

WAGANAKISING ODAWAK STATUTE # 2020-_____
PERSONAL PROTECTION ORDERS and NO CONTACT ORDERS and
VIOLATIONS of PROTECTIVE ORDERS

SECTION I. PURPOSE

The purpose of this Statute is to provide for Personal Protection Orders. This Statute repeals and replace WOS 2015-008 Personal Protection Orders and No Contact Orders and Violations of Protective Orders.

SECTION II. DEFINITIONS

- A.** “Course of conduct” means a pattern of conduct composed of a series of two (2) or more separate non-continuous acts or an ongoing continuous act.

- B.** “Emotional distress” means significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling.

- C.** “Harassment” means conduct directed toward a victim that includes, but is not limited to, repeated or continuing un-consented contact that would cause a reasonable individual to suffer emotional distress and that actually causes the victim to suffer emotional distress.

- D.** “Minor” or “Juvenile” means an individual who has not attained the age of 18 years.

- E.** “Non-Domestic Protection Order” or “NDPO” means an order issued by Tribal Court or a Court of Competent Jurisdiction to address or prevent stalking. Such orders are not intended for disputes between neighbors.

- F.** “Stalking” means a willful course of conduct involving repeated or continuing 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.

G. “Territorial Jurisdiction of the Little Traverse Bay Bands of Odawa Indians” means “*areas referred to in Public Law 103-324, 25 U.S.C. 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*”, including all land which is held in trust by the United States government for the benefit of the Tribe or an individual member of the Tribe and/or as otherwise described by applicable federal law or court opinion.

H. “Tribal Court” means the Little Traverse Bay Bands of Odawa Indians Tribal Court.

I. “Tribal Member” means a person who is an enrolled Citizen a federally recognized Tribe.

J. “Tribe” or “LTBB” means the Little Traverse Bay Bands of Odawa Indians.

K. “Unconsented contact” means any contact with another individual that is initiated or continued without that individual's consent or in disregard of that individual's expressed desire that the contact be avoided or discontinued. Unconsented contact includes, but is not limited to, the following:

1. Following or appearing within the sight of that individual.
2. Approaching or confronting that individual in a public place or on private property.
3. Appearing at that individual's workplace or residence.
4. Entering onto or remaining on property owned, leased, or occupied by that individual.
5. Contacting that individual by telephone.

6. Sending mail or electronic communications to that individual.

7. Placing an object on, delivering an object, or causing an object to be delivered to the victim's residence, place of work or property owned, leased, or occupied by that individual.

SECTION III. CIVIL JURISDICITON

Civil Jurisdiction. The Tribal Court has full jurisdiction and authority to issue and enforce Protection Orders against all persons who are Indians; who live or work within the territorial jurisdiction of LTBB; or who are a spouse, intimate partner or dating partner of an Indian.

SECTION IV. PROTECTION ORDERS

- A. **Types of Personal Protection Orders.** There are two types of Personal Protection Orders (PPO), non-domestic and domestic. A PPO shall clearly indicate whether it is a domestic or non-domestic PPO.

- B. **Issuance of PPO.** PPOs may be granted either ex parte or after a hearing. If a hearing is requested the Tribal Court shall provide at least a seven (7) days notice of the hearing to the Petitioner and the Respondent. Notice of the hearing shall be personally served upon the parties. If personal service cannot be accomplished, then the court shall accomplish service in a manner consistent with the Tribal Court Rules of Civil Procedure.

- C. **Criteria for issuance of PPO.** The Tribal Court, upon finding that the Respondent has engaged in one or more of the following acts, shall issue a PPO:
 1. Stalking the Petitioner;

 2. Making threats of physical violence directed at the Petitioner and/or the

Petitioner's minor child(ren), whether or not the threat was part of a pattern of conduct;

3. Making threats to destroy, damage, or cause harm to the Petitioner's property, whether or not the threat was part of a pattern of conduct;

4. Inflicting emotional distress on the Petitioner as part of a pattern of conduct to control and/or isolate the Petitioner;

5. Where the Respondent was convicted under tribal, federal or state law, of perpetrating one or more of the following crimes against the Petitioner:

a. criminal sexual conduct;

b. assault;

c. battery;

d. domestic violence;

e. kidnapping;

f. rape;

g. trafficking;

h. torture;

i. any crime involving the use, or threatened use, of a weapon;

j. any crime involving the use, or threatened use, of force and/or violence;

k. Making threats to take, remove, harm, abduct, kidnap, or conceal the Petitioner's minor child(ren).

D. Required findings to enter PPO ex parte. Prior to entering a PPO ex parte, the Tribal Court must make a finding based on testimony and/or other relevant evidence from the Petitioner that:

1. Petitioner requested an ex parte PPO; and

2. Respondent committed one or more of the acts listed in subsection (C); and

3. The delay caused by failing to grant the PPO ex parte would result in irreparable injury, loss, or damage to the Petitioner or notice of a hearing or of the

request itself would precipitate adverse action before the PPO could be issued.

E. Evidence for ex parte PPO; Consideration by Tribal Court. The Tribal Court may consider the following when determining whether to grant or deny an ex parte PPO:

1. Medical reports of injuries;
2. Police reports;
3. Pictures of injuries;
4. Evidence of damage to household, personal items or vehicles;
5. Copies of relevant criminal convictions of the Respondent;
6. A personal diary or calendar documenting abuse;
7. Email, social media or text messages;
8. Affidavits from witnesses.

F. Provisions applicable to ex parte PPOs. An ex parte PPO is effective when it is signed by the judge and is immediately enforceable whether or not the Respondent has received notice of the PPO. The following information shall be noted in bold or capital letters on the *ex parte* order “Advising the Respondent that”:

1. "You have the right to request a hearing to contest the ex parte PPO or any condition of the PPO, within 14 days”.
2. “The *ex parte* order shall remain in effect until it expires or is dismissed by the Court.”
3. "If you fail to request a hearing regarding the PPO, then you lose any right to contest the ex parte PPO”.

4. “When the hearing is set, if you fail to appear, the ex parte PPO will stay in effect.”

G. Conditions of PPO. After determination that a PPO should be issued, the Tribal Court may impose any of the following conditions as part of a PPO:

1. Prohibit the Respondent from threatening to physically harm, injure or kill Petitioner and/or the Petitioner’s minor child(ren)
2. Prohibit the Respondent from threatening to commit, or committing, acts of harassment against the Petitioner or other family or household members;
3. Prohibit the Respondent from harassing, annoying, telephoning, contacting, or otherwise communicating with the Petitioner, either directly or indirectly through a third-party including minor children, except as otherwise required or permitted by court order;
4. Prohibit the Respondent from appearing at, or entering the home of the Petitioner and/or the Petitioner’s minor child(ren);
5. Prohibit the Respondent from appearing at any location where the Petitioner is likely to be, including:
 - a. the Petitioner’s school;
 - b. the school where the Petitioner’s minor child(ren) attend;
 - c. the Petitioner’s place of employment;
 - d. a specified place frequented regularly by the Petitioner.
6. Prohibit the Respondent from approaching, confronting, or following the Petitioner in a public place or on private property;
7. Prohibit the Respondent from placing an object on, or delivering an object to, property owned, rented, leased, or occupied by the Petitioner or the Petitioner’s workplace;

8. Prohibit the Respondent from interfering with the Petitioner at her/his place of employment or education or engaging in conduct that impairs her/his employment or educational relationship or environment;
9. Prohibit the Respondent from purchasing or possessing a firearm;
10. Prohibit the Respondent from having access to information in records concerning a minor child of Petitioner and Respondent that will reveal Petitioner's address, telephone number, or employment address or other contact information or that will reveal the child's address, telephone number, or other contact information;
11. Prohibit the Respondent from interfering with or destroying property owned by the Petitioner.

H. Additional conditions for domestic PPOs. The Tribal Court may impose the following additional conditions in domestic PPO orders:

1. Prohibit the Respondent from entering the joint residence;
2. Prohibit the Respondent from removing property from the joint residence, unless otherwise ordered by the Court;
3. Prohibit the Respondent from taking, hiding or destroying joint property;
4. Prohibit the Respondent from denying Petitioner access to minor child(ren) of the Respondent and Petitioner;

I. Required Notifications. PPOs issued by the Tribal Court shall contain the following notices:

1. Inform the Respondent that a violation of these conditions may result in her/his immediate arrest. Responding to contact or invitation initiated by the Petitioner may result in the Respondent violating the PPO and the Respondent

may be arrested for the violation.

2. Inform the Respondent that as a result of this order, federal, tribal and/or state law may prohibit her/him from possessing or purchasing ammunition or a firearm.
3. Inform the Respondent that he/she may file a motion to modify or terminate this order. This particular notice must inform the Respondent that if the order was entered ex parte, the motion must be filed within 14 days after being served with or receiving actual notice of the order. This particular notice must inform the Respondent that forms and instructions are available from the court clerk.
4. State clearly the effective date of the order and when the order expires.
5. State clearly the potential penalties for violation of the order.
6. State clearly that the PPO is effective until the expiration date or until further order of the Tribal Court.

J. Transmission of PPO to law enforcement agencies, explanation of PPO to parties; notification. Following the issuance of a PPO the Tribal Court shall do the following:

1. Cause the order to be delivered to Tribal Law Enforcement or other appropriate person(s) and/or agency for service and entry into the Law Enforcement Information System (LEIN) system;
2. Make reasonable efforts to ensure that the PPO is understood by the Petitioner, and if present, the Respondent; and
3. Transmit, by the end of the next business day after the order is issued, a copy of the PPO to the local law enforcement agency or other agencies designated by the Petitioner.

4. Notify the Petitioner upon receipt of the proof of service of the PPO.

SECTION V. HEARINGS

A. Notice. Upon receiving any request for a hearing, either requesting a PPO or contesting a PPO, the Tribal Court shall hold a hearing with 10 business days. The Tribal Court shall provide at least seven (7) days' notice of any hearing held pursuant to this Statute. Notice shall be provided in accordance with the Tribal Court Rules of Civil Procedure unless otherwise provided for in this Statute.

B. Presentation of witnesses, evidence; right to cross examine. The Petitioner and Respondent will each have the opportunity to present testimony and evidence, including witness testimony. The Petitioner and the Respondent may have the court issue and serve subpoenas for witnesses to attend the hearing.

C. Attendance of parties not required. The Tribal Court may proceed with the hearing in the absence of either party.

D. After the Hearing the Court may confirm the terms of the ex parte order; or modify or amend the order. Additionally, the Court may order civil assistance, or a mutually agreed upon third party involvement so that either the Petitioner or Respondent may be able to access personal property or property of the minor children as appropriate. The order shall include reasonable dates, times, and locations for transfer of possessions.

SECTION VI. ARREST FOR VIOLATIONS OF ORDERS

A. When a law enforcement officer has probable cause to believe that a Respondent has violated a court Protection Order or No Contact Order, the officer may, without a warrant, arrest the apparent violator whether or not the violation was committed in the presence of the officer.

SECTION VII. IMMUNITY

A. Any law enforcement officer shall have immunity from any liability, civil or criminal, in making arrests or exercising any other authority granted under this Statute, if the law enforcement officer acts within the scope of his/her authority.

B. Law enforcement officers shall have the same immunity with respect to participation in any court proceedings resulting from arrests made for any crimes or violations involving a PPO.

SECTION VIII. CONFIDENTIALITY OF PETITIONER’S ADDRESS

A. The address of a Petitioner is confidential. Law enforcement, criminal justice personnel, probation and advocates shall not reveal the Petitioner’s address

B. A Petitioner may omit her or his address from all documents filed with the Court. If a Petitioner omits her or his address, the Petitioner must provide the Court a mailing address or, in the event the Petitioner is utilizing advocacy services, the name of an advocate that has the ability to contact the Petitioner. If disclosure of Petitioner's address is necessary to determine jurisdiction the Court may order the disclosure to be made:

- 1.** After receiving the Petitioner's consent;
- 2.** Orally and in chambers, out of the presence of the Respondent and a sealed record may be made; or
- 3.** After a hearing, if the Court takes into consideration the safety of the Petitioner and finds such disclosure is in the interest of justice.

SECTION IX. MUTUAL PROTECTION ORDERS PROHIBITED.

The Court shall not grant mutual Protection Orders. This does not preclude each of the parties from pursuing a PPO individually against the other party.

SECTION X. PETITIONER CANNOT VIOLATE THEIR OWN PROTECTION ORDER.

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

SECTION XI. TRIBAL REGISTRY FOR PROTECTION ORDERS:

A. To ensure the proper and timely enforcement of all LTBB Tribal Protection Orders, and any foreign orders falling within its purview and jurisdiction, the LTBB Tribal Court shall provide for a registry that shall be a record of all Protection Orders issued by or registered with the LTBB Tribal Court. The Court Clerk shall provide the law enforcement dispatch centers with certified copies of Protection Orders within the same day of issuance.

B. The Court shall coordinate with, and ensure that any LTBB Tribal Protection Orders are submitted to any other registries, whether federal, state, Tribal, or local, for the purpose of enhancing full faith and credit enforcement of all Protection Orders, including provisions to enter the Protection Orders in the National Crime Information Center (NCIC) database.

C. The Court Clerk shall also immediately provide the dispatch centers and designated registry with certified copies and information concerning any modifications, revocations, withdrawals, and/or expired, Protection Orders.

D. The Court shall provide that information contained in the registry shall be available on a 24-hour basis to any court, law enforcement agency, or domestic violence program.

SECTION XII. DURATION, VIOLATIONS OF PPO, SANCTIONS, HEARING

A. PPOs may be issued for up to 1 year in duration. Petitioner may file a Petition to

renew the PPO towards the end of the period if circumstances exist warranting an extension. Except as provided in Section VII. C and Section VIII. (Domestic Violence PPOs), violations of non-domestic violence PPOs are punishable as criminal contempt of court and are to be heard by the court.

B. There is no right to a jury trial.

C. An individual found violating a non-domestic violence PPO by the court may be sentenced to a maximum of ninety (90) days in jail and/or a \$500.00 fine for each violation. Domestic Violence PPO violations in Section VII. C and Section VIII. are considered crimes, punishable up to a year in jail and up to a \$5,000 fine, with the right of a jury trial attaching.

D. The standard of proof at any PPO violation hearing is beyond a reasonable doubt, and the rules of evidence apply.

SECTION XIII. REGULATIONS REQUIRED

Regulations shall be developed by the Executive Branch and presented to Tribal Council for approval in accordance with the Administrative Procedures Act that includes, but not limited to, clearly defining the rights, responsibilities, and requirements of the Petitioner and Respondent during the issuance, continuation and termination of a PPO.

SECTION XIV. SEVERABILITY CLAUSE

If any clause, section or part of this Statute is found to be unconstitutional, such a finding shall not render invalid the remainder thereof, but shall be confined in its operation to the offending section.

SECTION XV. EFFECTIVE DATE

This Statute is effective upon the signature of the Executive, or 30 days from submission

to the Executive branch, or if the Executive vetoes the legislation, then upon Tribal Council override of the veto.

SECTION XVI. OTHER RELATED STATUTES

See WOS 2009-009 Sex Offense, Crime and Criminal Code, Victims' Rights Statute, Domestic Violence, or as may be amended.

CERTIFICATION

As the Tribal Council Legislative Leader and Tribal Council Secretary, we certify that this Statute was duly adopted by the Tribal Council of the Little Traverse Bay Bands of Odawa Indians by a phone poll of the Tribal Council held on April 17, 2020 at which a quorum was present, by a vote of ____ in favor, ____ opposed, ____ abstentions, and absent as recorded by this roll call:

	In Favor	Opposed	Abstained	Absent
Fred Harrington Jr.	_____	_____	_____	_____
Fred Kiogima	_____	_____	_____	_____
Tamara Kiogima	_____	_____	_____	_____
Melissa Pamp	_____	_____	_____	_____
Leroy Shomin	_____	_____	_____	_____
Marty Van De Car	_____	_____	_____	_____
Marcella R. Reyes	_____	_____	_____	_____
Julie Shananaquet	_____	_____	_____	_____
Emily Proctor	_____	_____	_____	_____

Date: _____

 Emily Proctor, Legislative Leader

Date: _____

 Julie Shananaquet, Tribal Council Secretary

Received by the Executive Office on _____ by _____

Pursuant to Article VII, Section D, Subsection 1 of the Little Traverse Bay Bands of Odawa Indians Constitution adopted on February 1, 2005 the Executive concurs in this action of the Tribal Council.

Date: _____

 Regina Gasco Bentley, Tribal Chairperson

Received from the Executive on _____ by _____