

WAGANAKISING ODAWAK STATUTE # 2015-012
VULNERABLE ELDER AND ADULT PROTECTION STATUTE

SECTION I. PURPOSE

The purpose of this Statute is to protect Vulnerable Elders and Adults from abuse, neglect, or exploitation as defined by this Statute. This Statute repeals and replaces any previous Adult Welfare Code, including WOS 2005-07.

SECTION II. DEFINITIONS

A. "Abuse" means

- 1.** An intentional or negligent infliction of bodily injury, unreasonable confinement, intimidation, emotional abuse or cruel punishment of a Vulnerable Elder or Adult which results in physical pain or mental anguish; or
- 2.** Sexual abuse is physical contact without consent of a Vulnerable Elder or Adult with the intent to derive sexual gratification by the person making contact. Consent may not be obtained by threat, coercion, intimidation or fraud.

B. "Caretaker" means a person who is required by court of competent jurisdiction to provide services or resources to a Vulnerable Elder or Adult.

C. "Department" means the Little Traverse Bay Bands of Odawa Indians Department of Human Services.

D. "Emergency" means a situation in which a Vulnerable Elder or Adult is immediately at risk of death or injury and is unable to consent to services to remove the risk.

E. "Exploitation" means the improper or unauthorized use of a Vulnerable Elder or Adult's funds, property or other resources or failure to use a Vulnerable Elder or Adult's funds, property or resources as a Vulnerable Elder or Adult desires or for their benefit.

- F.** "Family" means any spouse, parent, child, stepparent, stepchild, grandparent, grandchild, or significant other person or relative with whom a Vulnerable Elder or Adult has a familial relationship, or who resides with a Vulnerable Elder or Adult.
- G.** "Guardian" means a person assigned by a court of competent jurisdiction to exercise the duty and authority to provide care and control of a person under the Tribal Court's jurisdiction.
- H.** "Good Faith" means an honest and reasonable belief or purpose, and the lack of intent to defraud.
- I.** "Least restrictive alternative" means whenever it is necessary to protect a Vulnerable Elder or Adult, the least restrictive method of intervention shall be used to protect the freedom and independence of a Vulnerable Elder or Adult; the least restrictive alternative is that environment which is the most like a Vulnerable Elder or Adult home setting and which is most capable of supporting the protected person's physical and mental health; and emotional well-being.
- J.** "LTBB" or "Tribe" or "Tribal" means the Little Traverse Bay Bands of Odawa Indians.
- K.** "Neglect" means the failure of someone with fiduciary or legal responsibility to provide necessary services or resources to maintain the health or safety of a Vulnerable Elder or Adult or self-neglect caused by the inability of the adult to provide themselves with basic food, clothing, shelter and medical care due to mental incompetency or physical disability.
- L.** "Party" or "interested party" means a Vulnerable Elder or Adult, family, caretaker, and any other person that has an interest in the welfare of a Vulnerable Elder or Adult. The Court shall have the power to determine who is or is not a party or interested party in any court proceeding.
- M.** "Prosecutor" means the Little Traverse Bay Bands of Odawa Indians Prosecutor.
- N.** "Protective placement" means the placement of a Vulnerable Elder or Adult in a hospital, nursing home, residential care facility, other suitable placement, or transfer from one facility to another with consent of that person or with appropriate legal authority.



- O.** "Protective services" means services provided to a Vulnerable Elder or Adult with consent or by order of appropriate legal authority which includes but is not limited to: social services, mental and physical health examinations, home and day care, legal assistance, guardianship, case management and any other services consistent with this Statute.
- P.** "Retaliation" means intimidating, threatening to cause bodily harm, or causing bodily harm, or causing bodily harm to a reporter or family of a person reporting abuse; causing the reporter or reporter's family to be terminated, suspended or reprimanded by an employer; causing property damage to real or personal property belonging to a reporter's family.
- Q.** "Substantiated Report" means when there is probable cause of abuse after an investigation conducted by the Department. The report is sent to the Tribal Prosecutor for further steps to be taken.
- R.** "Tribe" or "Tribal" means the Little Traverse Bay Bands of Odawa Indians.
- S.** "Tribal Court" means the Little Traverse Bay Bands of Odawa Indians Tribal Court.
- T.** "Vulnerable Elder or Adult" means an Elder who is fifty-five (55) years old or older or an adult who is eighteen (18) years old or older and is unable to protect themselves from abuse, neglect or exploitation due to mental incompetency or physical disability.
- U.** "Unsubstantiated Report" means when no probable cause exists after an investigation. These reports are filed within the Department for reference as needed.

SECTION III. AUTHORITY

A. Pursuant to provisions of the Tribal Constitution, including Article I, B, 2. *"Promote with special care the health, educational and economic interests of all the people, especially our children and Elders, and shall protect them from social injustice and all forms of exploitation;* and 4. *"Establish and maintain within the limits of their economic capacity and development, effect provision for securing the right to work, to education and assistance, in cases of unemployment, old age, sickness and disablement, and in other cases of need".*

B. Pursuant to provisions of the Tribal Constitution, including Article VI, C. "... the Executive Branch to administer such funds, enforce this Constitution and laws passed thereunder, and implement policies and procedures enacted by the Tribal Council in accordance with Article VIII", Article VII of the Tribal Constitution allows the Legislative Branch to approve the creation or dissolution of Executive divisions or departments to promote and protect the peace, health, safety, education and general welfare of Little Traverse Bay Bands of Odawa Indians and its members.

SECTION IV. JURISDICTION

A. The Little Traverse Bay Bands of Odawa Indians shall have jurisdiction over the following:

- 1.** A Tribal Vulnerable Elder or Adult, who are unable to protect themselves from suspected abuse, neglect or exploitation due to mental incompetency or physical disability and is an enrolled Citizen of Little Traverse Bay Bands of Odawa Indians who resides within the exterior boundaries of the Reservation or residing within Tribal Trust Lands;
- 2.** Vulnerable Elder or Adult, who are unable to protect themselves from suspected abuse, neglect or exploitation due to mental incompetency or physical disability who resides within Tribal Trust Lands;
- 3.** A person who is either required by a court of competent jurisdiction or has a fiduciary or legal responsibility to provide services or resources to an Vulnerable Elder or Adult and is suspected of abuse, neglect or exploitation under this statute within the exterior boundaries of the Reservation or residing within Tribal Trust Lands;

SECTION V. DUTY TO REPORT

A. It is the duty of any person who have reason to suspect that a Vulnerable Elder or Adult is abused or neglected shall contact the Department.

B. It is mandated by this Statute for the following to report to the Department any suspected abuse, neglect or exploitation of a Vulnerable Elder or Adult, immediately or as soon after that is reasonably possible:

1. Judiciary employees, or persons who either have been court appointed or have a legal responsibility to a Vulnerable Elder or Adult;
2. Law Enforcement, Prosecutor and staff;
3. Tribal employee who provide services to Vulnerable Elder or Adult of the following departments:
 - a. Education
 - b. Elders
 - c. Health
 - d. Housing
 - e. Human Services
 - f. Language
4. Elected or appointed official of the Tribe;

C. Reports of suspected Vulnerable Elder or Adult abuse are presumed to be made in good faith.

SECTION VI. IMMUNITY FOR REPORTING

A person who in good faith reports suspected abuse, neglect or exploitation as defined in this Statute is immune from any civil or criminal statute, even if the report is unsubstantiated.

SECTION VII. FAILURE TO REPORT; CIVIL PENALTY

If found responsible, after a fair hearing of the court, a person mandated to report who fails to report suspected Vulnerable Elder or Adult abuse, neglect, or exploitation as required by this Statute may be subject to a civil fine not to exceed five-thousand (\$5,000.00) dollars.

SECTION VIII. FALSE REPORT

If found responsible, after a fair hearing of the court, any person who makes a report of suspected Vulnerable Elder or Adult abuse, neglect or exploitation as defined by this Statute knowing it to be false may be subject to a civil fine not to exceed five-thousand (\$5,000.00) dollars.

SECTION IX. HUMAN SERVICES DEPARTMENT DUTIES, RESPONSIBILITIES and AUTHORITY

A. The Department shall be responsible to initiate an investigation, upon receiving a report of a Vulnerable Elder or Adult abuse, neglect or exploitation.

B. The Department shall investigate all reports. The Department shall investigate upon receipt of the report of abuse, neglect or exploitation within twenty-four (24) hours, meet face to face with the alleged victim within seventy-two (72) hours and complete the investigation with a written report within thirty (30) consecutive days based upon:

1. Personal interviews with the alleged Vulnerable Elder or Adult abused, neglected or exploited, the immediate family and caretaker, suspected abuser, employees of agencies (if involved), and any other person who may have pertinent information;
2. Medical records and other evidence of abuse;
3. Assessments of a Vulnerable Elder or Adult's living conditions;
4. Any other observations, assessments or documents that may aid in completing an accurate report.



C. Based on the investigation, if the Department believes that there is evidence of Vulnerable Elder or Adult abuse, neglect or exploitation, the Department will submit the report to the Prosecutor.

D. The Department shall have the authority to obtain from all tribal governmental departments, agencies and programs information and assistance with the Department's investigations of suspected Vulnerable Elder or Adult abuse, neglect or exploitation. This shall include information sharing without the need of signed releases.

SECTION X. LAW ENFORCEMENT DUTIES AND RESPONSIBILITIES

A. Upon the request of the Department, Law Enforcement shall assist the Department in conducting an investigation within twenty-four (24) hours, if one or more of the following conditions exist:

1. Abuse or neglect is the suspected cause of death of a Vulnerable Elder or Adult;
2. A Vulnerable Elder or Adult is the victim of suspected sexual abuse or sexual exploitation;
3. Abuse or neglect resulting in severe physical injury to a Vulnerable Elder or Adult that requires medical treatment or hospitalization. For the purpose of this subsection, "severe physical injury" means brain damage, skull or bone fracture, subdural hematoma, dislocation, sprain, internal injuries, poisoning, burns, scalds, severe cuts, or any other physical injury that seriously impairs the health or physical well-being of a vulnerable Tribal Elder or vulnerable Tribal adult.
4. Law enforcement intervention is necessary for the protection of a Vulnerable Elder or Adult, Department staff, or another person involved in the investigation; or
5. The alleged perpetrator of abuse, neglect or exploitation of a Vulnerable Elder or Adult is not a person responsible for the health or welfare of the Vulnerable Elder or Adult.

B. Law Enforcement shall be responsible to determine and investigate if any other criminal acts are alleged and shall forward this information to the Prosecutor.

SECTION XI. PROSECUTOR'S DUTIES AND RESPONSIBILITIES

A. The Prosecutor is authorized by this Statute to petition the Court for Emergency Protection Orders and Non- Emergency Protection Order for protection of Vulnerable Elder or Adult from abuse, neglect or exploitation, upon receipt of a report of investigation from the Department.

B. The Prosecutor is authorized by this Statute to represent the Tribe in matters of protection of Vulnerable Elder or Adult from abuse, neglect or exploitation, upon request of the Department.

SECTION XII. PETITIONS AND EMERGENCY ORDERS

A. Any concerned or interested party may file a Petition for an emergency protection order directly with the court of suspected Vulnerable Elder or Adult abuse, neglect or exploitation.

B. Upon filing of a Petition, the Court may issue an Emergency Protection Order (EPO) authorizing emergency services or protective placement either ex parte or after a hearing, if there is a showing, upon clear and convincing evidence

1. A person is a Vulnerable Elder or Adult and

2. The Vulnerable Elder or Adult is at risk of immediate abuse, neglect or exploitation.

C. The EPO, using the least restrictive alternative, may include:

1. Specific emergency services to be provided to remediate the emergency;

2. Protective placement only if the evidence indicates that it is absolutely necessary;
3. Designation of a person or agency required to implement the order;
4. A warrant for forcible entry by Tribal Law Enforcement, if requested and documented attempts to gain voluntary access have failed.

D. EPOs shall not exceed a maximum of seventy-two (72) hours excluding weekends and holidays, and may only be renewed for an additional seventy-two (72) hours, if there is evidence of continuing emergency.

E. The Court shall hold a hearing upon the filing of a Petition for an EPO or if an EPO was issued ex parte, within seventy two (72) hours. At the hearing, if the Vulnerable Elder or Adult is not represented, a Guardian Ad Litem shall be appointed at this time, if it has not already been done so at the time of the filing of the Petition for an EPO.

F. All parties, including attorneys, are permitted to attend the hearing for an EPO. The hearing may be done ex-parte if the need arises. The sufficiency of the petition will be determined on a totality of circumstances and goes into effect upon the immediate granting of the order by the Court.

SECTION XIII. PETITIONS AND NON-EMERGENCY PROTECTION ORDER

A. Upon the filing of a Non- Emergency Protection Order (NEPO) petition, the Court may issue an NEPO, after a hearing that shall be held within fourteen (14) consecutive days if there is a showing, upon clear and convincing evidence

1. A person is a Vulnerable Elder or Adult and
2. The Vulnerable Elder or Adult is at risk of abuse, neglect or exploitation.

B. All parties are entitled to notice and an opportunity to be heard on the record. All proceedings shall be open to the public, unless the Court, on its own motion or by motion of a party, determines that by the nature of the proceedings, the proceedings are to be closed.

C. Judgments. The Court shall make a written determination or decision within 48 hours of a hearing and using least restrictive alternative, which may include the following:

1. Appointing a guardian ad litem for the Elder or adult or enter other orders for the protection of the Vulnerable Elder or Adult.
2. Order the Department to prepare petitions for Guardianship or Conservatorship.
3. Removal from the place where the abuse or neglect occur(ed) including the Vulnerable Elder or Adult's home;
4. Remove the abuser from the residence to prohibit further abusive acts;
5. Requiring any party having a fiduciary duty to the Vulnerable Elder or Adult to account for the Vulnerable Elder or Adult's funds and/or property;

D. Protective orders authority shall not exceed 180 days.

SECTION XIV. EMERGENCY PLACEMENT

A. If there is good cause to believe that an emergency exists and a Vulnerable Elder or Adult is at risk of immediate or irreparable harm upon personal observation, the Department or Tribal Law Enforcement shall immediately take steps to protect the Vulnerable Elder or Adult, including emergency services or protective placement. A court order must be obtained within twenty-four (24) hours to continue the authorization of emergency services or protective placement.

B. Anyone who acts in reasonable good faith pursuant to this section shall be immune from civil and criminal suit if the suspected abuse or neglect results in an unsubstantiated report.

SECTION XV. CONFIDENTIALITY OF REPORTER and RECORDS

- A.** The identity of the reporter of suspected Vulnerable Elder or Adult abuse, neglect or exploitation, under this Statute, is confidential.
- B.** Records of investigations concerning suspected Vulnerable Elder or Adult abuse, neglect or exploitation shall be confidential.

SECTION XVI. RIGHTS OF VULNERABLE ELDER OR ADULT

- A.** A Vulnerable Elder or Adult shall be informed of any investigation as it begins, unless an emergency exists and shall have the ability to receive any investigation reports.
- B.** Elders or adults are presumed to be competent until a court of competent jurisdiction determines otherwise.
- C.** A Vulnerable Elder or Adult may refuse to allow investigators into their home without a warrant for entry.
- D.** The Vulnerable Elder or Adult has the right to attend all proceedings pertaining to the suspected abuse, neglect or exploitation unless the Court determines the Elders or adult's health is at risk in attending such proceedings.
- E.** The Vulnerable Elder or Adult has the right to receive any documents presented to the court at any or all court proceedings pertaining to the suspected abuse, neglect or exploitation.
- F.** The Vulnerable Elder or Adult has the right to independent medical, psychological or psychiatric evaluations at their own expense.

SECTION XVII. SAVING CLAUSE

In the event that any phrase, provision, part, paragraph, subsection or section of this statute is found by a court of competent jurisdiction to violate the Constitution, laws, ordinances or statutes of the Little Traverse Bay Bands of Odawa Indians, such phrase, provision, part, paragraph, subsection or section shall be considered to stand alone and to be deleted from this statute, the entirety of the balance of the statute to remain in full and binding force and effect.

SECTION XVIII. 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.



CERTIFICATION

As the Tribal Council Treasurer and Tribal Council Secretary, we certify that this Statute was duly passed by the Tribal Council of the Little Traverse Bay Bands of Odawa Indians at a regular meeting of the Tribal Council held on July 9, 2015 at which a quorum was present, by a vote of 7 in favor, 0 opposed, 0 abstentions, and 1 absent as recorded by this roll call:

	<u>In Favor</u>	<u>Opposed</u>	<u>Abstained</u>	<u>Absent</u>
Bill A. Denemy	X			
John W. Keshick III	X			
Beatrice A. Law	X			
Michael J. Naganashe	X			
Aaron Otto				X
Winnay J. Wemigwase	X			
Julie A. Shananaquet	X			
Marcella R. Reyes	X			

Date: 7-13-2015 Marcella R. Reyes
 Marcella R. Reyes, Treasurer

Date: 7-10-15 Julie Shananaquet
 Julie A. Shananaquet, Secretary

Received by the Executive Office on 7-13-15 by JL. L. K

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

Date: 7-21-15 Regina Gasco Bentley
 Regina Gasco Bentley, Tribal Chairperson