



Waganakising Odawak

Little Traverse Bay Bands of Odawa Indians

Office of Tribal Chairman

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SORNS RETROACTIVE CLASSES OF OFFENDERS REGULATIONS REG-WOS 2011-007 052711-001

I. Introduction. These regulations are promulgated to establish a process for recapturing, registering, and notifying “Retroactive Classes of Offenders” in accordance with the LTBB Sex Offender Registration and Notification Statute (SORNS). LTBB has additionally determined that a fair judicial appeal process is required for offenders who fall into a retroactive class and are not in agreement to the Sex Offender Tier that has been assigned by the Registering Officer. These regulations address the process of appeal.

II. Definitions:

A. “Felony” means a person has been convicted in a court of competent jurisdiction of one of the following:

1. A crime defined by the Tribe’s Criminal Code as a felony or;
2. Rape or;
3. Sexual assault against an individual who has not attained the age of 16 years or;

4. Any other crime that is listed by the Major Crimes Act, Title 18, United States Code, Section 1153 paragraph A. “(a) Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely, murder, manslaughter, kidnapping, maiming, a felony under chapter 109A, incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury (as defined in section 1365 of this title), an assault against an individual who has not attained the age of 16 years, arson, burglary, robbery, and a felony under section 661 of this title within the Indian country, shall be subject to the same law and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States.”

- B. "Conviction" means being found guilty by either plea of guilty or nolo contendere, or by verdict.

III. Recapture.

- A. According to SORNS a defendant can be recaptured for the following:
 - 1. Sex Offenders that are currently incarcerated or under supervision, either for the predicate sex offense or for some other crime.
 - 2. Sex Offenders that are already registered or subject to a pre-existing sex offender registration requirement under the Tribe's jurisdiction.
 - 3. Sex Offenders who have reentered the Tribe's criminal justice system because of a conviction for some other felony crime, (whether or not it is a sex offense).
- B. When a Sex Offender is incarcerated, under Court supervision, or has been convicted of felony crime, the Registering Officer shall obtain a copy of the Offenders criminal history record. Based on the convictions within the criminal history record, the Registering Office shall determine the Tier Classification of the Sex Offender.
- C. Upon making such determination, the Registering Officer shall notify the Sex Offender of his or her Tier Classification and registering requirements.

VI. Appeals.

- A. If the Sex Offender does not agree with the Registering Officer's determination of the Tier Classification, the Sex Offender will have fifteen (15) days to appeal such determination to the Tribal Court for review.
- B. The Tribal Court may review the Registering Officer's determination of the Tier Classification by using the review standard of arbitrary and capricious wherein the determination will only be invalid because it was made on unreasonable grounds or without any proper consideration of circumstances.
- C. The Tribal Court will notify the Registering Officer and the Sex Offender of its determination.

D. The Registering Officer shall register the Sex Offender based on the Tribal Court ruling.

CERTIFICATION

As Chairperson, I approve this Retroactive Classes of Offenders Regulations.

Date: 6-16-11

Ken Harrington, Tribal Chairperson

Received by the Tribal Council Office on: 06-23-11 by: _____

As the Legislative Leader and Tribal Council Secretary, we certify that this Retroactive Classes of Offenders Regulations were approved by the Tribal Council of the Little Traverse Bay Bands of Odawa Indians at a regular meeting of the Tribal Council held on 6-26-2011 at which a quorum was present, by a vote of 9 in favor, 0 opposed, 0 abstentions, and 0 absent.

Date: 6-28-11

Julie/Shananaquet, Legislative Leader

Date: 6-28-11

Regina Gasco Bentley, Secretary