

7-13-2011

VETO STATEMENT

To: Tribal Council
From: Tribal Chairman
Ken Harrington
Re: **Waganakising Odawak Statute
Stalking Personal Protection Orders
Violations and Criminal Offenses**

This statute was vetoed for the following reasons;

SECTION VII. PETITIONER CANNOT VIOLATE THEIR OWN PROTECTION ORDER.

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

Our Tribal Police Chief Cobe has an attached email regarding a potential risk of "malicious petitioner abuse". (See attached)

Essentially this proposed Statute is good except for this section. The section allows for situations where the petitioner can lure the contact and force unwarranted arrest. Therefore Executive has vetoed this Statute.

Respectfully,

Tribal Chairman Ken Harrington _____

7-13-11

Vice-Chairman Dexter McNamara _____

7-13-11

Lisa Flynn

From: Jeff Cobe
Sent: Monday, July 11, 2011 3:36 PM
To: Lisa Flynn
Subject: RE: Statute

Chairman,

Section VII. PETITIONER CANNOT VIOLATE THEIR OWN PROTECTION ORDER:

This may cause malicious Petitioner abuse. There is no checks and balances in keeping the Petitioner from invoking contact by any means with the Respondent that she/he is seeking protection from. There are some instances where coincidental contact may occur that would not require enforcement action however, if the petitioner initiates contact then calls law enforcement to report a violation I would be inclined not to enforce but submit to the Prosecutor for enforcement.

SPPO's are designed to protect people through a Statute and there is certain responsibility of the Petitioner for follow the order as well. There should be instruction for the Petitioner as to go back to Court to get the SPPO cancelled.

Respectfully Submitted

Jeff Cobe
Chief of Police

From: Lisa Flynn
Sent: Monday, July 11, 2011 2:33 PM
To: Jeff Cobe
Subject: Statute

Jeff,
For your review and input. Thanks.

Lisa Flynn
Administrative Assistant to the Chairman's office
Little Traverse Bay Band of Odawa Indians
7500 Odawa Circle
Harbor Springs, Michigan 49740
Phone (231) 242-1401
FAX (231) 242-1419

**WAGANAKISING ODAWAK STATUTE
STALKING PERSONAL PROTECTION ORDERS, VIOLATIONS, AND
CRIMINAL OFFENSES**

SECTION I. PURPOSE

The goal of this Statute is to provide victims of stalking with safety and protection.

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.** “Stalking Personal Protection Order” or “SPPO” means an order issued by Tribal Court or a Court of Competent Jurisdiction for the purpose of 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 referenced in Public Law 103-324, 25 USC Section 1300k-2(b)(2)(A) as the boundaries *of the reservations for the Little Traverse Bay Bands as set out in Article I, paragraphs ‘third and fourth’ of the Treaty of 1855, 11 Stat.621.*” Little Traverse Bay Bands Constitution, Article V(A)(1)(a).

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

I. “Tribal Member” means a person who is enrolled Citizen of the Little Traverse Bay Bands of Odawa Indian.

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

K. “Un-consented 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. Un-consented contact includes, but is not limited to, any of 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, or delivering an object to, property owned, leased, or occupied by that individual.

L. "Victim" means an individual who is the target of a willful course of conduct involving repeated or continuing harassment.

SECTION III. STALKING PROTECTION ORDERS

A. Tribal Court may issue Stalking Personal Protection Orders including but are not limited to the following:

1. Civil Ex Parte
2. Civil After Hearing
3. Condition of Release or Sentence:
 - a. Pre Adjudication Conditions of Release (Bond)
 - b. Post Adjudication Conditions of Release (Bond)
 - c. Sentencing Orders
 - d. Probation Orders

B. Eligible Petitioners: Any person who is or has been a victim of the offense of stalking may file a petition for a Protection Orders against any person who has threatened or has committed an act of stalking or any parent, guardian, or other representative may file a petition on behalf of a child, legally incompetent person, or vulnerable adult.

C. The Tribal Court may impose the following within a PPO:

1. An order prohibiting the person from threatening to commit or committing

acts of harassment against the alleged victim or other family or household member;

2. An order prohibiting the person from harassing, annoying, telephoning, contacting, or otherwise communicating with the alleged victim, either directly or indirectly through family, relations by marriage, friends, or co-workers;
3. An order directing the person to stay away from the home of the alleged victim and/or child and to stay away from any location where the victim is likely to be including school, place of employment, or a specified place frequented regularly by the petitioner and any named family or household member;
4. Inform the person that a violation of these conditions may result in his/her immediate arrest for noncompliance.

D. The Court shall:

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 Protection Order is understood by the Petitioner, and the Respondent, if present; and
3. Transmit, by the end of the next business day after the order is issued, a copy of the Protection Order to the local law enforcement agency or agencies designated by the Petitioner.

E. A Protection Order issued *ex parte* or upon notice and hearing, or a modification of a Protection Orders issued *ex parte* or upon notice and hearing, is effective until further order of the Court. If an *ex parte* order is entered, a hearing shall be scheduled within 14 days to allow the Respondent to respond to the petition. It shall be noted in bold or capital letters on the *ex parte* order:

1. Advising the Respondent that, "If a Protection Order is granted after a hearing, this *ex parte* order shall remain in effect until service is completed."
2. Advising the Respondent that, "If you fail to appear at the hearing regarding the Protection Order, the Court may issue a default judgment granting the relief requested

F. The LTBB Law Enforcement shall provide expedited service for Protection Orders.

SECTION IV. MANDATORY ARREST FOR VIOLATIONS OF ORDERS FOR, PROTECTION

A. When a law enforcement officer has probable cause to believe that a respondent has violated a court Protection Orders, the officer shall, without a warrant, arrest the apparent violator.

B. The petitioner who is granted a Protection Orders cannot violate or be arrested for violation of her/his own Protection Orders.

C. If a law enforcement officer has probable cause to believe that a person has violated a condition of release, or probation, the officer shall, without a warrant, arrest the alleged violator, whether or not the violation was committed in the presence of the officer.

SECTION V. 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. change

B. Law enforcement officers shall have the same immunity with respect to

Stalking Personal Protection Orders, Violations, and Criminal Offenses

participation in any court proceedings resulting from arrests made for any crimes involving SPPO.

SECTION VI. CONFIDENTIALITY OF VICTIM'S ADDRESS:

A. The address of a victim is confidential. Law enforcement, criminal justice personnel, probation and advocates shall not reveal the victim'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 knowledge to be able 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 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 VII. PETITIONER CANNOT VIOLATE THEIR OWN PROTECTION ORDER.

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

SECTION VIII. MUTUAL PROTECTION ORDERS PROHIBITED.

The Court shall not grant mutual Protection Orders.

SECTION IX. TRIBAL REGISTRY FOR PROTECTION ORDERS:

1. 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.
2. 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.
3. 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.
4. 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 X. VIOLATION OF SPPO SANCTIONS

An SPPO is a court order, so any violation proven beyond a reasonable doubt is criminal "contempt of court". The Judge can send the violating respondent to jail for up to 60 days for each violation, and/or impose a fine of \$500.00.

SECTION XI. STALKING PENALTIES:

A. An individual who engages in stalking is guilty of a crime as follows:

1. A person found guilty of stalking shall be subject to a penalty of not more than sixty (60) days in jail, a fine not to exceed \$500.00, or both fine and imprisonment.

2. A person guilty of a second or subsequent offense, within five (5) years of the first offense, shall be subject to a penalty of not less than ninety (90) days in jail, a fine not to exceed \$500.00, or both fine and imprisonment.

B. If the victim is a juvenile at any time during the individual's course of conduct and the individual is five (5) or more years older than the victim, shall be subject to a penalty of not less than ninety (90) days in jail, a fine not to exceed \$500.00, or both fine and imprisonment.

C. A criminal penalty provided for under this section may be imposed in addition to any penalty that may be imposed for any other criminal offense arising from the same conduct or for any contempt of court arising from the same conduct.

SECTION XII. SEVERABILITY CLAUSE

If any clause, section or part of this Statute is declared invalid by the Tribal Court, such shall not render invalid the remainder thereof, but shall be confined in its operation to the offending section.

SECTION XIII. EFFECTIVE DATE

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.

CERTIFICATION

As the Tribal Council Legislative Leader 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 June 12, 2011 at which a quorum was present, by a vote of 7 in favor, 0 opposed, 0 abstentions, and 3 absent as recorded by this roll call:

	In Favor	Opposed	Abstained	Absent
Marvin Mulholland	X			
Belinda Bardwell				X
Melvin L. Kiogima	X			
Gerald V. Chingwa	X			
Rita Shananaquet				X
Aaron Otto	X			
John Bott				X
Regina Gasco Bentley	X			
Julie Shananaquet	X	/		

Date: 6-13-11
Julie A. Shananaquet, Legislative Leader

Date: 6-13-11
Regina Gasco Bentley, Secretary

Received by the Executive Office on 6-15-11 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: 7-13-11
Ken Harrington, Tribal Chairperson

VETO