

TRIBAL CODE

CHAPTER 34:

PERSONAL PROTECTION ORDERS AND INJUNCTIONS

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HISTORY NOTE:

Current Ordinance:

Resolution 97-1, adopted January 7, 1997, enacts Chapter 34: Personal Protection Orders and Injunctions, effective immediately.

TRIBAL CODE

CHAPTER 34:

PERSONAL PROTECTION ORDERS AND INJUNCTIONS

34.101 Purpose.

The purpose of this Chapter is to provide a mechanism to protect tribal members and other Indians from domestic violence.

34.102 Jurisdiction.

The Tribal Court shall have jurisdiction to issue personal protection orders and injunctions as provided in this Chapter in any case in which either the petitioner or respondent resides within tribal territory at the time the petition is filed unless both the petitioner and respondent are not Indians.

34.103 Definitions.

As used in this Chapter:

(1) "Domestic violence" means any of the following engaged in by a person against that person's adult family member or household member, a former spouse, an individual with whom the person has a child in common, or an individual with whom the person has had a dating relationship:

- (a) intentional infliction of physical pain, physical injury or illness;
- (b) intentional impairment of physical condition;
- (c) unlawful sexual conduct, as defined in Tribal Code §71.1801; or
- (d) a threat to engage in any of the foregoing conduct.

(2) "Family member" means a spouse, a parent, a child or a person related by consanguinity to another person.

(3) "Household member" means a person currently or formerly residing in a place of abode with another person.

(4) "Indian" means any person who is:

(a) a member of the Tribe; or

(b) any other person who would be subject to the jurisdiction of the United States as an Indian under 18 U.S.C. §1153 if that person were to commit an offense listed in that section in Indian country to which that section applies.

(5) "Tribe" (or "tribal") means (or refers to) the Sault Ste. Marie Tribe of Chippewa Indians.

(6) "Tribal Court" means the Sault Ste. Marie Chippewa Tribal Court.

(7) "Tribal territory" means any of the following:

(a) all lands within the limits of the Tribe's reservation, including trust land, fee land, and rights of way running through the reservation;

(b) all land outside the boundaries of the Tribe's reservation held in trust by the United States for the Tribe or individual members of the Tribe;

(c) all other land considered "Indian country" as defined in 18 U.S.C. §1151 that is associated with the Tribe.

34.104 Commencement of Action.

By commencing an independent action to obtain relief under this Chapter, an individual may petition the Tribal Court to restrain or enjoin a family member, household member, a former spouse, an individual with whom he or she has had a child in common, or an individual with whom the victim has had a dating relationship from doing one or more of the following:

(1) Entering onto premises.

(2) Engaging in domestic violence against a named individual.

(3) Removing minor children from the individual having legal custody of the children, except as otherwise authorized by a custody or visitation order issued by a court of competent jurisdiction.

(4) Following a named individual.

(5) Appearing at the workplace or residence of a named individual.

- (6) Contacting a named individual by telephone.
- (7) Sending objects to a named individual.

34.105 Petition.

- (1) An action under this Chapter may only be commenced by the filing of a petition.
- (2) The petition shall allege facts sufficient to show the following:
 - (a) The name and residence of the petitioner and that the petitioner is the alleged victim.
 - (b) The name and residence of the respondent.
 - (c) An indication of which of the parties is an Indian, and of the tribe in which that person is enrolled, if any.
 - (d) That the respondent engaged in, or based on prior conduct of the petitioner and the respondent may engage in, domestic violence of the petitioner.
 - (e) Whether the petitioner is requesting a personal protection order.
- (3) The clerk of the Tribal Court shall provide petitioners with a petition form. No filing fee shall be charged for filing a petition under this Chapter.

34.106 Response.

The respondent may respond to the petition either in writing before or at the hearing on the issuance of the injunction or orally at the hearing.

34.107 Two-Part Procedure.

Procedure for an action under this Chapter shall be in two parts. First, if the petitioner requests a personal protection order, the Tribal Court shall issue or refuse to issue that order. Second, the Tribal Court shall hold a hearing pursuant to §34.109 on whether to issue an injunction, which is the final relief. If the Tribal Court issues a personal protection order, the order shall set forth the date for the hearing on an injunction.

34.108 Personal Protection Order.

(1) If the petitioner submits to the judge a petition alleging the elements set forth under §34.105 and the judge finds reasonable grounds to believe that the respondent has engaged in, or based on prior conduct of the petitioner and the respondent may engage in, domestic violence of the petitioner, a judge shall issue a personal protection order ordering any of the relief in §34.104.

(2) If the petitioner and the respondent are not married, the respondent owns the premises where the petitioner resides, and the petitioner has no legal interest in the premises, in lieu of ordering respondent to avoid the petitioner's residence, the judge may order the respondent to avoid the premises for a reasonable time until the petitioner relocates and shall order the respondent to avoid the new residence for the duration of the order.

(3) Notice need not be given to the respondent before issuing a personal protection order under this section. A personal protection order may be entered only against the respondent named in the petition.

34.109 Hearing.

The personal protection order shall remain in effect until a hearing is held on issuance of an injunction pursuant to §34.110. A judge shall hold a hearing on issuance of an injunction within 14 days after the personal protection order is issued, unless the time is extended upon request of the respondent or extended upon a finding that the respondent has not been served with a copy of the personal protection order although the petitioner has exercised due diligence.

34.110 Injunction.

(1) A judge may grant an injunction restricting activity as provided for in §34.104 if all of the following occur:

(a) The petitioner has filed a petition alleging the elements set forth under §34.105.

(b) The petitioner serves upon the respondent a copy of the petition and notice of the time for hearing on the issuance of the injunction, or the respondent serves upon the petitioner notice of the time for hearing on the issuance of the injunction.

(c) After hearing, the judge finds reasonable grounds to believe that the respondent has engaged in, or based upon prior conduct of the petitioner and the respondent may engage in, domestic violence of the petitioner.

(2) If the petitioner and the respondent are not married, the respondent owns the premises where the petitioner resides, and the petitioner has not legal interest in the premises, in lieu of ordering the respondent to avoid the petitioner's residence, the judge may order the respondent to avoid the premises for a reasonable time until the petitioner relocates and shall order the respondent to avoid the new residence for the duration of the order.

34.111 Duration of Injunction.

(1) An injunction issued pursuant to this Chapter is effective according to its terms, but no for more than two years.

(2) When an injunction in effect for less than six months expires, the Tribal Court shall extend the injunction if the petitioner states that an extension is necessary to protect him or her. This extension shall remain in effect until six months after the date the Tribal Court first entered the injunction.

(3) If the petitioner states that an extension is necessary to protect him or her, the Tribal Court may extend the injunction for up to two years after the date the Court first entered the injunction.

(4) Notice need not be given to the respondent before extending an injunction under sub. (2) or (3). The petitioner shall notify the respondent after the Tribal Court extends an injunction pursuant to this subsection.

34.112 Enforceability.

(1) An order issued pursuant to §34.108 or §34.110 is enforceable under this section.

(2) Such an order shall be served personally upon the individual to be restrained.

(3) The clerk of the Tribal Court shall file a true copy and proof of service of the order with the law enforcement agency having jurisdiction of the area in which the moving party resides.

(4) An individual who refuses or fails to comply with an order issued pursuant to this section is subject to the contempt powers of the Tribal Court.

(5) Upon receipt of a true copy and proof of service of an injunctive order issued in compliance with this Chapter, the law enforcement agency shall enter the order into the law enforcement information network as provided by the L.E.I.N. policy.

34.113 Arrest Without a Warrant.

(1) A law enforcement officer who has reasonable cause to believe that a violation of a personal protection order or injunction has taken place or is taking place and that the person who committed or is committing the violation is the respondent may arrest the violator without a warrant for that violation, irrespective of whether the violation was committed in the presence of the officer.

(2) A law enforcement officer, without a warrant, may arrest and take into custody an individual when the officer has reasonable cause to believe that all of the following exist:

(a) One of the following injunctive orders has been issued:

(i) An injunctive order issued pursuant to §34.108 or §34.110.

(ii) An injunctive order issued by the Tribal Court as authorized by law and stating on its face the period of time for which the order is valid and specifically restraining or enjoining the respondent from engaging in conduct prohibited pursuant to §34.104.

(b) A true copy and proof of service of the order has been filed with the law enforcement agency having jurisdiction of the area in which the moving party resides.

(c) The individual named in the order has received notice of the injunctive order.

(d) The individual named in the order is acting in violation of the order.

(e) The order states on its face that a violation of its terms subjects the individual to immediate arrest and to criminal contempt of court, and if found guilty of criminal contempt, the individual shall be imprisoned for not more than 90 days and may be fined not more than \$500.00.

(3) If the individual is not an Indian, a law enforcement may escort the individual off the reservation.

34.114 Contempt.

(1) An individual arrested as provided in §34.113 shall be brought before the Tribal Court within 24 hours after arrest to answer to a charge of contempt for violation of the personal protection order or injunction, at which time the Tribal Court shall do each of the

following:

(a) Set a time certain for a hearing on the alleged violation of the personal protection order or injunction within 72 hours after arrest, unless extended by the Tribal Court on the motion of the arrested individual.

(b) Set a reasonable bond pending a hearing of the alleged violation of the personal protection order or injunction.

(c) Notify the party who has procured the personal protection order or injunction and direct the party to appear at the hearing and give evidence on the charge of contempt.

(2) The Tribal Court has jurisdiction to conduct contempt proceedings based upon a violation of an injunctive order issued by a court of competent jurisdiction. The Tribal Court shall notify the court that issued the injunctive order that the issuing court may request that the respondent be returned to that court for violating the injunctive order. If the court that issued the injunctive order requests that the defendant be returned to that court to stand trial, then the requesting court shall bear the cost of transporting the defendant to that court.

(3) The prosecuting attorney shall prosecute a criminal contempt proceeding initiated by the court pursuant to sub. (2).

34.115 Notice to Victim.

After investigating or intervening in a domestic violence incident, a law enforcement officer shall provide the victim with a copy of the notice in this section. The notice shall be written and shall include all of the following:

(1) The name and telephone number of the responding police agency.

(2) The name and badge number of the responding law enforcement officer.

(3) The following statement:

"You may obtain a copy of the police incident report for your case by contacting this law enforcement agency at the telephone number provided. The domestic violence shelter program and other resources in your area are (include local information). Information about emergency shelter, counseling services, and the legal rights of domestic violence victims is available from these resources. Your legal rights include the right to go to court and file a petition requesting

an injunctive order to protect you or other members of your household from domestic abuse which could include the following:

(a) An order restraining or enjoining the abuser from entering onto premises.

(b) An order restraining or enjoining the abuser from assaulting, beating, molesting, or wounding you.

(c) An order restraining or enjoining the abuser from threatening to kill or physically injure you.

(d) An order restraining or enjoining the abuser from removing minor children from you, except as otherwise authorized by a custody or visitation order issued by a court of competent jurisdiction.

(e) An order restraining or enjoining the abuser from engaging in stalking behavior as defined in Tribal Code Chapter 71.

34.116 Domestic Violence Report.

The law enforcement officer shall prepare a domestic violence report after investigating or intervening in an incident involving domestic violence. The law enforcement agency shall retain the completed domestic violence report in its files for five years. The law enforcement agency shall also file a copy of the completed domestic violence report with the prosecuting attorney within 48 hours after the dispute or incident is reported to the law enforcement agency. The report shall contain, but is not limited to containing, all of the following:

(1) The address, date and time of the occurrence or incident being investigated.

(2) The victim's name, address, home and work telephone numbers, race, sex and date of birth.

(3) The suspect's name, address, home and work telephone numbers, race, sex, date of birth and information describing the suspect and whether an injunction or restraining order covering the suspect exists.

(4) The name, address, home and work telephone numbers, race, sex, date of birth of any witness, including a child of the victim or suspect, and the relationship of the witness to the suspect or victim.

(5) The following information about the occurrence or incident being investigated:

(a) The name of the person that called the law enforcement agency.

(b) The relationship of the victim and suspect.

(c) Whether alcohol or controlled substance use was involved in the occurrence or incident and by whom.

(d) A brief narrative describing the dispute or incident and the circumstances that led to it.

(e) Whether and how many times the suspect physically assaulted the victim and a description of any weapon or object used.

(f) A description of all injuries sustained by the victim and an explanation of how the injuries were sustained.

(g) If the victim sought medical attention, information concerning where and how the victim was transported, whether the victim was admitted to a hospital or clinic for treatment, and the name and telephone number of the attending physician.

(h) A description of any property damage reported by the victim or evident at the scene.

(6) A description of any previous incidents involving domestic violence between the victim and the suspect.

(7) The date and time of the report and the name, badge number, and signature of the peace officer completing the report.

34.117 Enforcement of Orders and Injunctions from Other Jurisdictions.

Any domestic violence order or injunction granted by a court of competent jurisdiction shall be recognized by the Tribal Court and enforced by law enforcement.