

## Chapter 1. Interim Criminal Code

### 9.101 JURISDICTION

**A. Definition.** The criminal jurisdiction of the Little Traverse Bay Bands of Odawa Indians (also referred to in this Code as "Bands" and/or "LTBB") is its power to prohibit certain conduct, as a matter of public policy, within its territory.

**B. Power Implemented.** That power is exercised by enacting this Code and by punishing people who violate its laws.

**C. Territorial Extent.** The criminal jurisdiction of the Little Traverse Bay Bands of Odawa Indians shall extend to:

1. all lands and waters described in Article 1 Third and Article 1 Fourth of the Treaty of Detroit of July 31, 1855, 11 Stat. 621;
2. all trust land held now or in the future by the United States for the benefit of the Little Traverse Bay Bands of Odawa Indians;
3. the activities of Band members when exercising treaty hunting and fishing rights wherever such activity occurs.

**D. Persons Under LTBB Criminal Jurisdiction.** The criminal jurisdiction of LTBB shall extend to:

1. all members of LTBB, and
2. all other Indians present within the areas described in Section I (C) of this Code.
3. The criminal jurisdiction of LTBB shall only extend to adults. However, upon motion of the tribal prosecutor, the judge may, in his/her discretion, try a minor as an adult.

### COMMENTS

LTBB, as a sovereign tribal entity, possesses the power to regulate conduct within its territory. The criminal jurisdiction of LTBB, its power to prohibit certain conduct within its territory and to punish those who violate its laws, has been limited by the United States Congress and the United States Supreme Court in the following ways:

- (1) The Major Crimes Act (MCA), 18 U.S.C. Section 1153, originally enacted by the U.S.

Congress in 1885, gives the federal government jurisdiction over certain enumerated "major crimes" committed by one Indian against the person or property of another in Indian country. These crimes include murder, manslaughter, kidnaping, rape, statutory rape, involuntary sodomy, assault with intent to commit rape, incest, assault with intent to commit murder, assault with a deadly weapon, assault resulting in serious bodily injury, arson, burglary and robbery. The MCA has backfired to a large extent, because many of these crimes committed in Indian Country now go unpunished. The federal government has not devoted adequate resources to enforce the MCA, so federal prosecutors are reluctant to prosecute crimes that fall under the MCA. Indian tribes retain concurrent jurisdiction over these crimes. These "major crimes" are thus included in this Code to ensure that those who commit major crimes in LTBB territory are not allowed to go unpunished.

- (2) The Indian Civil Rights Act (ICRA): The ICRA, 25 USC Section 1302, was enacted by Congress in 1968. It makes many of the protections included in the United States Constitution's Bill of Rights applicable to the conduct of Indian tribes. It also limits the punishment that an Indian tribe may impose to a one (1) year jail term or to a fine of \$5,000.00, or both.
- (3) Non-Indians: Under Oliphant v Suquamish Indian Tribe 435 US 191 (1978), an Indian tribe cannot try a non-Indian in Tribal Court. This Code, therefore, states that LTBB criminal jurisdiction shall only be exercised over Band members and other Indians present within LTBB's territory.

It is no longer debatable that LTBB can exercise jurisdiction over its members when exercising treaty hunting and fishing rights, regardless of whether such activity occurs within "Indian Country."

(Source: WOS 2021-003, April 20, 2021, Section I)

## 9.102 DEFINITIONS

For purposes of this Criminal Code:

- A. **Indian.** "Indian" means any person who is either:
  1. a member of the Little Traverse Bay Bands of Odawa Indians;
  2. a member of any federally-recognized Indian tribe, band, or group; or
  3. any person of Indian blood who is generally considered to be an American

Indian by the Little Traverse Bay Bands of Odawa Indians community.

**B. Mental State: Malice.** A person acts "maliciously" or "with malice" when that person consciously formulates a plan to injure the person or property of another and takes steps to carry out such plan.

**C. Mental State: Intent.**

1. A person acts "intentionally" or "with intent" with respect to conduct when it is that person's conscious desire to engage in certain conduct.

2. A person acts "intentionally" with respect to a result when it is that person's conscious desire that the conduct cause such result.

**D. Mental State: Knowledge.** A person acts "knowingly" or "with knowledge" when that person is aware of his/her actions and the probable consequences of such actions.

**E. Mental State: Wanton or Reckless.** A person acts "wantonly" or "recklessly" when that person is aware, or should be aware, that certain conduct will endanger the health, safety, or property of others but persists in engaging in the conduct despite the risks.

**F. Mental State: Negligent.** A person acts "negligently" or "with neglect" when that person acts in a manner that endangers the safety or property of others without exercising the care that a reasonably prudent person would exercise under the same or similar circumstances.

**G. Minor.** A minor is any person under eighteen (18) years of age.

**H. Adult. for Purposes** of criminal jurisdiction an adult is any person eighteen (18) years of age or older.

**I. Motor Vehicle.** Motor vehicle means any car, truck, motorcycle, or other motor-operated vehicle.

#### COMMENTS

This Section of the Code includes definitions of five (5) different mental states. One of

these mental states is an essential element of any given crime.

(Source: WOS 2021-003, April 20, 2021, Section II)

### **9.103 REQUIREMENTS FOR CONVICTION**

**A. Culpability.** A person shall not be guilty of an offense unless that person acted intentionally, maliciously, knowingly, recklessly or negligently as the law requires with respect to each material element of the offense; provided that any material element of an offense that does not require a mental state may be established by proving that the person participated in the prohibited conduct regardless of his/her state of mind.

**B. Proof.** No person may be convicted of an offense unless each element of the offense is proved beyond a reasonable doubt.

**C. Intoxication.**

1. Intoxication is not a defense unless it negates an element of the offense.
2. Self-induced intoxication cannot negate the element of recklessness.

**D. Statute of Limitations.** No person shall be prosecuted, tried or punished for any criminal offense unless the prosecution is initiated within one (1) year after both of the following conditions have been met:

1. discovery that an offense has been committed, and
2. discovery of the identity of the person who allegedly committed the offense.

**E. Multiple Counts.** When the conduct of a defendant establishes the commission of more than one offense, the defendant may be prosecuted for each such offense, unless:

1. one offense consists only of an attempt to commit the other;
2. inconsistent findings of fact are required to establish commission of the offenses; or
3. the offenses differ only in that one prohibits a designated kind of conduct generally, and the other prohibits a specific instance of such conduct.

## COMMENTS

This Section states that a person cannot be guilty of an offense unless that person acted with the requisite mental state, if a mental state is specified in the offense. For instance, to be convicted of battery it must be shown that a person intentionally struck another. If a person inadvertently bumps into another, he/she cannot be convicted of battery, because he/she did not act with intent.

Section **III (B)** states that in order to convict a person of an offense, each element must be proved beyond a reasonable doubt. Beyond a reasonable doubt means more than a mere likelihood. It means that the evidence as presented makes it virtually impossible for any other conclusion to be reached. Each element must be proved beyond a reasonable doubt. For instance, in order to convict a person of improper influence of an official, **VII (H)(2)**, it must be proved beyond a reasonable doubt that the person (1) threatened harm to a tribal official, and (2) did so with the intent of influencing such person's official actions.

Section **III (C)** makes clear that intoxication in itself is not a viable defense. However, under certain circumstances it may negate an element of the offense, such as intent or knowledge. However, self-induced intoxication can never negate the element of recklessness. A person can act recklessly whether or not that person is aware of what he/she is doing.

(Source: WOS 2021-003, April 20, 2021, Section III)

### **9.104 AFFIRMATIVE DEFENSES AND ALIBI**

**A. Duress.** It is an affirmative defense that the defendant, engaged in the conduct charged to constitute an offense, was coerced against his/her will by the use of, or threatened use of, unlawful force against his/her person or the person of another. The coercion must be such that a person of reasonable firmness would be unable to resist.

**B. Protection of Self, Property, or Other Person.** The use of reasonable force toward another person is justified and is an affirmative defense, if and only if:

1. the force is directed toward one who is using unlawful force, and
2. the person using such force reasonably believes the use of force is necessary for his/her protection or that of a third 'person.
3. The use of reasonable force toward another person is justified and is an affirmative defense if used to prevent the unlawful entry into the dwelling of the person asserting the defense or into the dwelling of another or to prevent the unlawful carrying away of personal property.

**C. Alibi.** The defense of alibi, that the accused was somewhere else when the crime was committed, shall be treated procedurally as an affirmative defense.

**D. Procedures for Raising Affirmative Defenses.** The procedures for raising and pleading affirmative defenses shall be specified by Court Rule.

#### COMMENTS

An affirmative defense does not negate an element of the crime, but raises additional circumstances that provide justification for the actions, relieving the defendant of culpability, so that he/she is not held criminally liable. For instance, if a person raises an affirmative defense of duress when being accused of battery, that person does not deny that he/she intentionally struck another. But that person may state, for example, that he/she was coerced into doing so by threats of a third person.

Similarly, if a person raises the defense of protection of self, property, or other person, to a charge of battery, that person is not denying that he/she intentionally struck another. However, that person is stating that his/her actions were necessary to protect himself/herself or another, and therefore such actions are justified.

(Source: WOS 2021-003, April 20, 2021, Section IV)

### **9.105 COUNSEL**

**A. Right to Counsel.** Any person accused of an offense under this Code may represent himself before the Tribal Court, or may be represented, at his/her own expense, by a person duly licensed to practice before the Tribal Court.

**B. Persons Licensed to Practice in LTBB Courts.** An Attorney admitted to practice law in any state may be licensed to practice in LTBB Courts upon:

1. payment of an annual fee, as specified by Court Rule; provided that the fee may be waived if the attorney is providing pro bono services;
2. certification to the Tribal Court that he/she has read the Court Rules; and taking of an oath to uphold the Constitution and laws of the Little Traverse Bay Bands of Odawa Indians, maintaining due respect for the Tribal Court, and employing, in his/her conduct and duties, the highest degree of ethical and moral standards with which the legal profession is charged. The Tribal Court Rules may also set out a procedure for

licensing non-attorney tribal members to practice before the Tribal Court.

(Source: WOS 2021-003, April 20, 2021, Section V)

## **9.106 SENTENCING**

**A. Sentencing Considerations.** The main goals of sentencing are the protection of the public, rehabilitation, healing of the harm done, restitution for the victim, appropriate punishment, and deterrence. The factors the Court should consider in sentencing include the seriousness of the offense and any resulting injury, the offender's prior record or lack of prior record, employment, family and community status and support, desires of the victim, amount of any restitution, genuine remorse expressed by the offender, and any other factors the Court deems relevant, consistent with achieving a just and fair sentence. The Court shall consider any victim impact statement, and also generally favor restitution, community service work and healing of the harm inflicted over incarceration, but has wide discretion on the appropriate sentence for any given case.

**B. Types of Sentences.** The Court has the following sentence options following a conviction. A sentence may utilize two (2) or more of the following options, unless the offender has been sentenced to prison following the enactment of TLOA by the Tribe:

1. Incarceration in a local jail for not more than one (1) year, depending on the statutory maximum of the crime for which offender was convicted.
2. Fines and costs pursuant to statutory requirements.
3. Placement on probation, with appropriate terms and conditions as set by the Court.
4. Prison sentencing. Upon enactment of TLOA by the Tribe, the defendant may be sentenced to prison, or any correctional facility that meets the requirements of 25 USC 1302, for up to three (3) years. Sentences for multiple felony convictions (sentences over one (1) year) may be consecutive at the discretion of the Court, but in no case may they exceed nine (9) years total, pursuant to TLOA - 25 USC 1302.
5. Delayed/Deferred Sentencing. The Court may adjourn or delay sentencing to give the defendant an opportunity to complete a rehabilitative program or to prove they deserve leniency, but only with the agreement of the Prosecutor may the Court reduce or dismiss charges after a delayed or deferred sentence. The delay may include any conditions deemed appropriate by the Court.

**6.** Consecutive vs concurrent sentencing convictions. In general, concurrent sentencing is preferred. The Court has the discretion to sentence consecutively for multiple convictions. Factors which should be considered when considering consecutive sentencing include: the heinousness of the offenses, the number of past convictions of the defendant, the number of victims, the seriousness of physical or psychological injuries or harm done, whether the defendant was on bond, probation, parole, or the subject of a protection order or other court order when the new offense(s) was committed, or other aggravated circumstances.

**C. Victim's Impact Statement.** Prior to sentencing, the Prosecutor shall inform the victim(s) of their right to submit a written statement to the Court detailing the physical, material, and emotional damages that they suffered as a result of the offender's actions. The victim has the right to speak at sentencing whether or not they have submitted a victim impact statement. The Court shall take into consideration any victim impact statement at sentencing.

#### COMMENTS

The Tribal Court Judge has considerable discretion in fashioning an appropriate sentence for a person convicted of an offense. The maximum jail term and fine is currently one year or \$5,000 or both, unless the Tribal Council enacts TLOA.

(Source: WOS 2021-003, April 20, 2021, Section VI)

### **9.107 OFFENSES**

#### **A. Contempt of Court and Perjury.**

##### **1. Contempt of Court.**

**a. Offense.** Intentional and unjustifiable behavior by any person, which disrupts, obstructs, or otherwise interferes with the conduct of any proceeding of the Court, or which obstructs, or interferes with the administration of justice by the Court, including disobedience or resistance to, or interference with, any lawful summons, subpoena, process, order, rule, term of probation, sentence, decree, or command of the Court, including failure to appear for a court date, shall constitute contempt of court.

**b. Contempt Committed in the Presence of the Court.** When contempt

of court is committed in the presence of the Court it may be punished summarily by the Court. In such case, an order shall be made reciting the facts constituting the contempt, adjudging the person guilty of contempt, and prescribing the punishment.

**c. Contempt Committed out of the Presence of the Court.** When it appears to the Court that a contempt has been committed out of the presence of the Court, the Court may issue a summons to the person so charged directing him/her to appear at a time and place designated for a hearing on the matter.

**d. Sentence.** A person found guilty of contempt of court may be sentenced to a jail term not to exceed thirty (30) days, or to a fine not to exceed one thousand dollars (\$1,000.00), or to both. In addition, if a person is charged with contempt for jumping bail, the Court may order forfeiture of the person's bail.

## **2. Perjury.**

**a. Offense.** A person who knowingly gives false testimony is guilty of perjury.

**b. Offense.** A person who attempts to induce, persuade or encourage someone else to give false testimony, whether or not such testimony occurred, is guilty of subornation of perjury.

**c. Sentence.** The penalty for perjury, or subornation of perjury, is up to twelve (12) months in jail, and/or a fine of up to five thousand dollars (\$5,000.00), unless the enhanced sentencing provisions of TLOA are enacted by Tribal Council, in which case the penalty would increase to three (3) years if the crime occurred in any felony case, or any case where the penalty is over one (1) year in jail.

## **B. Scheming and Planning Offenses.**

### **1. Solicitation.**

**a. Offense.** A person commits solicitation if, with intent that another person engages in illegal conduct, he/she code, entreats, induces or otherwise endeavors to persuade such person to engage in illegal conduct.

**b. Affirmative Defense.** It is an affirmative to a charge of solicitation that the defendant completely renounced his/her criminal intent before commission of the crime, and made a reasonable attempt to prevent the solicited conduct.

**c. Sentence.** A person convicted of solicitation shall be subject to the same

punishment as that specified in this Code for the completed offense.

**2. Conspiracy.**

**a. Offense.** A person commits conspiracy if that person agrees with one or more persons, with intent to promote or facilitate the commission of an offense, that at least one of them will engage in conduct constituting the offense, and one of the parties commits an overt act in furtherance of the agreement.

**b. Affirmative Defense.** It is an affirmative defense to a charge of conspiracy that the defendant completely and voluntarily renounced his/her criminal intent before commission of the crime, and made a reasonable attempt to prevent the illegal action.

**c. Sentence.** A person convicted of conspiracy shall be subject to the same punishment as that specified in this Code for the completed offense.

**3. Attempt.**

**a. Offense.** A person commits an attempt, with respect to any of the enumerated offenses in this Code, if that person, acting with the intent to commit the offense, takes a substantial step toward the commission of the crime, and does not retract his/her action, but is foiled by circumstances beyond his/her control.

**b. Sentence.** A person convicted of an attempt shall be subject to the same punishment as that specified in this Code for the completed offense.

**4. Contributing to the Delinquency of a Minor.**

**a. Offense.** Any person who aids, abets, or encourages any minor to commit an act that would be an offense under this Code, if committed by an adult, shall be guilty of contributing to the delinquency of a minor.

**b. Sentence.** A person convicted of contributing to the delinquency of a minor may be sentenced to a jail term not to exceed sixty (60) days, or to a fine not to exceed one thousand dollars (\$1,000.00) or to both.

**5. Aiding and Abetting.**

**a. Offense.** A person commits an offense if he/she knowingly aids or abets another person in the commission or furtherance of a crime.

**b. Sentence.** A person found guilty of aiding and abetting will be subject to the same sentence as provided for the underlying crime.

COMMENTS

A person cannot be found guilty of aiding and abetting if the principal offender is found not guilty of the underlying crime.

## C. Offenses Against the Person.

### 1. Assault.

**a. Offense.** A person commits assault if that person, by any unlawful act, threat, or menacing conduct, causes another person to reasonably believe that the other person is in immediate danger of physical harm.

**b. Sentence.** A person convicted of assault may be sentenced to a jail term not to exceed ninety (90) days or to a fine not to exceed one thousand (\$1,000.00) or to both.

### 2. Assault with a Weapon.

**a. Offense.** A person commits assault with a weapon if that person, through the use, or threatened use, of a weapon, causes another person to reasonably believe that he/she is in immediate danger of physical harm.

**b. Sentence.** A person convicted of assault with a weapon may be sentenced to a jail term not to exceed one (1) year, or to a fine not to exceed five thousand dollars (\$5,000.00) or to both.

### 3. Battery.

**a. Offense.** A person who intentionally strikes or offensively touches the person of another commits the offense of battery.

**b. Sentence.** A person convicted of battery may be sentenced to a jail term not to exceed one (1) year or to a fine not to exceed five thousand dollars (\$5,000.00) or to both.

### 4. Sexual Assault.

**a. Offense.** A person commits sexual assault if that person intentionally or knowingly engages in sexual penetration or sexual contact with any person without the consent of that person. Sexual contact means any fondling or manipulating of any part of the genitals, anus, or female breast.

**b. Sentence.** Any person found guilty of sexual assault may be sentenced to a jail term not to exceed one (1) year or to fine not to exceed five thousand dollars (\$5,000.00) or to both.

### 5. Sexual Assault of a Child.

**a. Offense.** A person commits sexual assault of a child if he/she intentionally or knowingly engages in sexual penetration or sexual contact with any person aged 16 years or younger, regardless of whether he/she has the consent of that person. Sexual contact means any fondling or manipulating of any part of the

genitals, anus, or female breast.

**b. Sentence.** Any person found guilty of sexual assault of a child may be sentenced to a jail term not to exceed one (1) year or to a fine not to exceed five thousand dollars (\$5,000.00) or both.

**6. Child Sexual Abuse.**

**a. Offense.** A person commits child sexual abuse if that person engages a child in sexual activity that the child does not developmentally understand, to which he or she cannot give informed consent, or that violates the social taboos of the community. Child Sexual Abuse includes but is not limited to; all forms of intercourse, oral genital contact, fondling, exhibitionism and child pornography.

**b. Sentence.** Any person found guilty of Child Sexual Abuse may be sentenced to a jail term not to exceed one (1) year or to a fine not to exceed five thousand dollars (\$5,000.00) or to both.

**7. Unlawful Imprisonment.**

**a. Offense.** A person commits unlawful imprisonment if, without lawful authority, that person intentionally removes, detains, restrains, or confines the person of another without his/her consent.

**b. Sentence.** A person convicted of unlawful imprisonment may be sentenced to a jail term not to exceed one (1) year or to a fine not to exceed five thousand dollars (\$5,000.00) or to both.

COMMENTS

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

**8. Stalking**

**a. Stalking:** Any person who engages in stalking is guilty of a crime punishable by up to six (6) months in jail and/or a \$5,000 fine.

**1.** Stalking means a willful course of conduct involving repeated or continued harassment of another individual, that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed or molested, and that actually causes the victim to feel terrorized, frightened, intimidated, threatened harassed or molested.

**2.** Contact as used in this subsection may include, but is not limited to: in-person contact, communication or contact through electronic means

regardless of the device used, phone calls, email, social media applications, text messaging of any kind, standard mail, and/or indirect contact of the victim through the use of third parties.

3. Harassment means repeated or continuing unwanted contact that would cause a reasonable person to feel emotional distress, and in fact caused the victim to feel emotional distress.

4. Evidence that the defendant continued the contact or communication after having been requested by the victim or a representative of the victim to refrain from any further contact or communication gives rise to a rebuttable presumption that the continuation of the course of conduct did cause the victim to feel emotional distress, harassed, frightened, threatened or intimidated.

5. If TLOA is enacted by the Tribe, then the term of incarceration for this offense shall be up to (1) year.

**b. Aggravated Stalking.** If any of the acts giving rise to the stalking behavior involve any of the following aggravating factors, the offense then constitutes Aggravated Stalking:

1. The defendant makes threats to kill or cause serious physical harm to the victim or a member of the victim's family or household, or to any pets of the victim;

2. The defendant was armed with a weapon at the time of the contact;

3. A Personal Protection Order or other court order, such as a condition of probation, parole or bond / pretrial release, restraining order or injunction, which prohibited contact between the defendant and the victim was in effect at the time of any of the continued stalking behavior;

4. Defendant has a prior conviction for stalking;

5. An actual assault and/or battery occurred, causing any bodily injury to a victim.

6. Aggravated Stalking is punishable by up to one (1) year incarceration and/or a \$5,000 fine. If TLOA is enacted by the Tribe, then this offense shall be punishable by up to three (3) years' incarceration and/or a \$10,000 fine.

**c.** This section does not prohibit a person from being charged with, convicted of, or punished for any other violation of law committed by that person while violating or attempting to violate this section.

**9. Strangulation.**

**a.** A person who assaults another person by strangulation or suffocation is guilty of a felony punishable by up to one (1) year of incarceration and a fine of not more than \$1,000.

**b.** “Strangulation or suffocation” means intentionally impeding normal breathing or circulation of the blood by applying pressure on the throat or neck or by blocking the nose or mouth of another person.

**c.** This section does not prohibit a person from being charged with, convicted of, or punished by any other violation of law arising out of the same conduct as the violation of this section.

**d.** Upon enactment of the Tribal Law and Order Act (TLOA) by the Tribe, this crime will be punishable by up to three (3) years of incarceration and/or a \$5,000 fine.

**10. Interfering with Electronic Communications.**

**a.** Interfering with Electronic Communications. Any person who intentionally interferes with, prevents, obstructs or attempts to interfere with, prevent or obstruct any authorized electronic communication such as a telephone call, email, text message or any similar type of communication shall be guilty of a misdemeanor punishable by up to one (1) year incarceration and/or a \$1,000 fine.

**b.** This section does not prevent a person from being charged with, convicted of or punished for any other violation of law committed by that person while violating or attempting to violate this section.

**D. Weapons and Explosives.**

**1. Carrying of a Deadly Weapon without a License.**

**a. Offense.** A person who carries a deadly weapon without being licensed to do so by LTBB or by the State of Michigan commits an offense.

**b. Sentence.** A person convicted of unlawful carrying of a deadly weapon without a license may be sentenced to a jail term not to exceed sixty (60) days or to a fine not to exceed one thousand dollars (\$1,000.00) or to both. The judge may also order that the weapon be impounded.

**2. Unlawful Use of a Weapon.**

**a.** Offense. A person commits unlawful use of a weapon if that person:

**i.** discharges a firearm in the proximity of a building or vehicle so as

to knowingly or recklessly endanger a person or property;

ii. carries a firearm while intoxicated;

iii. handles or uses a firearm or other weapon so as to knowingly or recklessly endanger the safety of another; or

iv. carries a firearm or other weapon with unlawful intent.

**b. Sentence.** A person convicted of unlawful use of a weapon may be sentenced to a jail term not to exceed one hundred eighty (180) days or to a fine not to exceed two thousand dollars (\$2,000.00) or to both. The judge may also order that the weapon be impounded.

**3. Dangerous Use of Explosives.**

**a. Offense.** A person commits dangerous use of explosives if, with intent to injure, intimidate or terrify another, or to damage another's property, that person maliciously explodes, attempts to explode or places any explosive anywhere within the territorial jurisdiction of the Little Traverse Bay Bands of Odawa Indians.

**b. Sentence.** A person convicted of dangerous use of explosives may be sentenced to a jail term not to exceed one (1) year or to pay a fine not to exceed five thousand dollars (\$5,000.00) or to both.

**c.** In addition to, or in lieu of, the punishments set out above, the Court may order the offender to repair any property damaged by his/her actions or to pay the costs of such repairs to the injured party.

**4. Negligent Use of Explosives.**

**a. Offense.** A person commits negligent use of explosives if that person negligently explodes, attempts to explode or places any explosive in such a manner as to result in injury to another or to the property of another, or by such action that increases the probability of such injury.

**b. Sentence.** A person convicted of negligent use of explosives may be sentenced to a jail term not to exceed ninety (90) days or to a fine not to exceed three thousand dollars (\$3,000.00) or to both.

**c.** In addition to, or in lieu of, the punishments set out above, the Court may order the offender to repair any property damaged by his/her actions or to pay the costs of such repairs to the injured party.

**E. Theft and Related Crimes.**

**1. Theft of Property.**

- a. Offense.** A person commits theft of property if, without lawful authority, that person intentionally or knowingly:

  - i. controls property of another with the intent to permanently deprive the owner, or person in lawful possession, of such property;
  - ii. obtains property of another by means of any material misrepresentation with intent to permanently deprive the owner, or person in lawful possession, of such property, or
  - iii. comes into control of lost, mislaid or incorrectly delivered property under circumstances providing means of inquiry as to the true owner and appropriates such property to himself/herself without making reasonable efforts to notify the true owner.
- b. Sentence.** A person convicted of theft of property may be sentenced to a jail term not to exceed one hundred eighty (180) days or to a fine not to exceed five thousand dollars (\$5,000.00) or to both.
- c. Return of Property.** When a person is convicted of a theft, the Court shall confiscate the stolen property and return it to its rightful owner. If the property has been lost or destroyed, the Court may require the offender to compensate the rightful owner for the value of the stolen property in addition to, or in lieu of, the sentence set out above.

**2. Robbery.**

- a. Offense.** A person commits robbery if that person threatens another with bodily harm, through the use of force or a weapon, in order to obtain property that is in the lawful custody of the person being threatened.
- b. Sentence.** A person convicted of robbery may be sentenced to a jail term not to exceed one (1) year or to pay a fine not to exceed five thousand dollars (\$5,000.00) or to both.

**3. Theft of Services.**

- a. Offense.** A person commits theft of services if, without lawful authority, that person obtains services which are available only for compensation with the intent of avoiding payment for such services.
- b. Sentence.** A person convicted of theft of services may be sentenced to a jail term not to exceed ninety (90) days or to a fine not to exceed two thousand dollars (\$2,000.00) or to both.
- c. Payment for Services.** The Court may require the offender to compensate the victim for the services wrongfully obtained in addition to, or in lieu of, the sentence set out above.

**4. Unauthorized Use of a Vehicle.**

**a. Offense.** A person commits an offense if that person intentionally or knowingly operates, or tampers with, another's automobile, motorcycle, motorboat or other motor-operated vehicle, without the consent of the owner.

**b. Sentence.** A person convicted of unauthorized use of a vehicle may be sentenced to a jail term not to exceed sixty (60) days or to a fine not to exceed one thousand dollars (\$1,000.00) or to both.

**5. Receiving Stolen Property.**

**a. Offense.** A person commits an offense if that person purchases, receives, conceals, or aids in concealing any property of another knowing, or having reason to know, that such property was obtained by theft or any other means declared by law to be unlawful.

**b. Sentence.** A person convicted of receiving stolen property may be sentenced to a jail term not to exceed one hundred eighty (180) days or to pay a fine not to exceed five thousand dollars (\$5,000.00) or to both.

**F. Burglary and Arson.**

**1. Burglary.**

**a. Offense.** A person commits burglary if that person enters into a building, boat, or motor vehicle belonging to another with the intent of committing an offense therein.

**b. Sentence.** A person convicted of burglary may be sentenced to a jail term not to exceed one hundred eighty (180) days or to a fine not to exceed one thousand dollars (\$1,000.00) or to both.

**2. Arson.**

**a. Offense.** A person commits arson if that person knowingly sets fire to the building or property of another, or sets fire to his/her own property with the intent of collecting insurance benefits, or with the intent of negatively impacting a family member or any person who has a rightful interest in the property.

**b. Sentence.** A person convicted of arson may be sentenced to a jail term not to exceed one (1) year or to pay a fine not to exceed five thousand dollars (\$5,000.00) or to both.

**G. Forgery and Related Crimes.**

**1. Forgery.**

**a. Offense.** A person commits forgery if, with intent to defraud, that person:

- i. falsely makes, completes, or alters a written instrument; or
- ii. offers or presents a forged instrument knowing such instrument to be forged.

**b. Sentence.** A person who is convicted of forgery may be sentenced to a jail term not to exceed one hundred eighty (180) days or to a fine not to exceed five thousand dollars (\$5,000.00) or to both.

## **2. Obtaining a Signature by Deception.**

**a. Offense.** A person commits an offense if, with intent to defraud, that person obtains the signature of another person on a written instrument by knowingly misrepresenting or omitting any material fact relevant to the instrument or transaction.

**b. Sentence.** A person who is convicted of obtaining a signature by deception may be sentenced to a jail term not to exceed one hundred eighty (180) days or to a fine not to exceed four thousand dollars (\$4,000.00) or to both.

## **3. Criminal Impersonation.**

**a. Offense.** A person commits criminal impersonation if that person:

- i. assumes a false identity with the intent to defraud another, or
- ii. pretends to be a representative of some person or organization with the intent to defraud.

**b. Sentence.** A person who is convicted of criminal impersonation may be sentenced to a jail term not to exceed one hundred eighty (180) days or to a fine not to exceed five thousand dollars (\$5,000.00) or to both.

## **H. Bribery and Related Crimes.**

### **1. Bribery of Officials.**

**a. Offense.** A person commits the offense of bribery if that person:

- i. offers, confers, or agrees to confer any benefit upon a tribal official, judge or employee with the intention of influencing such person's vote, opinion, judgement, exercise of discretion or other action in his/her official capacity, or
- ii. as a tribal official, judge, or employee solicits, accepts, or agrees to accept any benefit upon an agreement or understanding that his/her official actions may be thereby influenced.

**b. Sentence.** A person convicted of bribery may be sentenced to a jail term not to exceed one hundred eighty (180) days or to a fine not to exceed five thousand dollars (\$5,000.00) or to both.

**2. Improper Influence of Official.**

**a. Offense.** A person commits improper influence of an official if that person threatens harm to any tribal official, judge or employee with the intent of influencing such person's official actions.

**b. Sentence.** A person convicted of improper influence of an official may be sentenced to a jail term not to exceed one hundred eighty (180) days or to a fine not to exceed five thousand dollars (\$5,000.00) or to both.

**3. Abuse of Office.**

**a. Offense.** A person commits abuse of office if that person acts or purports to act in an official capacity and:

i. subjects another to arrest, detention, search or seizure without just and lawful cause, or

ii. maliciously denies or impedes another in the exercise or enjoyment of any right, privilege, power or immunity.

**b. Sentence.** A person convicted of abuse of office may be sentenced to a jail term not to exceed ninety (90) days or to a fine not to exceed three thousand dollars (\$3,000.00) or to both.

**I. Obstruction of Tribal Administration.**

**1. Resisting or Obstructing an Officer of the Little Traverse Bay Bands of Odawa Indians or any Other Law enforcement Officer.**

**a. Offense.** A person commits an offense if that person intentionally or knowingly assaults, batters, injures, opposes, interferes with, obstructs, impairs, hinders, or attempts to commit any of the preceding against.

i. Any officer of the Little Traverse Bay Bands of Odawa Indians in the lawful exercise of his/her duties;

ii. Any duly authorized person serving or attempting to serve or execute process under any rule or order of the courts of the Little Traverse Bay Bands of Odawa Indians;

iii. Any judge or other court personnel of the Little Traverse Bay Bands of Odawa Indians, in the lawful exercise of his/her duties; or

iv. Any other law enforcement official in the lawful exercise of his/her duties.

**b. Sentence.** A person convicted of obstruction of tribal administration may be sentenced to a jail term not to exceed one *year* or to a fine not to exceed five thousand dollars (\$5,000.00) or to both. If the Tribe enacts TLOA and the

defendant injured the victim, the defendant may be sentenced to up to two (2) years' incarceration and/or a \$5,000 fine; if the defendant seriously injured the victim, the defendant may be sentenced to up to three (3) years' incarceration and/or a \$10,000 fine. "Seriously injured" means an injury requiring immediate medical treatment, whether or not that treatment actually occurs, or which causes serious harm to, or substantially impairs the health or normal functioning of a part of the body.

**2. Escape from Lawful Custody.**

**a. Offense.** A person commits the offense of escape from lawful custody if that person escapes or attempts to escape from lawful custody or confinement.

**b. Sentence.** A person convicted of escape from lawful custody may be sentenced to a jail term not to exceed one hundred eighty (180) days or to a fine not to exceed five thousand dollars (\$5,000.00) or to both.

**3. Helping a Person to Escape from Lawful Custody.**

**a. Offense.** A person commits an offense if that person helps or attempts to help a person escape from lawful custody or confinement.

**b. Sentence.** A person convicted of helping a person to escape from lawful custody may be sentenced to a jail term not to exceed one hundred eighty (180) days or a fine not to exceed five thousand dollars (\$5,000.00) or to both.

**4. Tampering with a Public Record.**

**a. Offense.** A person commits tampering with a public record if that person intentionally or knowingly and without proper authority:

i. makes or completes a written instrument which purports to be a public record or true copy thereof or alters a written instrument which is a public record or true copy thereof;

ii. presents or uses a written instrument which is or purports to be a public record or a copy thereof, knowing that it has been falsely made, completed, or altered, with intent that it be taken as genuine;

iii. offers for recording, registration or filing in a tribal office or agency a written statement knowing that it has been falsely made, completed or altered or that it contains a false statement or information; or

iv. knowingly destroys, conceals, removes or otherwise impairs the availability of any public record.

**b. Public records** mean all official books, papers, written instruments or records created, issued, received or kept by any tribal office, branch or division.

**c. Sentence.** A person convicted of tampering with a public record may be sentenced to a jail term not to exceed two hundred seventy (270) days or to a fine not to exceed five thousand dollars (\$5,000.00) or to both.

**5. Malicious Criminal Prosecution.**

**a. Offense.** A person commits malicious criminal prosecution if that person maliciously causes or attempts to cause a criminal charge to be prosecuted against an innocent person, knowing such person to be innocent.

**b. Sentence.** A person convicted of malicious criminal prosecution may be sentenced to a jail term not to exceed one hundred eighty (180) days or to a fine not to exceed five thousand dollars (\$5,000.00) or to both.

**6. Interfering with an Election.**

**a. Offense.** A person commits an offense if that person, during the course of election held by the Little Traverse Bay Bands of Odawa Indians, knowingly:

- i. attempts to influence the vote of any person or prevent a person from voting through the use or threatened use of force or violence; or
- ii. attempts to cast more than one (1) vote in an election, or in any way interferes with the collection and counting of ballots.

**b. Sentence.** A person convicted of interfering with an election may be sentenced to a jail term not to exceed two hundred seventy (270) days or to a fine not to exceed five thousand dollars (\$5,000.00) or to both.

**J. Criminal Damage to Property and Trespass.**

**1. Vandalism.**

**a. Offense.** A person commits the offense of vandalism if that person intentionally or recklessly:

- i. defaces or damages the personal or real property of another person; or
- ii. defaces or damages the real property of the Little Traverse Bay Bands of Odawa Indians.

**b. Sentence.** A person convicted of vandalism may be sentenced to a jail term not to exceed one hundred eighty (180) days or to a fine not to exceed five thousand dollars (\$5,000.00) or to both.

**c. Restitution.** The judge may, in addition to, or-in lieu of, the punishments set out above, order the offender to pay the owner the repair or replacement costs of the damaged property or to perform work for the owner equal to the value of the damaged property.

**2. Littering.**

**a. Offense.** A person commits the offense of littering if that person throws, places, drops or disposes of any litter in a place which is not a lawful waste disposal site or receptacle for the disposal of litter.

**b. Sentence.** A person convicted of littering may be sentenced to a jail term not to exceed thirty (30) days or a fine not to exceed five hundred dollars (\$500.00) or to both.

**c.** The judge may, in addition to, or in lieu of, the punishments set out above, order the offender to pick up litter within tribal land, as community service, for a time not to exceed eighty (80) hours.

**3. Dumping of Hazardous Material.**

**a. Offense.** A person commits an offense if that person throws, places, drops or disposes of any hazardous material in a place which is not a lawful disposal site for such materials.

**b. Sentence.** A person convicted of dumping hazardous materials may be sentenced to a jail term not to exceed one (1) year or a fine not to exceed five thousand dollars (\$5,000.00) or to both. In addition, the Court may order the person to remove the materials that have been dumped or to pay for the cost of such removal.

**4. Trespass.**

**a. Offense.** A person commits the offense of trespass if that person knowingly enters the property or dwelling of another with reason to know that the owner would not permit him/her to do so, or refuses to depart when requested to do so, or enters upon Tribal properties and refuses to depart when requested to do so by an officer or employee of the Little Traverse Bay Bands of Odawa Indians.

**b. Sentence.** A person convicted of trespass may be sentenced to a jail term not to exceed ninety (90) days or to a fine not to exceed two thousand dollars (\$2,000.00) or to both.

**K. Offenses Against the Family.**

**1. Court's Jurisdiction Expanded.**

The court, in its discretion, may order the victim(s) or others touched by any of the offenses enumerated in this Section to undergo appropriate treatments or participate in appropriate rehabilitative program(s).

**a.** The Court, to protect children who are victims of crimes against the family or who are affected by crimes against the family, may:

- i. find probable cause to believe that the children are minors-in-need-of-care and begin appropriate proceedings by entering a protective warrant pursuant to the Children's Code; or
- ii. schedule an adjudicatory hearing, pursuant to the Children's Code, to determine whether the children are minors-in-need-of-care.

**b.** In cases of abuse, the Tribal Court shall have the option of ordering the abuser(s) to vacate the residence and allowing the children to remain in the residence, under the supervision of the Court or its designee.

**2. Abandonment of a Child.**

**a. Offense.** A parent, guardian or other person having legal custody of a child commits abandonment of a child if he/she intentionally or knowingly abandons a child under seventeen (17) years of age.

**b. Sentence.** A person convicted of abandonment of child may be sentenced to a jail term not to exceed one hundred eighty (180) days or to pay a fine not to exceed three thousand dollars (\$3,000.00) or to both.

**c.** The judge may order the offender to undergo an appropriate rehabilitative program, in lieu of, or in addition to, the sentence set out above, if it appears from the totality of the circumstances that rehabilitative services could help the offender become a responsible parent.

**3. Failure to Support a Dependent.**

**a. Offense.** A person commits an offense if that person knowingly and persistently fails to provide food, shelter, clothing, medical attention, financial support or other necessary care which he/she is capable of providing to his/her child or other dependent.

**b. Sentence.** A person convicted of failure to support a dependent may be sentenced to a jail term not to exceed ninety (90) days or to a fine not to exceed one thousand dollars (\$1,000.00) or to both.

**c.** The judge may order the offender to undergo an appropriate rehabilitative program, in lieu of or in addition to, the sentence set out above, if it appears from the totality of the circumstances that rehabilitative services could help the offender become a responsible parent.

**4. Sexual Conduct with a Foster Child or Stepchild.**

**a. Offense.** A person commits an offense if that person knowingly engages in sexual penetration or contact with his/her foster child or stepchild who is under seventeen (17) years of age. Sexual contact means any fondling or manipulating of any part of the genitals, anus, or female breast.

**b. Sentence.** A person convicted of sexual conduct with a foster child or stepchild may be sentenced. to a jail term not to exceed one (I) year or to a fine not to exceed five thousand dollars (\$5,000.00) or to both.

**5. Incest.**

**a. Offense.** A person commits incest if that person knowingly engages in sexual penetration or contact with another who is a member of such person's immediate family. Sexual contact means any fondling or manipulating of any part of the genitals, anus or female breast. For purposes of this Section immediate family means mother, father, son, daughter, brother or sister.

**b. Sentence.** A person who commits incest may be sentenced to a jail term not to exceed one (1) year or to pay a fine not to exceed five thousand dollars (\$5,000.00) or to both.

**6. Child Abuse.**

**a. Offense.** A person commits the offense of child abuse if that person intentionally, knowingly or recklessly causes physical injury to a child in his/her care or custody.

**b. Sentence.** A person who commits child abuse may be sentenced to a jail term not to exceed one (1) year or to a fine not to exceed five thousand dollars (\$5,000.00) or to both.

**7. Spouse Abuse.**

**a. Offense.** A person commits an offense if that person intentionally, knowingly or recklessly causes physical injury to his/her spouse.

**b.** The term spouse for this offense shall include:

- i. a husband or wife,
- ii. either member of a couple living together, and
- iii. either parent of a child.

**c. Sentence.** A person who commits spouse abuse may be sentenced to a jail term not to exceed one (1) year or to a fine not to exceed five thousand dollars (\$5,000.00) or to both.

COMMENTS

In keeping with Section **III (E)** a person should not be prosecuted for both an offense under this Section and for sexual assault, **VII (C) (4)**, because sexual conduct with a foster child or stepchild and incest are specific types of sexual assaults.

Also, a person should not be prosecuted for both child abuse and battery, or spouse abuse and battery, because these are specific types of battery. A person who abuses a child, not in

his/her care or custody, should be prosecuted for battery.

**L. Riot and Related Offenses.**

**1. Riot.**

**a. Offense.** A person commits riot if, with five or more other persons acting together, that person intentionally, knowingly or recklessly uses force or violence, or threatens to use force or violence, which disturbs the public peace.

**b. Sentence.** A person convicted of riot may be sentenced to a jail term not to exceed one hundred eighty (180) days or to a fine not to exceed four thousand dollars (\$4,000.00) or to both.

**2. Disorderly Conduct.**

**a. Offense.** A person commits disorderly conduct if that person intentionally, knowingly or recklessly:

- i. engages in fighting, or provokes a fight;
- ii. makes any protracted commotion which prevents the transaction of the business of a lawful meeting, gathering or procession; makes loud and unreasonable noise; or
- iii. engages in the consumption of alcohol out of doors with two or more persons without a tribal permit.

**b. Sentence.** A person convicted of disorderly conduct may be sentenced to a jail term not to sixty (60) days or to a fine not to exceed one thousand dollars (\$1,000.00) or to both.

**3. Obstructing a Highway or Other Public Thoroughfare.**

**a. Offense.** A person commits an offense if that person intentionally, knowingly or recklessly interferes, having no legal privilege to do so, with the use of any highway or public thoroughfare by creating an unreasonable inconvenience or hazard.

**b. Sentence.** A person who is convicted of obstructing a highway or other public thoroughfare may be sentenced to a jail term not to exceed sixty (60) days or to a fine not to exceed one thousand dollars (\$1,000.00) or to both.

**4. Creating False Alarm.**

**a. Offense.** A person commits an offense if that person reports a bombing, fire, crime or other emergency knowing such report to be false or baseless and knowing that it will cause action by an official or voluntary agency organized to deal with emergencies;

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

ii. it will prevent or interrupt the occupation of any building, room, place of assembly or other public place.

**b. Sentence.** A person convicted of creating false alarm may be sentenced to a jail term not to exceed ninety (90) days or to a fine not to exceed two thousand dollars (\$2,000.00) or to both.

**5. Public Intoxication.**

**a. Offense.** A person commits public intoxication if that person appears in public in an inebriated state to the degree that he/she is unable to care for his/her own safety or is creating a public nuisance.

**b. Sentence.** A person convicted of public intoxication may be sentenced to a jail term not to exceed thirty (30) days or to a fine not to exceed five hundred dollars (\$500.00) or to both.

**c.** The judge may, in addition to or in lieu of, the punishments set out above, order the offender to participate in an alcohol treatment program.

**6. Curfew.**

**a. Offense.** All minors must adhere to a curfew of 11:00 p.m. It shall be unlawful for any minor to appear in public after curfew. Furthermore, it shall be unlawful for anyone to allow a minor to violate the tribal curfew.

**b. Sentence.** A person who is found guilty of a curfew violation may be sentenced to a jail term not to exceed thirty (30) days or to pay a fine not to exceed five hundred dollars (\$500.00) or to both.

**7. Truancy.**

**a. Offense.** It shall be unlawful for any minor under the age of sixteen (16) to be absent from school without proper permission or excuse. Furthermore, it shall be unlawful for any person to allow any minor under the age of sixteen (16) to be absent from school without proper permission or excuse.

**b. Sentence.** Any person found guilty of truancy may be sentenced in the Court's discretion to ensure regular school attendance.

**M. Traffic Offenses.**

**1. Reckless Driving.**

**a. Offense.** A person commits reckless driving if that person operates a motor vehicle in a manner that he/she knows or should know, endangers the safety or property of others, including, but not limited to, driving on the wrong side of the street, weaving, or driving at a speed in excess of that which is prudent under the conditions.

**b. Sentence.** A person convicted of reckless driving may be sentenced to a jail term not to exceed ninety (90) days or a fine not to exceed two thousand dollars (\$2,000.00) or to both.

**2. Driving While Under the Influence of Intoxicating Liquor or Other Drug.**

**a. Offense.** A person commits an offense if that person operates a motor vehicle within the territorial jurisdiction of the Little Traverse Bay Bands of Odawa Indians while under the influence of alcohol or other drugs.

**b. Sentence.** A person convicted of driving while under the influence of intoxicating liquor or other drugs may be sentenced to a jail term not to exceed one hundred eighty (180) days or to a fine not to exceed five thousand dollars (\$5,000.00) or to both.

**c. Order for Treatment.** The judge may, in addition to, or in lieu of the punishments set out above, order the offender to participate in an alcohol or substance abuse treatment program.

**3. Driving with an Open Alcohol Container.**

**a. Offense.** A person commits an offense if that person operates a motor vehicle while an open container containing an alcoholic beverage is present anywhere in the passenger compartment of the vehicle.

**b. Sentence.** A person convicted of driving with an open alcohol container may be sentenced to a jail term not to exceed thirty (30) days or to a fine not to exceed one thousand dollars (\$1000.00) or to both.

**4. Driving with a Loaded Firearm.**

**a. Offense.** A person commits an offense if that person operates a motor vehicle with a loaded firearm present in the vehicle.

**b. Sentence.** A person convicted of driving with a loaded firearm may be sentenced to a jail term not to exceed ninety (90) days or to a fine not to exceed two thousand dollars (\$2,000.00) or to both.

**5. Operation of Motor Vehicle without Proof of Insurance.**

**a. Offense.** A person commits an offense if that person operates a motor vehicle without proof of insurance on his/her person or present in the vehicle.

**b. Sentence.** A person convicted of operation of a motor vehicle without proof of insurance may be sentenced to a jail term not to exceed sixty (60) days or to a fine not to exceed one thousand dollars (\$1,000.00). The uninsured vehicle may be impounded by LTBB until it is properly insured.

**N. Criminal Homicide.**

1. **Offense.** A person commits the offense of criminal homicide if:
  - a. that person intentionally causes the death of another person;
  - b. with intent to cause bodily injury to a person, that person causes the death of the intended victim or any other person;
  - c. that person voluntarily commits or participates in: the commission of, or attempts to commit, arson, robbery, burglary, kidnaping, assault, or sexual assault, and in the course of, or in furtherance of the crime that is being committed or attempted, or during flight from the scene of the crime, the death of a person is caused;
  - d. that person recklessly or by gross negligence causes the death of another person, including the reckless operation of a motor vehicle; or
  - e. that person, through the negligent operation of a motor vehicle, causes the death of another person.
2. **Sentence.** A person convicted of criminal homicide may be sentenced to a jail term not to exceed one (1) year or to a fine not to exceed five thousand dollars (\$5,000.00), or to both, or to the maximum penalty allowable under federal law.

#### COMMENTS

A discussed above, under the Indian Civil Rights Act, a tribal court may only sentence an offender to a maximum of one (1) year in jail and/or a fine of five thousand dollars (\$5,000.00). Every effort should be made to obtain a federal prosecution in cases of criminal homicide, in addition to the tribal court prosecution. An offender can be prosecuted in both tribal and federal court without violating the United States Constitutional prohibition against double jeopardy because the tribal and federal governments are separate sovereign entities. United States v Wheeler, 435 US 313 (1978).

#### **O. Alcohol-Related Offenses.**

1. **Possession or Consumption of Alcohol by a Person Under 21 Years of Age.**
  - a. **Offense.** A person commits an offense if that person is under twenty-one (21) years of age and knowingly possesses or consumes any alcoholic beverage.
  - b. **Sentence.** A person convicted of possession or consumption of alcohol by a person under 21 years of age may be compelled to perform an amount of community service work and/or undergo rehabilitative treatment as deemed appropriate by the tribal judge.
  - c. In addition, the Court may sentence the person who commits this offense to a jail term not to exceed thirty (30) days or to a fine not to exceed one

thousand dollars (\$1,000.00) or to both.

**2. Furnishing Alcohol to a Person Under 21 Years of Age.**

**a. Offense.** A person commits an offense if that person knowingly furnishes, purchases, provides or in any way procures, any alcoholic beverage for the possession or consumption by a person under twenty-one (21) years of age.

**b. Sentence.** A person convicted of furnishing alcohol to a person under twenty-one (21) years of age may be sentenced to a jail term not to exceed sixty (60) days or to a fine not to exceed one thousand dollars (\$1,000.00) or to both.

**3. Allowing a Person Under 21 Years of Age to Consume Alcohol.**

**a. Offense.** A person commits an offense if that person knowingly allows a person under twenty-one (21) years of age to consume alcohol in his/her residence, vehicle, or presence.

**b. Sentence.** A person convicted of allowing a person under twenty-one (21) years of age to consume alcohol may be sentenced to a jail term not to exceed sixty (60) days or to a fine not to exceed one thousand dollars (\$1,000.00) or to both.

**P. Controlled Substances.**

**1. Possession, Use, Sale, Manufacture and/or Distribution.**

**a. Offense.** It shall be unlawful for any person to possess, use, sell, manufacture and/or distribute any controlled substance defined and/or described in the Uniform Controlled Substances Act, 21 U.S.C. Section 812, as updated, without prior authorization, with the exception of Marihuana (Marijuana) with the following prohibitions:

- i. No person shall transfer of marihuana or marihuana accessories to a person under the age of 21.
- ii. No person under the age of 21 shall possess, consume, purchase or otherwise obtain, cultivate, process, transport, or sell marihuana.
- iii. No person shall possess more than 2.5 ounces of marihuana within a person's place of residence unless the excess marihuana is stored in a container or area equipped with locks or other functioning security devices that restrict access to the contents of the container or area, except that not more than 15 grams of marihuana may be in the form of marihuana concentrate; within the person's residence, possessing, storing, and processing not more than 10 ounces of marihuana and any marihuana produced by marihuana plants cultivated on the premises and cultivating not more than 12

marihuana plants for personal use, provided that no more than 12 marihuana plants are possessed, cultivated, or processed on the premises at once.

- iv. No person shall consume marihuana while operating, navigating, or being in physical control of any motor vehicle, aircraft, snowmobile, off-road recreational vehicle, or motorboat, or smoking marihuana within the passenger area of a vehicle upon a public way.
- v. No person shall operate, navigate, or being in physical control of any motor vehicle, aircraft, snowmobile, off-road recreational vehicle, or motorboat while under the influence of marihuana.
- vi. No person shall consume marihuana in a public place or smoke marihuana where prohibited by the person who owns, occupies, or manages the property, except for purposes of this subdivision a public place does not include an area designated for consumption within a municipality that has authorized consumption in designated areas that are not accessible to persons under 21 years of age.
- vii. No person shall possess marihuana accessories or possessing or consuming marihuana on the grounds of a public or private school where children attend classes in preschool programs, kindergarten programs, or grades 1 through 12, in a school bus, or on the grounds of any correctional facility.
- viii. No person shall separation of plant resin by butane extraction or another method that utilizes a substance with a flashpoint below 100 degrees Fahrenheit in any public place, motor vehicle, or within the curtilage of any residential structure.
- ix. No person shall cultivate marihuana plants if the plants are visible from a public place without the use of binoculars, aircraft, or other optical aids or outside of an enclosed area equipped with locks or other functioning security devices that restrict access to the area.

**b. Sentence.** Any person convicted of this offense may be sentenced to a jail term not to exceed one year or to pay a fine not to exceed five thousand dollars (\$5,000.00) or to both.

**2. Youth and Tobacco.**

**a. Offense.** It shall be unlawful for any minor to possess, use or purchase tobacco or tobacco products. Furthermore, it shall be unlawful for any person to allow the possession, use or sale of tobacco or tobacco products to any minor.

**b. Sentence.** Any person found guilty of this offense may be sentenced to a jail term not to exceed ninety (90) days or to pay a fine not to exceed two thousand dollars (\$2,000.00) or to both.

**c. Affirmative Defense.** It shall be an affirmative defense to this offense when the alleged violation occurred in the furtherance of a recognized tribal and/or religious purpose.

**Q. Animal Control.**

**1. Failure to Have a Dog Properly Licensed.**

**a. Offense.** Any person who owns a dog must have the dog properly licensed under the County Animal Control Enforcement Ordinance or by the Little Traverse Bay Bands of Odawa Indians if LTBB sets up its own animal licensing system. A person commits an offense if that person fails to have his/her dog so licensed.

**b. Sentence.** A person who commits an offense may be sentenced to a jail term not to exceed thirty (30) days or to a fine not to exceed five hundred dollars (\$500.00) or to both.

**2. Allowing a Dog to be a Public Nuisance.**

**a. Offense.** Any person who owns, possesses or maintains a dog is responsible for such dog. A person, whose dog barks outside to an extent that a person of reasonable sensibility is disturbed by such barking, or whose dog is vicious or has propensity to be vicious, commits it's an offense.

**b. Sentence.** Any person convicted of allowing a dog to be a public nuisance may be sentenced to a jail term not to exceed thirty (30) days or to pay a fine not to exceed five hundred dollars (\$500.00) or to both.

**c.** In addition, the Court may order the destruction of the dog if necessary, to protect the public.

**3. Allowing a Dog to Run at Large.**

**a. Offense.** It shall be unlawful for any dog to run at large; provided that a dog engaged in hunting need not be leashed when under reasonable control of its owner,

or possessor. The owner of a dog running at large commits an offense.

**b. Sentence.** Any person convicted of allowing a dog to run at large may be sentenced to a jail term not to exceed thirty (30) days or to pay a fine not to exceed one thousand dollars (\$1,000.00) or to both.

**4. Animal Abuse.**

**a. Offense.** A person commits an offense if that person intentionally beats, cruelly treats, torments, overloads or otherwise abuses any dog, livestock or poultry, or instigated any dog fight, cock fight, bull fight or other combat between animals or between animals and humans.

**b. Sentence.** A person convicted of animal abuse may be sentenced to a jail term not to exceed thirty (30) days or to a fine not to exceed one thousand dollars (\$1,000.00) or to both.

**R. Violation of a Tribal Ordinance.**

**1. Offense.** In addition to the offenses specified above, a person commits an offense under this Code if that person violates any criminal statute or ordinance duly enacted by the Tribal Council.

**2. Sentence.** A person convicted of violation of a tribal ordinance may be subject to whatever punishment is specified in the ordinance that was violated.

**S. Habitual Offender.**

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

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

**a. 2nd Offense:** One and one half (1 1/2) times the maximum for the underlying offense not to exceed a jail term of one year or to pay a fine not to exceed five thousand dollars (\$5,000.00) or to both.

**b. 3rd Offense:** Two (2) times the maximum for the underlying offense not to exceed a jail term of one (1) year or to pay a fine not to exceed five thousand dollars (\$5,000.00) or to both.

**c. 4th or more offense:** Not to exceed a jail term of one (1) year or to pay a fine not to exceed five thousand dollars (\$5,000.00) or to both.

**T. Crimes Against Officers and Natural Resources**

**1. Assault of an Officer.**

- a. Offense.** A person commits assault of an Officer if that person, by any intentional act, threat, or menacing conduct, causes the Officer to reasonably believe that he/she is in immediate danger of physical harm.
- b. Sentence.** A person convicted of assault of an Officer may be sentenced to a jail term not to one (1) year, or a fine not to exceed five thousand dollars (\$5,000.00) or both.

**2. Assault of an Officer With a Weapon.**

- a. Offense.** A person commits assault of an Officer with a weapon if that person, through the intentional or negligent use, or threatened use, of a weapon, causes the Officer to reasonably believe that he/she is in immediate danger of physical harm.
- b. Sentence.** A person convicted of assault of an Officer with a weapon may be sentenced to a jail term not to exceed one (1) year, or a fine not to exceed five thousand dollars (\$5,000.00) or both.

**3. Battery of An Officer**

- a. Offense.** A person who intentionally strikes or physically restrains or physically impedes an Officer commits the offense of battery of an Officer.
- b. Sentence.** A person convicted of battery of an Officer may be sentenced to a jail term not to exceed one (1) year or a fine not to exceed five thousand dollars (\$5,000.00) or both.

**4. Eluding an Officer**

- a. Offense.** A person who knowingly flees or attempts to evade an Officer after a visible or audible command to stop commits the offense of eluding an Officer. A visible or audible signal under this section may include the use of hands, voice, emergency lights or sirens.
- b. Sentence.** A person convicted of Eluding an Officer may be sentenced to a jail term not to exceed six (6) months or a fine not to exceed two thousand five hundred dollars (\$2,500.00) or both.

**5. Larceny of Natural Resources.**

- a. Offense.** A person who, without permission of the owner, knowingly molests, disturbs or appropriates any wild plant, wild fish, wild animal or carcass thereof, which has been lawfully reduced to possession by or otherwise owned by another commits the offense of larceny of natural resources.
- b. Sentence.** A person convicted of larceny of natural resources may be sentenced to a jail term not to exceed ninety (90) days or a fine not to exceed one thousand dollars (\$1,000.00) or both.

- 6. Violation of a Natural Resource License or Permit Revocation or Suspension Order.**

  - a. Offense.** A person commits an offense if he/she knowingly violates any natural resources license or permit suspension or revocation order.
  - b. Sentence.** A person convicted of violation of a natural resource license or permit revocation or suspension order may be sentenced to a jail term not to exceed ninety (90) days or a fine not to exceed one thousand dollars (\$1,000.00) or both.
- 7. Impersonating an Officer.**

  - a. Offense.** A person who is not an Officer who intentionally claims to be such an Officer through the use of false claims or disguise commits the offense of impersonating an Officer.
  - b. Sentence.** A person convicted of impersonating an Officer may be sentenced to a jail term not to exceed six (6) months or a fine not to exceed two thousand five hundred dollars (\$2,500.00) or both.
- 8. Failure to Report Natural Resource Harvesting Injury or Death.**

  - a. Offense.** A person who witnesses or encounters any life-threatening injury or death of another resulting from the actions of any person taking or attempting to take any wildlife, game, fish or furbearer, and who fails to make a reasonable attempt to report the injury or death to Tribal or other law enforcement or emergency response officials commits the offense of failing to report natural resource harvesting injury or death.
  - b. Sentence.** A person convicted of failing to report natural resource harvesting injury or death may be sentenced to a jail term not to exceed ninety(90) days or a fine not to exceed two thousand five hundred dollars (\$2,500.00) or both.
- 9. Damaging or Stealing Gear.**

  - a. Offense.** A person who intentionally damages or steals any nets, stands, traps or gear belonging to another hunter, fisher or trapper commits the offense of damaging or stealing gear.
  - b. Sentence.** A person convicted of damaging or stealing gear may be sentenced to a jail term not to exceed ninety (90) days or a fine not to exceed two thousand five hundred dollars (\$2,500.00) or both.
- 10. Conspiracy to Violate Natural Resource Regulation or Law.**

  - a. Offense.** A person commits conspiracy to violate natural resource regulation or law if that person agrees with one or more persons, with intent to

promote or facilitate the commission of a violation, that at least one of them will engage in conduct constituting the violation, and one of the parties commits an overt act in furtherance of the agreement.

**b. Sentence.** A person convicted of conspiracy to violate natural resource regulation of law may be sentenced to a jail term not to exceed ninety (90) days or a fine not to exceed two thousand five hundred dollars (\$2,500.00) or both, in addition to any punishment provided for the specific violation if he/she actually carried it out.

**11. Taking or Harming Threatened or Endangered Species.**

**a. Offense.** A person who intentionally harms or harvests a threatened or endangered plant or animal species commits the offense of taking or harming a threatened or endangered species.

**b. Sentence.** A person convicted of taking or harming a threatened or endangered species may be sentenced to a jail term not to exceed six (6) months or a fine not to exceed five thousand dollars (\$5,000.00) or both.

**12. Falsification of Identification to Procure a Tribal Natural Resource License.**

**a. Offense.** A person who intentionally presents false identification for purposes of obtaining a natural resource license or permit that the person would not otherwise be entitled to commit the offense of falsification of identification to procure a Tribal natural resource license.

**b. Sentence.** A person convicted of falsification of identification to procure a Tribal natural resource license may be sentenced to a jail term not to exceed ninety (90) days or a fine not to exceed two thousand five hundred dollars (\$2,500.00) or both.

**U. Witness Intimidation:**

The following conduct constitutes the crime of Witness Intimidation, and is punishable by up to one (1) year in jail and/or a five thousand-dollar (\$5,000) fine, unless the enhanced sentencing provisions of TLOA are enacted by Tribal Council, in which case the penalty would increase to three (3) years in prison, with the same maximum fine for perjury on any felony case, or crime punishable by over one (1) year in jail:

1. Threatening, intimidating, discouraging or dissuading a potential witness or victim with the intent to influence their testimony.

2. Threatening, intimidating, discouraging or dissuading a potential witness or victim from appearing at court proceedings, or complying with a subpoena in a pending or future court case.
3. Offering payment or any other inducement to a potential witness or victim with the intent of influencing their testimony.
4. Offering payment or any other inducement to a potential witness or victim with the intent of dissuading them from appearing, testifying, testifying truthfully, or complying with a subpoena in a pending or future court case.
5. Impeding, obstructing, preventing, interfering with, or attempting to impede, obstruct, prevent or interfere with the ability of a witness to attend, testify, or provide information in, or for, a pending or future court case.
6. Retaliating, threatening retaliation or attempting retaliation against a witness or victim for being a witness in a court case. "Retaliation" means to actually commit, or threaten to commit, a crime against any person, or to threaten harm, violence, or property damage against any person.
7. The Court may order any sentence under this section to be consecutive to any conviction on the underlying offense that the threats, attempted intimidation, offer of inducement, obstruction or retaliation was intended to affect.

(Source: WOS 2021-003, April 20, 2021, Section VII)

### **9.108 EFFECTIVE DATE**

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

(Source: WOS 2021-003, April 20, 2021, Section VIII)