

WAGANAKISING ODAWAK STATUTE 2015-005
VICTIMS RIGHTS

SECTION I. SHORT TITLE

This Statute may be cited as the “Victims Rights Statute.”

SECTION II. PURPOSE

The purpose of this Statute is to protect the rights of crime victims. This Statute repeals and replaces the “Victims Rights Act,” WOTCL 9.600.

SECTION III. JURISDICTION

This Statute applies to victims, as defined in this Statute, of crimes under the laws of LTBB.

SECTION IV. DEFINITIONS

- A. **“Court”** means the Little Traverse Bay Bands of Odawa Indians Tribal Court.
- B. **“Crime”** means a violation of the laws of the Little Traverse Bay Bands of Odawa Indians for which the offender, upon conviction, may be punished by imprisonment or fine.
- C. **“Defendant”** means a person charged with having committed a crime against a victim.
- D. **“Final disposition”** means the ultimate termination of the criminal prosecution of a defendant including, but not limited to, dismissal, acquittal or imposition of a sentence by the Court.
- E. **“LTBB or Tribe”** means the Little Traverse Bay Bands of Odawa Indians.

- F. **“Prisoner”** means a person who has been convicted and sentenced to imprisonment for having committed a crime against a victim.
- G. **“Prosecutor”** means the Little Traverse Bay Bands of Odawa Indians Tribal Prosecutor.
- H. **“Victim”** means any of the following:
1. Any individual who suffers direct or threatened physical, financial or emotional harm as a result of the commission of a crime;
 2. A parent, guardian or custodian of a victim who is less than eighteen (18) years of age if the parent, guardian or custodian so chooses; or
 3. A parent, guardian or custodian of a victim who is so mentally incapacitated that he or she cannot meaningfully understand or participate in the legal process.
 4. If a victim is physically unable to exercise the rights under this Statute, the victim may designate his or her spouse or a child of fifteen (15) years of age or older, parent, sibling, grandparent or legal representative of the victim to act in place of the victim during the duration of the physical disability.

SECTION V. RIGHTS OF CRIME VICTIMS

All crime victims have the following rights:

- A. **Right to be Protected.** The following measures may be taken to protect victims as necessary and appropriate:
1. Have police escorts to and from court;
 2. Have secure waiting areas separate from those of the accused and his or her family, witness and friend during court proceedings;

3. Have bail denied or have specific conditions imposed on bail release such as protective orders for defendants who are found to present a danger to the community, the victims, or witnesses;

4. Have the victim's address, place of employment, and other personal identification information kept confidential based upon the victim's reasonable apprehension of acts or threats of physical violence or intimidation by the defendant or at the defendant's direction against the victim or the victim's immediate family; and

5. Have any other action taken that is necessary to protect the victim from the accused.

B. Right to Notice. The right to reasonable, accurate, and timely notice of the victim's rights and any public court proceeding, or any parole proceeding, involving the crime or any release or escape of the accused and the right not to be excluded from any public court proceeding.

1. **Initial Notice.** Within twenty four (24) hours after the initial contact between the victim of a reported crime and law enforcement having the responsibility of investigating that crime, law enforcement must give the victim information about the availability of emergency and medical services and the rights of the victim.

2. **Notice of Charges.** The right to be notified immediately, if the Prosecutor chooses not to file charges against the Defendant or drops charges being held against the Defendant.

3. **Notice of Release.**

a. Within twenty four (24) hours after the arraignment of the defendant for a crime, the prosecutor must give the victim notice of whether the defendant is eligible for pretrial release and notice if the defendant is released from custody by bond or otherwise.

b. The Prosecutor may move that the bond or personal recognizance of a defendant be revoked where the victim's statement or affidavit asserts acts or

threats of physical violence or intimidation by the defendant or at the defendant's direction against the victim or the victim's immediate family.

3. Notice of Trial Process. Within seven (7) days after the arraignment of the defendant for a crime, the Prosecutor must give the victim a written notice in plain English of each of the following:

- a. A brief statement of the procedural steps in the processing of a criminal case;
- b. Suggested procedures if the victim is subjected to threats or intimidation; and
- c. The appropriate person to contact for further information.

5. Notice of Sentencing.

- a. Upon request of the victim, the victim must be given notice of the following:
 - i. The defendant's conviction;
 - ii. The crimes for which the defendant was convicted;
 - iii. The victim's right to make a written or oral impact statement for use in the preparation of a pre-sentence investigation report concerning the defendant;
 - iv. The address and telephone number of the probation office, if any, which is to prepare the pre-sentence investigation report;
 - v. That a pre-sentence investigation report and any statement of the victim included in the report will be made available to the defendant unless exempted from disclosure by the Court;

vi. The victim's right to make an impact statement at sentencing;

vii. The time and place of the sentencing proceeding

b. The notice given by the Prosecutor to the victim must be given by any means reasonably calculated to give prompt and actual notice.

6. Notice of Appeal.

a. Upon request of the victim, the Court must notify the victim of the following:

i. That the defendant has filed an appeal of his or her conviction;

ii. A brief explanation in plain English of the appeal process, including the possible dispositions;

iii. Whether the defendant has been released on bail or other recognizance pending the disposition of the appeal;

iv. The time and place of any appellate court proceedings and any changes in the time or place of those proceedings; and

v. The result of the appeal.

b. In the event the defendant's conviction is reversed and the case is returned to the trial court for further proceedings, the victim must have the same rights previously requested during the proceedings, which led to the appeal.

7. Notice of Release. Upon request of the victim, the Court must notify the victim of the defendant's release.

8. Notice of Escape. A victim who requests notice of the escape and the Prosecutor who is or has prosecuted the crime for which the person is detained or under sentence must be given immediate notice of the escape of the person accused, convicted or

imprisoned for committing a crime against the victim. The notice must be given by means reasonably calculated to give prompt and actual notice.

C. Right not to be Excluded. The victim has the right to attend proceedings related to the crime for which the defendant is charged, unless the Court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at the proceeding. The victim has the right to have a support person present during such proceedings such as a family member, trusted advocate, or legal representative.

D. Right to be Heard During Proceedings. The right to be heard at any court or agency proceeding involving release, plea, sentencing, or any parole proceeding.

1. The victim has the right to submit or make a written or oral impact statement to law enforcement for use in preparing investigations and reports.

2. The victim has the right to appear and make an oral impact statement at the sentencing of the defendant.

3. The victim has the right to address or submit a written statement for consideration by a probation officer, a parole board or any other group or person having authority over the prisoner's release.

E. Right to Confer with the Prosecutor. The Prosecutor must offer the victim an opportunity to consult with the Prosecutor to obtain the victim's views about the disposition of a crime, including the victim's views about dismissal, plea or sentence negotiations, and pretrial or probation programs.

F. Right to Restitution. The right to full and timely restitution as provided by law.

1. Consistent with LTBB criminal laws, the Court may order that the defendant make restitution to any victim of the defendant's course of conduct that gives rise to the conviction or the victim's estate.

2. If the Court does not order restitution, or orders only partial restitution, the Court must state on the record the reasons for that action.

3. If a crime results in damage to or loss or destruction of property of a victim of the offense, the order of restitution may require that the defendant do either of the following:
 - a. Return the property to its owner or to another person designated by the owner; or
 - b. If return of the property is impossible, impractical or inadequate, pay an amount equal to the value of the property on the date of the damage, loss or destruction.

4. If a crime results in physical or psychological injury to a victim, the order of restitution may require that the defendant do one or more of the following, as applicable:
 - a. Pay an amount equal to the cost of actual medical and related professional services and devices relating to physical and psychological care;
 - b. Pay an amount equal to the cost of actual physical and occupational therapy and rehabilitation;
 - c. Reimburse the victim or the victim's estate for after-tax income loss suffered by the victim as a result of the offense; or
 - d. Pay an amount equal to the cost of psychological and medical treatment for members of the victim's family that has been incurred as a result of the offense.

5. If a crime resulting in bodily injury also results in death of a victim, the order of restitution may require that the defendant pay an amount equal to the cost of actual funeral and related expenses.

6. Instead of restitution, and if the victim or the victim's estate consents, the order of restitution may require the defendant make restitution in services in lieu of money, or make restitution to a person designation by the victim or victim's estate if that person provided services to the victim as a result of the crime.

7. If the Court orders restitution, the Court must, if the victim is deceased, order that the restitution be made to the victim's estate.

8. Any order of restitution must be as fair as possible to the victim or victim's estate without unduly complicating or prolonging the sentencing process.

9. Any amount paid to a victim or victim's estate as restitution must be set off against any amount later recovered as compensatory damages by the victim or the victim's estate in any federal, state or Tribal civil proceeding.

10. If the defendant is placed on probation or paroled, any restitution ordered under this section must be a condition of that probation or parole. The Court may revoke probation or parole if the defendant fails to comply with the order and if the defendant has not made a good faith effort to comply with the order. In determining whether to revoke probation or parole, the Court must consider the defendant's employment status, earning ability, financial resources, and the willfulness of the defendant's failure to pay and any other special circumstances that may have a bearing on the defendant's ability to pay.

11. An order of restitution may be enforced by the Prosecutor, a victim, or victim's estate named in the order to receive the restitution in the same manner as a judgment in a civil action.

G. Right to Proceedings without Unreasonable Delay. The right to proceedings free from unreasonable delay. If the Court is ruling on a continuance or other delay in the proceedings, the Court must consider the impact of the delay on the victim. Victims who are children, elders, or otherwise vulnerable must be given preference in setting the Court docket.

H. Right to be Treated with Fairness and Respect. The right to be treated with fairness and with respect for the victim's dignity and privacy. The victim must be treated with fairness, respect, and dignity throughout the criminal justice process. During proceedings the Prosecutor and the Court must take into this into consideration when requesting or ordering testing, testimony, or any other potentially invasive act.

I. Right to Return of Property. The right to the expeditious return of personal property seized as evidence whenever possible. Law enforcement must promptly return to the victim property belonging to that victim which is taken in the course of the investigation, except that law enforcement:

1. Must not return property which is contraband;
2. Must not return property if the ownership of the property is disputed until the dispute is resolved; and
3. Must retain as evidence any weapon used in the commission of the crime and any other evidence if the Prosecutor certifies that there is a need to retain that evidence in lieu of a photograph or other means of memorializing its possession by a law enforcement officer.

J. Right to Enforcement. The right to enforcement of these rights and access to other available remedies under the laws of LTBB. Upon request of a victim, the Prosecutor must ask the Court to enforce the rights of the victim.

K. Right to View Copies of Record and Evidence. The right to view copies of reports and other evidence related to the proceeding, provided that the records will not compromise the prosecution of the case. Upon the closing of an investigation or if still open, before the statute of limitations has run on the particular crime or within one year after the case goes cold, the victim has a right to view any and all records and evidence gathered by law enforcement. Such items do not include anything that is privileged. If any of the items contain confidential information, that information must be redacted before the victim is allowed to view it.

SECTION VII. SEVERABILITY

If any section, subsection, paragraph, sentence, phrase or portion of this Statute is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

SECTION VIII. EFFECTIVE DATE

Effective upon the 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 March 5, 2015 at which a quorum was present, by a vote of 8 in favor, 0 opposed, 0 abstentions, and 0 absent as recorded by this roll call:

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

Date: 03.06.2015 Marcella R. Reyes
 Marcella R. Reyes, Treasurer

Date: 03.06.2015 Julia A. Shananaquet
 Julia A. Shananaquet, Secretary

Received by the Executive Office on 3/6/15 by [Signature]

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 with this action of the Tribal Council.

Date: 3-6-2015 Regina Gasco Bentley
 Regina Gasco Bentley, Tribal Chairperson