section. The Court shall consider all aggravating factors such as, but not limited to, use of weapons, level of injury, criminal history, and history of violence, as grounds to enhance any sentence under this section.
5. The Court shall order the offender to pay restitution for any medical expenses and/or damages to property.
This Section shall apply to any offense committed after the enactment of this Section, but any conviction of a crime of domestic violence committed before enactment of this Section may be considered in determining whether the sentence should be enhanced.

SECTION: 204. Duties of law enforcement officer to victims of domestic violence:

1. A law enforcement officer who responds to an allegation of domestic violence shall use all reasonable means to protect the victim and others present from further violence and have a duty to arrest upon finding probable cause to believe that domestic violence has occurred. A law enforcement officer need not obtain a search warrant in order to

enter a residence where s/he has probable cause to believe a crime of domestic violence is occurring or has just occurred, nor to seize property. Such reasonable means include but are not limited to:
(a) Taking any lawful action necessary to provide for the safety of the victim and any family or household member;
(b) Confiscating any weapon involved in the alleged domestic violence;
(c) Transporting or obtaining transportation for the victim and any child to a shelter or any other place of safety;
(d) Assisting the victim in removing essential personal effects;
(e) Assisting the victim and any child in obtaining medical treatment, including obtaining transportation to a medical facility;
(f) Giving the victim immediate and adequate notice of the rights of victims and or the remedies and services available to victims of domestic violence; and
(g) Enforcing a Protection Order.
2. Provide victims written notice of services available.

SECTION: 205. Mandatory arrest for crimes involving domestic violence:

If a law enforcement officer has probable cause to believe that a person has committed a crime involving domestic violence, the officer must, without a warrant, arrest and charge an abuser with the appropriate crime.

SECTION: 206. Mandatory arrest for violations of orders for, protection:

When a law enforcement officer has probable cause to believe that a respondent has violated a court Protection Orders, the officer shall, without a warrant, arrest the apparent violator.

The petitioner who is granted a Protection Orders cannot violate or be arrested for violation of her/his own Protection Orders.

SECTION: 207. Officials who batter, including law enforcement officers:

Law enforcement officers and public officials who are suspected of committing the crime of domestic violence shall be subject to all provisions of the Domestic Violence Statute, including mandatory arrest with probable cause, prohibitions against temporary release, and all laws involving firearms disqualification.

The provisions of this Section shall not relieve the responding officer from the duty to implement mandatory arrest, should probable cause and/or immediate victim safety indicate such action.

SECTION: 208. Authority of law enforcement officer to seize weapons; incident to an

arrest, or in the course of securing a crime scene involving domestic violence, a law enforcement officer:

1. Shall seize all weapons that are alleged to have been involved or threatened to be used in the commission of a crime or any weapon in the immediate vicinity of the alleged commission of the offense; and
2. Shall seize a weapon that is in the plain view or which is located during a search authorized by a person entitled to consent to the search. The seizure of weapons is without regard to ownership of the weapons; weapons owned by a third party are subject to confiscation when officers conclude that the weapon was used in the commission of a crime or must be confiscated to protect law enforcement officers, victims of domestic violence, or others.

SECTION: 209. Immunity:

1. Any law enforcement officer shall have immunity from any liability, civil or criminal, in making arrests or exercising any other authority granted under this section when domestic violence or any crimes involving domestic violence have been committed, if the law enforcement officer acts within the scope of his/her authority.

2. Law enforcement officers shall have the same immunity with respect to participation in any court proceedings resulting from arrests made for domestic violence or any crimes involving domestic violence.

SECTION: 210. Conditions of pre-trial release:

1. Any person arrested for a crime of domestic violence or violation of a Protection Order shall be held without bond, pending formal arraignment for a period not to exceed 72 hours.
2. In making a decision concerning pretrial release of an offender who is arrested for, or charged with, a crime involving domestic violence the Court has the authority to decide whether to allow pre-trial release and shall review whether the offender:
(a) Is a threat to the alleged victim, other family member, or household member;
(b) Is a threat to public safety;
(c) Is reasonably likely to appear in court; and
(d) Criminal history.
3. The Tribal Court may impose the following conditions of release:
(a) An order prohibiting the person from threatening to commit or committing acts of domestic violence against the alleged victim or other family or household member;
(b) An order prohibiting the person from harassing, annoying, telephoning, contacting, or otherwise communicating with the alleged victim, either directly or indirectly through family, relations by marriage, friends, or co-workers;
(c) An order directing the person to vacate or stay away from the home of the alleged victim and/or child and to stay away from any location where the victim is likely to be;
(d) An order prohibiting the person from using or possessing a firearm or other weapon specified by the Court;

(e) An order prohibiting the person from possession or consumption of alcohol or controlled substances; and
(f) Any other order required to protect the safety of the alleged victim and to ensure the appearance of the person in court.
4. Inform the person to be released that a violation of these conditions may result in his/her immediate arrest for noncompliance.
5. The Court shall provide a copy of the conditions to the arrested or charged person upon his/ her release. Failure to provide the person with a copy of the conditions of release does not invalidate the conditions if the arrested or charged person has been provided other notice of the conditions.
6. If conditions of release are imposed without a hearing, the arrested or charged person may request a prompt hearing before the Court to review the conditions.
7. The Defendant shall not be released until s/he has been advised of his/her next court date.
8. The address of the victim is confidential and shall not be released or disclosed.

SECTION 211: Mandatory warrant-less arrest for violation of conditions of release:

If a law enforcement officer has probable cause to believe that a person has violated a condition of release, or probation, the officer shall, without a warrant, arrest the alleged violator, whether or not the violation was committed in the presence of the officer.

SECTION: 212. Prosecutor's duties in domestic violence offenses:

1. In prosecuting domestic violence crimes, the protection and safety of the victim(s) shall be controlling.
2. The Prosecutor must promptly review every report of domestic violence received from tribal police.
3. If the Prosecutor decides to issue charges the victim(s) shall be notified as soon as possible.
4. The Prosecutor shall refer all domestic violence reports to the victims advocate.
5. Plea bargaining is discouraged in domestic violence cases and shall only be used with the full understanding and cooperation of the victim(s).
6. The Prosecutor must notify the victim(s) of domestic violence that they have the rights enumerated in section 214 of this Statute.
7. The Prosecutor shall make reasonable efforts to notify a victim of an alleged crime involving domestic violence when the prosecutor has decided to decline prosecution of the crime, to dismiss the criminal charges filed against the defendant, or to enter into a plea agreement.

SECTION: 213. Requirement for dismissal:

When the Prosecutor moves to dismiss charges against a defendant accused of a crime involving domestic violence, the Prosecutor must clearly state the basis for the motion.

SECTION: 214. Rights of victims of domestic violence; duty of prosecutor to inform victim of rights:

1. A victim of domestic violence is entitled to all rights granted to victims of crime, including but not limited to the right to:
(a) Be informed of all hearing dates and continuances;
(b) Provide the Court with a victim-impact statement;
(c) Be present at sentencing and address the Court;
(d) Recommend to the Court conditions of probation that may be necessary to ensure the safety of the victim and other family or household members;
(e) The right to seek reimbursement for personal property damage and medical expenses resulting from actions of the offender;
(f) The right to assistance from Tribal services;
(g) The right to receive notice of all hearing dates and any adjournments; and
(h) The right to address the Court in person or by written statement.

2. The Prosecutor shall notify any victim of domestic violence, in writing, of his/her rights as set forth in this section.

SECTION: 215. Pleas of no contest prohibited.

The Court shall not approve or entertain a plea of no contest.

SECTION: 216. Appearance or testimony of victim not required:

A victim of domestic violence or related offense shall not be required to appear or testify as a condition of proceeding with the prosecution.

SECTION: 217. Confidentiality of victim's address:

The address of a victim of a crime involving domestic violence is confidential. Law enforcement, criminal justice personnel, probation and advocates shall not reveal the victim's address

SECTION: 218. LTBB Law Enforcement Departmental Procedures:

Law Enforcement shall develop departmental procedures to effectuate the mandates of this Statute and promote consistent application of its provisions.

SECTION: 219. Role of the Court; sentencing; probation conditions: In responding to the crime of domestic violence the Court shall:

1. Expedite trials of domestic violence criminal cases.
2. Order the defendant to report to the Probation Department for intake and rehabilitative

assessment.
3. Consider whether alcohol or drugs are factors in the rehabilitation effort. If so, the Court shall impose appropriate conditions.

Upon conviction of any second or subsequent offense, the offender shall be sentenced according to the mandatory provisions of Section 203.

SECTION: 220. Conditions of probation for perpetrator convicted of crime involving domestic violence; required reports by probation department.

1. The Court shall first consider the safety and protection of the victim of domestic violence.
2. The Court may impose any condition of probation that is necessary to ensure the safety and protection of the victim, including but not limited to:
(a) Enjoining the Defendant from threatening to commit or committing acts of domestic violence against the victim or other family or household member;
(b) Prohibiting the Defendant from harassing, annoying, telephoning, contacting, or otherwise communicating with the victim, directly or indirectly through family, relations by marriage, friends, or co-workers;
(c) Requiring the Defendant to stay away from the residence, school, place of employment, or a specified place frequented (regularly by the victim and any designated family or household member;
(d) Prohibiting the Defendant from possessing or consuming alcohol or controlled substances;
(e) Prohibiting the Defendant from possessing a firearm or other specified weapon;
(f) Directing the Defendant to surrender any weapons owned or possessed by the perpetrator;
(g) Directing the Defendant to participate in and complete, to the satisfaction of the Court, a program of intervention for perpetrators, treatment for alcohol or substance abuse, or psychiatric or psychological treatment or any other program or service deemed applicable by the domestic violence program or domestic violence probation officer;
(h) Directing the Defendant to pay restitution to the victim;
(i) Directing the Defendant to refrain from any violations of law for the duration of his/her probation; and
(j) Imposing any other condition necessary to protect the victim of domestic violence and any designated family or household member, or to rehabilitate the Defendant.
3. The Court shall consider non-compliance with any probation conditions to be a matter of contempt.
4. The Probation Department shall document and report to the Court any probation violations, regardless of where the violation occurred or under what jurisdiction any subsequent crime was adjudicated

SECTION: 221. Probation violations, process for revocation, consequences:

1. The Probation Officer or any Law Enforcement Officer may, upon direct or reliable knowledge, take a Defendant into immediate custody for violation of the terms of probation.

2. If a Defendant is taken into custody for an alleged probation violation, the Probation Officer must file, as soon as practicable, a motion for a show cause hearing listing the reasons and basis for the violation.
3. The Court shall conduct a summary hearing on the motion. The burden of proof shall be a preponderance of the evidence.
4. If the Court finds that a Defendant has violated any term of probation, the Court may revoke probation, modify the terms of probation, order the Defendant to serve jail time, or may enter any other appropriate orders.

SECTION: 222. Juveniles:

Any juvenile committing domestic violence as defined in Section 103 shall be subject to juvenile proceedings and all other conditions outlined under the Domestic Violence Statute. Any such proceeding shall be closed.

SECTION: 223. Domestic Violence Firearms Violation:

1. Offense. Any person subject to any Protection Orders, shall not possess, use, sell, trade, or have immediate access to any firearm or ammunition.

2. Sentence. Any person convicted of domestic violence firearms, may be sentenced to a jail term not to exceed sixty (60) days, or a fine not to exceed one thousand dollars ($1,000.00), or to both, and costs. In addition, the Court may order forfeiture of the firearms and ammunition.

SECTION: 224. Denying, hindering, or delaying provision of emergency or law enforcement services to a family or household member; mandatory arrest; penalties;

It shall be a criminal offense of Hindering Emergency Services for:

Any person to use force, fear, or intimidation against a family or household member to prevent that family or household member from contacting law enforcement services, emergency medical services, or the 911 reporting system to secure appropriate law enforcement or emergency services assistance on behalf of him/herself or another; and
2. Any person to destroy, disable, conceal, or remove from the immediate premises any telephone or other telecommunications devices, or any motor vehicle or other means of transportation, with the intent to deny, hinder, delay, or prevent any family or household member from attempting to secure law enforcement or emergency services in a timely and expedient manner.
3. Any person who is convicted of, or pleads guilty to, subsection 1 or 2 shall be subject to a maximum confinement of 30 days in jail, a maximum fine of $500.00, or such confinement and fine, plus restitution for repairs to any damaged property or vehicle, plus

costs.

SECTION: 225. Required participation; information technology system:

All Tribal criminal justice agencies, including the LTBB Tribal Court, LTBB Law Enforcement, and victim services agencies for domestic violence, shall be required to actively participate in any domestic violence tracking and/or criminal information system or technology which:

1. Its primary purpose is the coordination and collection of domestic violence offender information, Protection Orders, criminal justice response records and documents, and law enforcement reports and documentation;
2. Provides for controlled and secure access by responding agencies to domestic violence;
3. Interfaces with any habitual domestic violence offender and/or Protection Orders registry implemented under the Domestic Violence Statute;
4. Provides for the gathering and dissemination of detailed statistical information reports on offenders, victim services, and agency response; and
5. Adheres to strict policies and procedures to enhance and provide for victim confidentiality and safety, and offender accountability.

CHAPTER 3 - CIVIL PROTECTION ORDERS

SECTION: 301. Requirements for an order:

1. Eligible Petitioners:
(a) Any person who is or has been a victim of domestic violence may file a petition for a Protection Orders against any person who has threatened or has committed an act of domestic violence or;
(b) Any parent, guardian, or other representative may file a petition on behalf of a child, legally incompetent person, or vulnerable adult.
2. Issuance of a Protection Order must arise from a situation of domestic violence as defined by Section 201 of this Statute.

SECTION: 302. Tribal Court approved forms required for petitions and orders; required statements in petitions and <u>orders; duty of clerk to provide petitions and clerical assistance; no fee for filing or service</u>

1. The LTBB Tribal Court system shall:
(a) Develop and adopt uniform forms for petitions and orders(b) Provide that the title of any form or order developed under this Section, whether an emergency, emergency *ex parte*, or permanent Protection Orders, shall include the words "Protection Orders"; and
(c) Provide that all petitions and forms developed and implemented under this Section address and include all requirements for compliance with full faith and credit provisions of the Violence Against Women Act, 18 USC 2265
1. In addition to any other required information, the petition for a Protection Orders must contain a statement listing all current or pending civil or criminal actions involving one or

both parties.
2. The following statements must be printed in bold-faced type and/or in capital letters on the Protection Orders:
(a) "Consequences for violation of this Protection Orders include";
(b) " The respondent is forbidden to enter or stay at the petitioner's residence, even if invited to do so by the petitioner or any other person. In no event is the Protection Orders voided by any such invitation or contact initiated by the petitioner";
(c) "Any person who is subject to a Protection Orders shall not possess, own, buy, sell, trade, or have immediate access to any firearm or ammunition, in violation of Section 206 of this Statute and Title18, United States Code, Section 922 (g) (8). Violation of firearms restrictions shall result in prosecution under Tribal and/or Federal law."
3. The Court Clerk shall provide to any person requesting a Protection Orders:
(a) The form adopted pursuant to subsection 1; and
(b) Clerical assistance in filling out the forms and filing the petition.
4. All Protection Orders must be issued on the form adopted in accordance with subsection 1.
5. There shall be no filing fees for petitions requesting a Protection Orders.

SECTION: 303. Jurisdiction:

1. The Tribal Court has jurisdiction over any actions involving Protection Orders under this Statute when a petitioner or respondent is a resident or found within the boundaries of the LTBB reservation or any act of domestic violence occurred within the boundaries of the LTBB reservation or when the Court is being asked to recognize and enforce a valid order of another court of competent jurisdiction. The Court shall construe this Section liberally to exercise maximum jurisdiction.
2. There is no minimum requirement of residency to petition for or to be granted a Protection Order.

SECTION: 304. Continuing duty to inform court of other proceedings; effect of other proceedings; delay <u>of relief prohibited; omission of petitioner's address:</u>

1. At any hearing in a proceeding to obtain a Protection Orders, each party has a continuing duty to inform the court of each proceeding for a Protection Order, any civil litigation, each proceeding in family or juvenile court, and each criminal case involving the parties, including the case name, the file number, and the Tribe, county, and/or state, including federal proceedings, if that information is known by the party.
2. A Protection Order is in addition to and not in lieu of any other available civil or criminal proceeding. A petitioner is not barred from seeking relief because of the existence of a pending action between the parties.
3. A petitioner may omit her or his address from all documents filed with the Court. If a petitioner omits her or his address, the Petitioner must provide the Court a mailing address or, in the event the Petitioner is utilizing advocacy services, the name of an advocate that has the knowledge to be able to contact the Petitioner. If disclosure of Petitioner's address is necessary to determine jurisdiction the Court may order the disclosure to be made:
(a) After receiving the Petitioner's consent;

(b) Orally and in chambers, out of the presence of the respondent and a sealed record be made; or
(c) After a hearing, if the Court takes into consideration the safety of the Petitioner and finds such disclosure is in the interest of justice.

SECTION: 305. Protection Orders; modification of orders; relief available *ex parte*; relief available after hearing; duties of the Court:

1. If it appears from a petition for a Protection Order, or a petition to modify a Protection Order, that domestic violence has occurred or a modification of a Protection Order is required, the Tribal Court may:
(a) Without notice or hearing, immediately issue a Protection Order *ex parte* or modify a Protection Orders *ex parte* as it deems necessary to protect the Petitioner; or
(b) Upon notice, issue a Protection Order or modify an order after a hearing, whether or not the Respondent appears;
2. The Court may grant the following relief *ex parte* or after a hearing: *ex parte*
(a) Enjoin the respondent from threatening to commit or committing acts of domestic violence against the Petitioner and any designated family or household member;
(b) Prohibit the Respondent from harassing, annoying, telephoning, contacting, or other communicating with the Petitioner directly or indirectly through friends, relatives, or co-workers;
(c) Remove and exclude the Respondent from the residence of the Petitioner, regardless of ownership of the residence or lessee of record;
(d) Order the Respondent to stay away from the residence, school, or place of employment of the Petitioner, or any specified place frequented by the Petitioner and any designated family or household member;
(e) Seize and prohibit the Respondent from using or possessing a firearm or other weapon specified by the Court;
(f) Order possession of the parties' residence and use of or ownership of any vehicle and other essential personal effect, regardless of the ownership, and direct the appropriate law enforcement officer to accompany the Petitioner to the residence of the parties to ensure that the Petitioner is safely restored to possession of the residence, vehicle, and other personal effects, or to supervise the Petitioner or Respondent's removal of personal belongings;
(g) Prohibit the destruction, liquidation or disposal of any and all joint assets or property and any and all specific assets or property of the Petitioner;
(h) Grant temporary custody of any minor children to the Petitioner, including custody to any petitioner currently residing in a shelter or safe home; and
(i) Order such other relief as it deems necessary to provide for the safety and welfare of the Petitioner and any designated family or household member.
3. The Court may grant the following relief in a Protection Order or a modification of an order after notice and hearing, whether or not the respondent appears:
(a) Grant the relief available in accordance with subsection 2;
(b) Specify arrangements for visitation of any minor child by the respondent and require supervision of that visitation by an independent third party or deny visitation if necessary to protect the safety of the Petitioner and/or child;

(c) In specifying visitation arrangements, the Court shall consider the Respondent's overall lifestyle, especially as it pertains to alcohol and other chemical use;
(d) Order the Respondent to:

i. Pay any special legal fees,

ii. Pay rent or make payment on a mortgage on the Petitioner's residence and pay for the support of the Petitioner and minor child if the Respondent is found to have a duty to support the Petitioner or minor child-,

iii. Reimburse the Petitioner or other person for any expenses associated with the domestic violence incident, including but not limited to medical expenses, counseling, shelter, and repair or replacement of damaged property; and

iv. Pay any LTBB fees incurred by the Petitioner in bringing the action;

4. The Court shall:
(a) Cause the order to be delivered to Tribal Law Enforcement or other appropriate person(s) and/or agency for service and entry into the Law Enforcement Information System (LEIN) system;
(b) Make reasonable efforts to ensure that the Protection Order is understood by the Petitioner, and the Respondent, if present; and
(c) Transmit, by the end of the next business day after the order is issued, a copy of the Protection Order to the local law enforcement agency or agencies designated by the Petitioner.
5. A Protection Order issued *ex parte* or upon notice and hearing, or a modification of a Protection Orders issued *ex parte* or upon notice and hearing, is effective until further order of the Court. If an *ex parte* order is entered, a hearing shall be scheduled within 14 days to allow the Respondent to respond to the petition. It shall be noted in bold or capital letters on the *ex parte* order:
(a) Advising the Respondent that, "If a Protection Order is granted after a hearing, this *ex parte* order shall remain in effect until service is completed."
(b) Advising the Respondent that, "If you fail to appear at the hearing regarding the Protection Order, the Court may issue a default judgment granting the relief requested
6. The LTBB Law Enforcement shall provide expedited service for Protection Orders.

SECTION: 306. Issuance of a Protection Order after a hearing; duration of order; expiration date required:

Any Protection Order issued under this Chapter, upon notice and opportunity to appear, shall be issued for an expressed period of time based on the individual circumstances of the matter. For the purpose of Full Faith & Credit compliance and enforcement, all such orders must include an expiration date, not to exceed ninety-nine (99) years.

SECTION: 307. Required hearings; service; duty of court when Protection Order denied:

1. Except as otherwise provided in subsection 2, if the Court issues an *ex parte* Protection Order or a modification of an *ex parte* Protection Order and the Court provides relief pursuant to subsection 2 of section 305, the Court shall set a date for a hearing within fourteen (14) days.
2. The Law Enforcement Department shall expedite service of a Protection Order. If the

Law Enforcement Department fails to effect personal service with in three (3) days it shall notify the Court. The Court shall then order alternative service.
3. If personal service cannot be completed, the Court shall notify the Respondent by mail, at the last and best known address of the Respondent and/or Petitioner, of the date and time of the hearing for a Protection Order.
4. The Court Clerk shall be responsible for forwarding a copy of the *ex parte* order to the jail for service before the Respondent's release on any related charge(s).

SECTION: 308. Petitioner cannot violate their own Protection Order.
Petitioner cannot be considered by any invitation as having violated, or be subject to arrest for a violation of their own Protection Order.

SECTION: 309. Mutual Protection Orders prohibited.

The Court shall not grant mutual Protection Orders.

SECTION: 310. Court-ordered and court-referred mediation of cases involving domestic violence prohibited:

The Court shall not order parties into mediation or any type of counseling, alternative justice, restorative justice, peace-making, circle sentencing, traditional Odawa ceremonies, or any other mediation type of situation that would put the Petitioner in the position of dealing directly with the Respondent, even if the Petitioner has the right to refuse to participate, for resolution of the issues in a petition for a Protection Order.

SECTION: 311. Court costs and fees:

Fees for filing and service of process shall not be charged for any proceeding seeking only the relief provided in this Chapter.

SECTION: 312. Court responsibilities; notification of assistance available to victims of domestic violence:

The Court shall inform any petitioner for relief under this Chapter about any services and advocacy available without regard to the victim's employment, economic, educational, mental or physical health, social, or political status.

SECTION: 313. Enforcement of foreign Protection Orders:

1. Tribal Law Enforcement shall enforce any foreign Protection Order as they would enforce a Protection Order issued by the Tribal Court.
2. Law enforcement officers shall attempt to verify the existence and/or validity of any foreign Protection Order by any means available. In the event that the victim does not

have a copy of the order, the officer cannot verify the order, or the copy is not clear enough to determine its validity, the officer may arrest the subject on any applicable violation of Tribal law, and shall assist the victim in obtaining verification of the order and/or explaining the procedure for obtaining a Protection Order. The law enforcement officer shall also offer other assistance as provided in Section 204.
3. Under this section, the Court shall utilize the penalties and procedures provided in Chapter 2 for the enforcement of Protection Orders.
4. In accordance with Section 206, any violations of a foreign Protection Orders shall be acted upon in the same manner as if the Protection Orders were issued by the LTBB Tribal Court and in accordance with the full faith and credit provisions of Title 18 USC 2265.
5. Law enforcement and criminal justice system personnel shall enter valid foreign Protection Orders within the Tribal Court.
6. Law enforcement and criminal justice system personnel shall encourage persons possessing foreign Protection Order to file the foreign order with the LTTB Tribal Court.
7. Facsimile copies which meet the requirements of Title 18, United States, Section 2265 shall be recognized as valid verification of foreign Protection Orders for the purpose of enforcement under this section.

SECTION: 314. Tribal Registry for Protection Orders:

1. To ensure the proper and timely enforcement of all LTBB Tribal Protection Orders, and any foreign orders falling within its purview and jurisdiction, the LTBB Tribal Court shall provide for a registry that shall be a record of all Protection Orders issued by or registered with the LTBB Tribal Court. The Court Clerk shall provide the law enforcement dispatch centers with certified copies of Protection Orders within the same day of issuance.
2. The Court shall coordinate with, and ensure that any LTBB Tribal Protection Orders are submitted to any other registries, whether federal, state, Tribal, or local, for the purpose of enhancing full faith and credit enforcement of all Protection Orders, including provisions to enter the Protection Orders in the National Crime Information Center (NCIC) database.
3. The Court Clerk shall also immediately provide the dispatch centers and designated registry with certified copies and information concerning any modifications, revocations, withdrawals, and/or expired, Protection Orders.
4. The Court shall provide that information contained in the registry shall be available on a 24-hour basis to any court, law enforcement agency, or domestic violence program.

CHAPTER 4 – CUSTODY, VISITATION & MEDIATION FOR FAMILY AND CHILDREN CASES

SECTION: 401. Presumptions concerning custody:

In every proceeding where there is a dispute as to the custody of a child, it is not in the

best interest of the child to be placed in custody with the perpetrator of domestic violence.

SECTION: 402. Factors in determining custody and visitation:

The Court will consider the best interest of the child in determining custody in matters of domestic violence. It is in the best interest of the child to reside with the parent who is not a perpetrator of domestic violence, in the location of that parent's choice.

SECTION: 403. Mediation prohibited in cases involving domestic violence:

The Court shall not order parties into mediation or any type of counseling, alternative justice, peace-making, circle sentencing, traditional Odawa ceremonies or any other mediation type of situation that would put the petitioner in the position of dealing directly with the respondent for resolution of the issues in a petition for custody, even if the petitioner has the right to refuse to participate.

CHAPTER 5 - STALKING

SECTION: 501. Purpose:

The stalking provision of the LTBB Domestic Violence Statute is construed to promote the fact that the active stalking of another, is a basic and often primary activity used by domestic violence offenders to establish, or re-establish, control over domestic violence victims. Through the pursuit or following of the victim by the perpetrator, the risk to the victim of being physically assaulted by the stalker is greatly increased. The goal of this section is to provide safety and protection to victims, potential victims, and to set standards of behavior within the family.

SECTION: 502. Stalking Defined:

A person is guilty of stalking if s/he, either directly or through a third party, willfully, maliciously and repeatedly follows or harasses another person, and who is perceived to constitute a credible threat and, by such perception places a person in reasonable fear of his/her safety, or the immediate safety of his/her family.

1. "Credible threat" means a verbal or written threat, or a threat implied by a pattern of conduct, or combination of such verbal/written statements and conduct, either directly or through a third party, made with the intent to place the person who is the target of the threat in reasonable fear of his/her safety. The main standard for establishing a credible threat is the victim's perception of a threat to his/her safety. The second criteria will be the apparent ability of the defendant to carry out the threat, whether verbal, written, or

implied through a willful pattern of conduct. The third standard is the ability to identify and relate a pattern of corroborated stalking behavior.
2. "Harass" means a knowing and willful pattern of conduct directed at a specific person, either directly or through a third party, which seriously alarms, annoys, torments, or terrorizes the person, and which serves no legitimate purpose. Harassing behavior can include but is not limited to:
(a) Vandalism;
(b) Annoying or threatening telephone calls;
(c) Following or other violations of a Protection Order;
(d) Actual Assaults;
(e) Sending unwanted letters;
(f) Sending unwanted electronic mail, or any other form of electronic communication;
(g) Sending unwanted messages or threats through third parties;
(h) Showing up at a victim's home or workplace;
(i) Attempting to obtain private information about the victim through others;
(j) Leaving gifts for the victim;
(k) Disabling or otherwise tampering with the victim's vehicle;
(l) Taking mail from the victim's mailbox;
(m) Entering the victim's home or place of residence whether the victim is there or not there;
(n) Parking near or driving by the victim's residence or workplace for no legitimate reason; and
(o) Using agencies or institutions in a manner that constitutes a pattern of conduct consistent with retaliation or harassment, by initiating investigations, restrictions or sanctions against the victim.
3. "Pattern of conduct" means conduct which has caused the victim to suffer substantial emotional distress or fear. This course of conduct should contain a series of acts carried out by the defendant over a period of time, however short, which demonstrates a continuity of purpose (i.e., to annoy, harass, follow, etc.), and which would cause a reasonable person to suffer like emotional distress or fear.
4. "Family" means any spouse, parent, child, stepparent, stepchild, grandparent, grandchild, or significant other person or relative with whom the victim has a familial relationship, or who resides with the victim or any other relationship as defined in LTBB Domestic Violence Statute, Section 102.(2).
5. "Corroborating stalking conduct" means any evidence of harassing behavior, physical evidence at the scene, records, documents, letters, unsubstantiated alibis, recorded messages, police reports, prior stalking convictions, witness information, or any other information, which would indicate a willful pattern of conduct or threat.

SECTION: 503. Stalking; Penalties:

1. A person found guilty of stalking shall be subject to a penalty of not more than sixty (60) days in jail, a fine not to exceed $500, or both fine and imprisonment.
2. A person guilty of a second or subsequent offense, within five (5) years of the first offense, shall be subject to a penalty of not less than ninety (90) days in jail, a fine not to exceed $500, or both fine and imprisonment.

CHAPTER 6 - FIREARMS DISQUALIFICATION

SECTION: 601. Purpose:

It shall be the purpose of this chapter to prohibit any person who has been convicted of a felony or misdemeanor offense of domestic violence/abuse, as defined under Section 102 of this Domestic Violence Statute, under Tribal, state or federal law, or any person who is subject to an Protection Order based upon a finding that the person represents a credible threat of violence to the victim, under Tribal, state or federal law, to possess, own, sell, trade, or have immediate access to a firearm.

SECTION: 602. Firearm possession, dealing, or access prohibited.

It shall be unlawful for any person to possess, own, sell, trade, or have immediate access to a firearm who:

1. Is subject to any court order from a court of competent jurisdiction that restrains such person from assaulting, harassing, stalking or threatening a family or household member as defined in Section 102. (2) or engaging in any other conduct that would place a family or household member in reasonable fear of bodily injury to the household or family member, except that this paragraph shall apply only to an order that:
(a) Was issued after a hearing, of which such person received actual notice and had the opportunity to participate;
(b) Included a finding that such person represented or represents a credible threat to the physical safety of a household or family member; and
(c) By its terms explicitly prohibits the use, attempted use or threatened use of physical force against another family or household member.
2. Has been convicted in state, federal or Tribal court of any crime involving domestic violence/abuse, as defined in Section 102 of this Statute, which involved the use or attempted use of physical force, or the threatened use of physical force, or the threatened use of a deadly weapon against a household or family member as defined in Section 102. (2).

SECTION: 603. Penalties; forfeiture of firearms:

(a) A violation of Section 602 shall constitute a misdemeanor offense and shall be punishable by not more than 90 days in jail, $500 fine, or both jail time and fine.

(b) A violation of Section 602 shall result in the forfeiture of firearms.

CHAPTER 7 – DOMESTIC VIOLENCE ADVOCATES

SECTION: 701. Purpose:

The Tribe recognizes that advocating for those who have been the victims of domestic violence can be a dangerous situation for the advocate because of the potential for violence on the part of the perpetrator. This Chapter makes it a crime for any person to harass, annoy or intimidate an advocate for a domestic violence victim with the intent to interfere with the rights of the victim of domestic violence to pursue any civil or criminal remedies she may have in a court of law. It also provides for an enhanced penalty for any person committing a crime of violence against an advocate because of his or her advocacy for a victim of domestic violence.

SECTION: 702. Harassment of a Domestic Violence Advocate; misdemeanor offense:

It shall be unlawful for any person to commit the following acts against a domestic violence advocate:
1. To harass, annoy, intimidate, make any written threat, verbal threats, or electronically communicated threat, a domestic violence advocate for the purpose of interfering with the right of any victim of domestic violence to obtain a civil protection order or pursue criminal charges against a perpetrator of domestic violence; and/or
2. To harass, annoy, intimidate, make any written threat, verbal threats, or electronically communicated threat, to a domestic violence advocate which places the advocate in apprehension of bodily injury, in retaliation for that advocate's representation of a domestic violence victim.

SECTION: 703. Harassment of a Domestic Violence Advocate; penalties:

Any person making a judicial admission to, pleading guilty to, or found guilty of a violation of Section 702 of this Statute shall be guilty of the misdemeanor offense of Harassment of a Domestic Violence Advocate and shall be subject up to 30 days in jail, a $250 fine or both.

SECTION: 803. SEVERABILITY CLAUSE

If any clause, section or part of this Statute is declared invalid by the Tribal Court, such shall not render invalid the remainder thereof, but shall be confined in its operation to the offending section.

SECTION: 904. 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 passes by the Tribal Council of the Little Traverse Bay Bands of Odawa Indians at a regular meeting of the Tribal Council held on July 23, 2006 at which a quorum was present, by a vote of 8 in favor, 0 opposed, 0 abstentions, 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: 7/23/06 Beatrice A. Law

Beatrice A. Law, Legislative Leader

Date: 7/23/06

Melvin L. Kiogima, Secretary

Received by the Executive Office on 7-24-06 by Ellen Payne

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: 7-25-2006

Frank Ettawageshik, Tribal Chairperson