

WAGANAKISING ODAWAK STATUTE 2018-001
CONTEMPT OF COURT

SECTION I. SHORT TITLE

This Statute shall be known and cited as the Little Traverse Bay Bands of Odawa Indians "Contempt Statute" and repeals and replaces WOS 2010-004 Contempt of Court.

SECTION II. PURPOSE

The purpose of this Statute is to provide the Court with statutory authority to adjudicate persons or corporations who may have committed a contemptible act in the presence of the Court or outside of the presence of the Court, which is a civil infraction.

SECTION III. DEFINITIONS

- A. "Contemnor" means a person or corporation who is responsible for Contempt of Court.
- B. "Direct Contempt" or "Direct Contempt of Court" means a contempt committed in the presence of the Judge presiding in Court or so near to the Judge as to interrupt the Court's proceedings.
- C. "Indirect Contempt" or "Indirect Contempt of Court" means a contempt committed outside of the presence of a Judge.
- D. "Contempt to Compel" is when a Court finds a person or corporation responsible for failure to comply with a Court order and seeks to compel compliance through contempt remedies.
- E. "Indigent person" means a person who qualifies for public assistance.
- F. "LTBB Reservation" means all lands and waters as described in the LTBB Constitution Article III (H).

G. "Officer of the Court" means any person who has an obligation to promote justice and effective operation of the judicial system, including, but not limited to, attorneys who appear in Court, bailiffs, clerks, law enforcement officers, bail bondsmen/women, coroners, other Court personnel, and all persons in any manner elected or appointed to perform any judicial or ministerial services.

H. "Movant" means the party who files a motion to request a hearing to determine if a person or corporation shall be held in Contempt.

I. "Tribe" or "LTBB" means the Waganakising Odawa, also known as the Little Traverse Bay Bands of Odawa Indians.

J. "Tribal Court" or "Court" means the LTBB Court created under Article IX of the LTBB Constitution.

SECTION IV. JURISDICTION

This Statute shall apply to all persons or corporations over whom the Tribe exercises jurisdiction.

SECTION V. CONTEMPT OF COURT

A. Contempt of Court shall include any of the following:

- 1.** Willful behavior committed during the sitting of a Court with the intent to interrupt its proceedings.
- 2.** Willful behavior committed during the sitting of a Court and in the Court's presence that is disrespectful to either the Judge, the Court, any juror or witness, or any Officer of the Court.
- 3.** Willful disobedience of, resistance to, or interference with a lawful Court process, order, directive, or instruction or the execution of same.

4. Willful refusal to be sworn or affirmed as a witness, or, when so sworn or affirmed, willfully refuses to answer any legal and proper question when the refusal is not legally justified.

5. Willful or grossly negligent failure by an Officer of the Court to perform his or her duties in an official transaction.

6. Willful or grossly negligent failure to comply with schedules and practices of the Court resulting in substantial interference with the business of the Court.

7. Failure to comply with an order of a Court.

B. In order to find Contempt of Court, the Court must find that the act or omission was willfully or negligently contemptuous by clear and convincing evidence; or the act or omission was preceded by a clear warning by the Court that the conduct is improper.

C. Unless otherwise indicated in this statute, the Court must use the least restrictive measures the Court believes is appropriate which may include, but are not limited to a fine, compensatory remedies, community service or confinement to jail for a period of no longer than seven (7) days.

SECTION VI. CORPORATION IN CONTEMPT

An order against a corporation for willful disobedience may be enforced by one or more of the following:

A. Imposition of a fine upon the corporation.

B. Imprisonment of one or more directors or officers of the corporation;

C. Imposition or a fine upon one or more directors or officers of the corporation.

SECTION VII. PROCEEDINGS FOR CONTEMPT

A. Direct Contempt. The presiding Judge may summarily impose measures in response to Direct Contempt when necessary to restore order or to maintain the dignity and authority of the Court.

1. The measures should be imposed substantially contemporaneously with the contempt.
2. Before imposing measures, the Judge must give the person or corporation charged with contempt summary notice of the charges, warn them of the potential legal sanctions, and give a summary opportunity to respond, unless doing so would compromise the safety of the Court.
3. A contempt order must recite the facts, be signed by the Judge, and served upon the Contemnor.
4. The Court must give notice to the Contemnor of their right to a show cause hearing to be held within forty-eight (48) hours of confinement to jail or any place of confinement that a person cannot leave on their own volition.
5. The Court shall hold a show cause hearing within forty-eight (48) hours of confinement to jail or any place of confinement that a person cannot leave on their own volition, unless waived by the Contemnor. If the Contemnor does not waive their right to a show cause hearing, and a show cause hearing is not held within forty-eight (48) hours, the Contemnor shall be immediately be released from confinement to jail or any place of confinement that a person cannot leave on their own volition.

B. Indirect Contempt. The presiding Judge may, after a show cause hearing, impose measures in response to Indirect Contempt of the Court.

1. **Movant.** A motion to request a that a person be held in contempt may be brought forth by any of the following:
 - a. A party whose interests are harmed by the alleged Contemnor.
 - b. The Court.
 - c. A Prosecutor.

d. Other lawful officer of the Court.

2. The Court must provide written notice of the alleged Indirect Contempt and possible ramifications.

3. A separate hearing (Show Cause Hearing), with written notice of the hearing, must be held to determine if the person or corporation shall be held in Contempt.

C. Indirect Contempt of the Court Proceedings. All alleged Contemnors retain the right of legal representation at his or her own expense at a Show Cause Hearing unless the Court is considering jail time. In that instance, if the alleged Contemnor is indigent, the Court shall appoint an attorney to represent him/her at the Court's expense.

1. The alleged Contemnor may not be compelled to be a witness against himself or herself in the hearing.

2. All alleged Contemnors have the right to make a statement to the Court in their defense.

3. No right to a jury trial exists under this Ordinance.

4. At the conclusion of the hearing, the Judge must enter a finding as to whether the person or corporation is responsible for Indirect Contempt of Court. If a person or corporation is found to be responsible for Indirect Contempt of Court, the Judge must make findings of fact and enter a judgment.

5. A contempt order must recite the facts, be signed by the Judge, and served upon the Contemnor.

D. Contempt to Compel- Failure to Comply with an Order of a Court

1. The Movant must demonstrate the presence of an otherwise valid process, order, or directive of the Court.

2. The Movant must show that the alleged Contemnor had actual or constructive knowledge of the process, order, or directive, or failed to have notice due to his/her own negligence.
3. The Movant must demonstrate that the authority, process, order, or directive of the Court has been violated by the alleged Contemnor through clear and convincing evidence.
4. The Movant must show that either that the act or omission was willfully or negligently contemptuous by clear and convincing evidence; or the act or omission was preceded by a clear warning by the Court that the conduct is improper.
5. The Judge presiding over the hearing may appoint a member of the bar to represent the Court in hearings for indirect contempt.
6. The alleged Contemnor may move to dismiss the order.
7. If the Court finds a person or corporation responsible for failure to comply with a Court Order and seeks to compel compliance through contempt, the Court must use the least restrictive measures that the Court believes will be effective which may include, but are not limited to a fine, compensatory remedies, community service or confinement to jail.
8. If Contemnor is confined to jail for Contempt to Compel it shall only be for the purpose to coerce compliance with an order of the Court.
9. The Contemnor must be released when his or her contempt no longer continues.
10. The order of the Court must specify how the Contemnor may purge himself or herself of the contempt.
11. The Judge may at any time withdraw, terminate, or reduce a sentence of imprisonment, or remit or reduce a fine imposed as punishment for contempt, if warranted.

12. A person or corporation who fails to comply with a Court Order and is found responsible under Contempt to Compel may be held in contempt as long as:

- a. The order remains in force
- b. The purpose of the order may still be served by compliance with the order; and
- c. The person to whom the order is directed is able to comply with the order or is able to take reasonable measures that would enable him to comply with the order.

13. The Contemnor must be released when his or her contempt no longer continues. The order of the Court holding a person in contempt must specify how the person may purge himself or herself of the contempt.

- a. Upon finding compliance with the specifications, the Judge should order the release of the person as soon as it is reasonably possible.

14. On motion of the Contemnor, the Court must determine if he or she is subject to release and, on an affirmative determination, order the release. The motion must be directed to the Judge who found contempt. If that Judge is unavailable, another Judge of the Court can approve release.

SECTION VIII. UNIFORMITY CLAUSE

Any other provision of Tribe's law providing for the exercise of contempt shall comply with the substantive and procedural requirements of this law.

SECTION IX. APPEALS

- A. Any Order of Contempt is automatically appealable.
- B. Appeal of Contempt Order.

1. Applicable Law. All appeals of a finding of contempt shall follow the Court's Rules of Appellate Procedure.

2. Limited Issues on Appeal. In the event the alleged Contemnor fails to respond or challenge the merits of underlying process, order, or directive to the Court which issued the contempt, a challenge to the validity of the process, order, or directive is barred on appeal.

3. The only appealable question in such cases shall be the validity of the contempt order itself.

C. Representation.

1. The Contemnor shall retain all rights to legal representation upon appeal at his or her own expense.

2. The Court which issued the Order of Contempt shall be represented on appeal by legal counsel appointed by the Legislature.

SECTION X. STATUTE OF LIMITATIONS

Any finding of Contempt must be within one (1) year of the Contemptuous act.

SECTION XI. 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 XII.

EFFECTIVE DATE

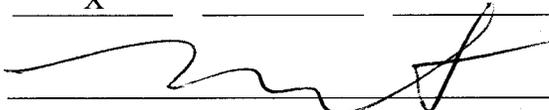
Effective upon signature of the Executive or 30 days from Tribal Council approval whichever comes first or if the Executive vetoes the legislation, then upon Tribal Council override of the veto.

CERTIFICATION

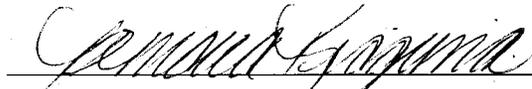
As the Tribal Council Treasurer and Tribal Council Secretary, we certify that this Statute was duly passed by the Tribal Council of the Little Traverse Bay Bands of Odawa Indians at a regular meeting of the Tribal Council held on February 8, 2018 at which a quorum was present, by a vote of 7 in favor, 0 opposed, 0 abstentions, and 2 absent as recorded by this roll call:

	<u>In Favor</u>	<u>Opposed</u>	<u>Abstained</u>	<u>Absent</u>
Frank Bernard	X			
David Harrington	X			
Dexter McNamara	X			
Emily Proctor	X			
Julie Shananaquet				X
Shanna Wemigwase	X			
Marcella Reyes				X
Tamara Kiogima	X			
Fred Harrington Jr.	X			

Date: 2/8/18


Legislative Leader Fred Harrington, Jr.

Date: 02-08-18

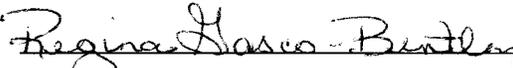

Secretary Tamara Kiogima

Received by the Executive Office on

2-9-18 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: 2-13-18


Regina Gasco Bentley, Tribal Chairperson