

Chapter 33. Tribal Prosecutor

6.3301 SHORT TITLE

This Statute may be cited as the “Tribal Prosecutor Statute”, and repeals and replaces any prior Statute or resolution or amendment to same.

(Source: WOS 2011-006, March 22, 2011, Section I)

6.3302 PURPOSE

The purpose of this Statute is to establish Tribal standards and ethics for the prosecution of crimes and the representation of the Tribe in Child Welfare matters.

- A.** Little Traverse Bay Bands of Odawa Indians finds protecting the Prosecutor from influence is necessary for the portion of the Prosecutors duties of conducting criminal investigations and prosecutions.

- B.** Little Traverse Bay Bands of Odawa Indians finds that it is paramount in exercising its rights to promote the efforts of law enforcement to protect the community, conduct investigations and to apprehend those who commit crimes through the authority of the Office of the Prosecutor.

- C.** Little Traverse Bay Bands of Odawa Indians find that it is paramount in exercising its rights to prescribe the best interest of the Tribe by promoting the stability and security of it families.

(Source: WOS 2011-006, March 22, 2011, Section II)

6.3303 DEFINITIONS

- A.** “Best Interests of the Child” means the sum total of the following factors to be considered, evaluated, and determined by the Court:
 - 1.** The love, affection, and other emotional ties existing between the parties involved and the child;

2. The capacity and disposition of the parties involved to give the child love, affection, and guidance and to continue the education and raising of the child in his or her religion or creed, if any;
 3. The capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of the Tribe in place of medical care, and other material needs;
 4. The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity;
 5. The permanence, as a family unit, of the existing or proposed custodial home or homes;
 6. The moral fitness of the parties involved;
 7. The mental and physical health of the parties involved;
 8. The home, school, and community record of the child;
 9. The reasonable preference of the child, if the Court considers the child to be of sufficient age to express preference;
 10. The willingness and ability of each of the parties to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent or the child and the parents;
 11. Domestic violence, regardless of whether the violence was directed against or witnessed by the child; and
 12. Any other factor considered by the Court to be relevant.
- B.** “Best Interest of the Tribe” means the Tribe’s interest in protecting the best interests of Indian children and to promote the stability and security of Indian tribes and families.
- C.** “Chief of Police” means the Chief of the Little Traverse Bay Bands of Odawa Indians Law Enforcement;

- D. “Indian” means a person who a member of a federally recognized Indian Tribe;
- E. “Indian Tribe” means any federally recognized Tribe;
- F. “Prosecutor” means the person identified within the Tribal Constitution to represent the Tribe in child welfare matters and violations of Tribal law, Article X (A) and such assistant Prosecutors.
- G. “Territorial Jurisdiction of the Little Traverse Bay Bands of Odawa Indians” means “areas referenced in Public Law 103-324, 25 USC Section 1300k-2(b)(2)(A) as the boundaries of *the reservations for the Little Traverse Bay Bands as set out in Article I, paragraphs ‘third and fourth’ of the Treaty of 1855, 11 Stat.621.*” Little Traverse Bay Bands Constitution, Article V(A)(1)(a).
- H. “Tribal Child/Children” means a child who is enrolled Citizen of the Little Traverse Bay Bands of Odawa Indian or eligible for enrollment;
- I. “Tribal Constitution” means Constitution of the Little Traverse Bay Bands of Odawa Indians as adopted on February 2, 2005.
- J. “Tribal Council” means the Tribal Council of the Little Traverse Bay Bands of Odawa Indians.
- K. “Tribal Court” means the Little Traverse Bay Bands of Odawa Indians Tribal Court;
- L. “Tribe” means the Little Traverse Bay Bands of Odawa Indians;

(Source: WOS 2011-006, March 22, 2011, Section III)

6.3304 APPOINTMENT AND COMPENSATION

- A. In accordance with the Tribal Constitution, the Tribal Chair shall receive, prepare and submit nominations to the Tribal Council for consideration for the appointment of the Prosecutor.

- B.** The Prosecutor shall be appointed by an affirmative vote of six of the nine Tribal Council members and such appointments shall be for a three year term, without limitations on reappointment.
- C.** Assistant Prosecutors shall be appointed by an affirmative vote of six of the nine Tribal Council members and such appointments shall be for a two year term without limitations on reappointment.
- D.** The Prosecutor and Assistant Prosecutors shall be compensated in accordance with the Constitutionally Mandated Compensation Statute and any amendments therein.

(Source: WOS 2011-006, March 22, 2011, Section IV)

6.3305 QUALIFICATION

- A.** Any person shall be eligible to serve as Prosecutor only if he/she:
 - 1.** Is an attorney in good standing licensed to practice law in Tribal Court and any state in the United States;
 - 2.** Applicable Indian Preference laws shall apply to this position;
- B.** The Prosecutor may be removed in accordance with Section XII, for failure to maintain such listed qualifications.

(Source: WOS 2011-006, March 22, 2011, Section V)

6.3306 PROSECUTOR'S OFFICE

- A.** The Prosecutor's office shall function as an independent office, separate from the three branches of government
- B.** The Prosecutor shall develop and implement office policies and procedures for purchasing, and personnel, etc., in accordance with standard administrative and accounting practices.

- C. The Prosecutor shall have the authority to hire administrative staff, subject to budget approval by the Tribal Council.

(Source: WOS 2011-006, March 22, 2011, Section VI)

6.3307 FUNDING

- A. The Prosecutor shall submit an annual budget directly to the Tribal Council in accordance with the Budget Formulation Statute, or such future Statute as amended.
- B. The Prosecutor may apply for grants and other funding that enhances the functions of the office in accordance with applicable laws and/or policies.

(Source: WOS 2011-006, March 22, 2011, Section VII)

6.3308 DUTIES OF THE PROSECUTOR

- A. The Tribal Prosecutor shall:
 - 1. Be the Chief Law Enforcement Officer of the Tribe and shall represent the Tribe in all criminal investigations and prosecutions in Tribal Court, including, but not limited to:
 - a. Reviewing all charges and complaints of violations of the Tribal Criminal Laws or such other laws or Statutes as authorized by such law or Statute.
 - b. Having the discretion to prosecute violations of the Tribal Criminal Laws and such other laws or Statutes as authorized by such law or Statute by determining whom to charge and what charges to bring.
 - c. Reviewing all requests for arrest warrants and search warrants to determine if all Constitutional and legal requirements are satisfied prior to approval or authorization.
 - d. Having the authority to issue subpoenas for compelling or producing documentation in investigations.

- e. Having the authority to grant immunity to a witness.
- 2. Represent the Tribe in juvenile delinquency matters.
- 3. Represent the Tribe in Indian child welfare matters in both Tribal Court and State Court proceedings and:
 - a. Shall advocate for the best interest of the Tribe;
 - b. Shall make certain that all placements of Indian children be in accordance with Tribal preference for child placement;
 - c. Shall intervene in all State Court cases involving Tribal children involved in Indian child welfare cases on behalf of the Tribe;
 - d. Shall request a transfer from State Court to Tribal Court if placement of the Tribe's children does not confirm to the Tribe's placement preferences;
 - e. Any exceptions to this Section shall be reported immediately to Tribal Council in writing.
- 4. Establish a working relationship with tribal, local, state and federal jurisdictions to establish a protocol for coordinating criminal investigations, prosecutions and child welfare matters.

(Source: WOS 2011-006, March 22, 2011, Section VIII)

6.3309 APPOINTMENT OF SPECIAL PROSECUTOR

A. In the case of either a conflict of interest or where the Prosecutor is unavailable, the Special Prosecutor also known as the Assistant Prosecutor shall have all of the authority of the Tribal Prosecutor in the handling of matters or cases within the limited purpose as set forth in this section.

B. The Prosecutor shall recuse him or herself from any matter or case as the Prosecutor deems appropriate based on conflict of interest or where a Court of competent jurisdiction, upon motion of an interested party or on its own motion, finds a conflict of interest.

C. Unavailable, within this section, shall mean death, incapacity, vacancy, or unavailable or unresponsive by phone, electronic communications, or other means for a period of not less than 24 hours and the matter needs to be addressed within 48 hours or the Tribe will suffer detrimental harm or the matter needs immediate attention within a 24 period or the Tribe will suffer detrimental harm.

D. Every two years, the Tribal Chair shall provide nominations for Special Prosecutor/Assistant Prosecutor for Tribal Council approval. Such nomination shall meet the qualifications as set forth in Section V of this Statute and shall be approved in accordance with the Tribal Constitution. The Special Prosecutor/Assistant Prosecutor shall only serve for the limited purpose of handling matter or cases that involve a conflict of interest for the Prosecutor or a vacancy in the Prosecutor position during the two year appointment.

E. The Special Prosecutor/Assistant Prosecutor shall have all of the authority of the Tribal Prosecutor in the handling of matters or cases within the limited purpose as set forth in this section.

(Source: WOS 2012-014, August 19, 2012, Section IX)

6.3310 SPECIAL ETHICAL CONSIDERATION OF THE PROSECUTOR

A. The Prosecutor shall:

- 1.** Refrain from prosecuting a charge that the Prosecutor knows is not supported by probable cause;
- 2.** Make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining counsel and has been given reasonable opportunity to obtain counsel as permitted by the Indian Civil Rights Act [25 U.S.C. Section 1302];
- 3.** Not seek to obtain from an unrepresented accused a waiver of important pretrial rights;
- 4.** Make timely disclosure to the defense of all evidence or information known to the Prosecutor that tends to negate the guilt of the accused or mitigates the degree of

the offense, and, in connection with sentencing, disclose to the defense and to the Court all unprivileged mitigating information known to the Prosecutor, except when the Prosecutor is relieved of this responsibility by a protective order of this Court;

5. Refrain from making extrajudicial statements that a reasonable person would expect to be disseminated by means of public communication and that does more than state without elaboration:
 - a. Information contained in a public record;
 - b. That the investigation is in progress;
 - c. The general scope of the investigation including a description of the offense, and if permitted by law, the identity of the victim;
 - d. A request for assistance in apprehending a suspect or assistance in other matters and the information necessary to the request for assistance; or
 - e. A warning to the public of any dangers.
 6. Exercise reasonable care to prevent investigators, law enforcement, employees, or other persons assisting or associated with the Prosecutor in a criminal case from making an extrajudicial statement.
 7. Not receive any fee or reward from or on behalf of any victim or other individual for services in any prosecution or business which it is the Prosecutor's official duty to attend.
 8. Not hold any other Tribal elected or Judicial office while in office as the Prosecutor.
 9. Not appear for or defend any person that was previously charged or issued an arrest warrant by the Prosecutor.
- B.** Prosecutors have a duty to not be dissuaded from making difficult or unpopular decisions. Prosecutors have a responsibility to study the applicable law and factors. They must not be influenced in making these decisions by the fear of being unpopular politically or from the threat of community or personal reprisal. They must not be influenced by threatening community or family anger. Their decisions should never be reactive to non-admissible

influences, rather they should act based on their opinion as formed by the applicable facts and law of each case.

- C.** The political activity of a Prosecutor shall be consistent with the support of the Tribe's jurisdictional rights. Tribal Prosecutors will refrain from all political activities or actions which could be interpreted in the community as supporting any political position except that the Tribe's right and responsibility to govern its own Citizens and its own territory. All actions should be consistent with this belief and supportive of this standard. This prohibition does not mean that Prosecutors cannot, if they choose, engage in activities of electoral politics at the local, state, national or tribal level. This prohibition is specific as to politics adversely affecting the jurisdictional rights of the Tribe.
- D.** A Prosecutor may write, lecture, teach and speak on any subject, and engage in the arts, sports, and other social and recreational activities of the Tribe, if those activities do not interfere with the performance of his or her duties.
- E.** A Prosecutor shall avoid financial and business dealings that tend to reflect adversely on his or her impartiality, interfere with the performance of his or her Prosecutorial duties, exploit the Prosecutor's position, or involve him or her in frequent transactions with lawyers and others likely to be involved in the opposing side in court cases. The Prosecutor may, however, hold other employment or participate in the operation of a business.
- F.** Neither the Prosecutor nor any member of his or her family or household shall accept a gift, bequest, favor, or loan from anyone which would affect or appear to affect his or her impartiality in Prosecutorial duties, or on the Prosecutor's appearance of fairness.
- G.** A Prosecutor shall disqualify himself or herself from acting as Prosecutor in any proceeding in which his or her impartiality might reasonably be questioned, including instances where:

 - 1.** The Tribal Prosecutor has a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts;
 - 2.** The Tribal Prosecutor served as lawyer, advocate, or personal representative in the matter before the Court, or a person with whom the Tribal Prosecutor has been

associated with in a professional capacity served as a lawyer, advocate or personal representative concerning the matter;

3. The Tribal Prosecutor knows that he or she individually or a member of his or her family or household has a financial interest in the subject matter in controversy or is a party to the proceeding, or has any other interest that could be substantially affected by the proceedings; or
4. The Prosecutor or a member of his or her family or household:
 - a. Is a party to the proceeding, or an officer, director, or trustee of a party;
 - b. Is acting as a lawyer or lay advocate in the proceeding; or
 - c. Is to the Prosecutor's knowledge likely to be a material witness in the proceeding.

H. The Prosecutor shall be subject to the Constitutionally Mandated Rules of Conduct for Officials of Tribal Government.

(Source: WOS 2011-006, March 22, 2011, Section X)

6.3311 CRIMINAL INVESTIGATIONS

The Prosecutor shall be notified of any and all criminal investigation that potentially may involve violations of tribal law, including investigations by federal, state or local authorities.

(Source: WOS 2011-006, March 22, 2011, Section XI)

6.3312 NOT TO ACT IN CIVIL MATTER

The Prosecutor shall not act or represent the Tribe in civil matters, unless authorized by Law or Statute or prior approval of the Tribal Council, except as provided in article X, § A of the Tribal Constitution.

(Source: WOS 2011-006, March 22, 2011, Section XII)

6.3313 NOTICE AND REPORTING REQUIREMENTS

All notices received by the Tribe for State Court Child Welfare proceedings, as required by the Indian Child Welfare Act, shall be immediately forwarded to the Tribal Prosecutor.

(Source: WOS 2011-006, March 22, 2011, Section XIII)

6.3314 REMOVAL OF TRIBAL PROSECUTOR

- A.** A Prosecutor may only be removed by a vote of six of the nine members of Tribal Council for one or more of the following reasons:
- 1.** Unethical conduct as defined by this Statute or any other applicable Code of Conduct adopted by the Tribal Council or Tribal Court.
 - 2.** Physical or mental disability which prevents the performance of his or her duties.
 - 3.** Persistent failure to perform duties in a timely manner.
 - 4.** Gross misconduct that is clearly prejudicial to the administration of justice.
 - 5.** Fails to maintain the requirements for qualifications found in Section V.
- B.** The Prosecutor shall be given adequate notice of any proceeding for removal and shall have an opportunity to examine the evidence against them, offer evidence in their favor, call witnesses in their favor, examine witnesses, and address the body conducting the removal proceeding.

(Source: WOS 2011-006, March 22, 2011, Section XIV)

6.3315 SAVINGS CLAUSE

In the event that any section, subsection or phrase of this Statute is found by a court of competent jurisdiction to violate the Constitution or laws 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.

(Source: WOS 2011-006, March 22, 2011, Section XV)

6.3316 EFFECTIVE DATE

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

(Source: WOS 2011-006, March 22, 2011, Section XVI)