



MODEL TRIBAL DOMESTIC VIOLENCE FULL FAITH AND CREDIT ORDINANCE

Draft

Purpose-

It is the purpose of this chapter to ensure that domestic violence protection orders issued by other jurisdictions, including tribal and state courts, be honored and enforced by the courts of the _____ Indian tribe as well as tribal law enforcement. The Tribe finds that federal law, 18 U.S.C §2265, requires state and tribal courts to honor protection orders entered by each court. To implement this section of federal law, and to assure protection for victims of domestic violence within the _____ Indian reservation this chapter is being enacted. The problem of domestic violence on the _____ Indian reservation is seriously impacting the ability of the Tribe to provide for the health and well-being of its tribal members and threatens the political integrity of the Tribe because of its serious impact upon victims and their families to function in their respective tribal communities. This ordinance is enacted pursuant to the inherent, sovereign right of the _____ Tribe to enact ordinances for the welfare and protection of all persons on the _____ Indian reservation and it is intended to apply to all acts of domestic violence and violations of protection orders within the exterior boundaries of the _____ Indian reservation and all trust lands and dependent Indian communities that lie outside the exterior boundaries of the reservation

Definitions:

1. Ex Parte Protection Order- a temporary order issued by a tribal or state court which restrains any person, Indian or non-Indian, from harassing, annoying, stalking, contacting, or coming within a certain proximity to another person issued by a court with jurisdiction over the person restrained and subject matter jurisdiction. The order shall also provide for an opportunity for a restrained person to be heard before the issuance of a permanent order of protection.
2. Permanent Order of Protection- an order issued by a tribal or state court which restrains any person, Indian or non-Indian, either permanently or for a specified period of time, from harassing, annoying, stalking, contacting, or coming within a certain proximity to another person issued by a court with jurisdiction over the person restrained and subject matter jurisdiction. The order may be the result of a civil protection order proceeding or the result of an order arising from a criminal prosecution against a person.
3. Mutual Protection Order- an order issued by a tribal or state court which restrains both parties to a proceeding from harassing, annoying, stalking, contacting or coming within a certain proximity to another persons. In order to be enforced by a court of this Tribe, a mutual protection order must be the result of both parties to a proceeding filing separate protection order petitions and the issuing Court finding that each of the persons to a mutual protection order have committed an act of domestic violence under the laws of the issuing jurisdiction.
4. Issuing Court- a tribal or state court that issues an ex parte or permanent order of protection against a person.
5. Enforcing Court- a tribal or state court that recognizes and enforces an ex parte or permanent order of protection against a person issued by another tribal or state court.
6. Full Faith and Credit- the act of enforcing an ex parte or permanent order of protection from another tribal or state court as if it were the order of the tribal court of the

_____Tribe. In enforcing said order of protection, the enforcing court and its law enforcement agencies shall apply all laws and ordinances, including mandatory arrest for violations of protection orders, that the enforcing court has in existence at the time enforcement of the foreign protection is sought. Registration of the protection order is not a prerequisite to enforcement under this paragraph.

7. Registration- the act of filing a protection order issued by another tribal or state court with the tribal court of the _____ Tribe or with the law enforcement agencies of the _____
8. Central registry of protection orders- a list of protection orders issued by the state and tribal courts in North Dakota either maintained by the state or Some tribal entity, which contains verifiable methods of identifying the existence of protection orders to be enforced under federal law, 18 U.S.C. §2265, and the person against whom the protection order is enforceable.

Enforcement of Foreign Protection Orders:

Whenever any law enforcement officer of the _____ Tribe or the Tribal Court is presented with an order, either ex parte or permanent, or verifies tile existence of such an order with the court or law enforcement of the issuing jurisdiction, which restrains any person from harassing, annoying, stalking, contacting or coming within a certain proximity to another person that was issued by another tribal or state court, that officer and court shall enforce such order and all provisions of such order, including the award of custody and property in such protection order, as if it were issued by the _____ Tribal Court.

Role of Law Enforcement in Enforcing This Section:

If a law enforcement officer of the _____ Tribe is presented with a protection order, either ex parte or permanent, or verifies the existence of such an order with the court or law enforcement of the issuing jurisdiction or by the oral statements made by the protected person under said protection, the officer shall enforce such order as if it had been entered by the _____ Court. This shall include arresting a person violating such order without the necessity of a warrant, if the officer has probable cause to believe the person has violated the protection order, and taking all necessary steps to assure the protection of the protected person.

Immunity for Good Faith Enforcement of Foreign Protection Order:

An officer or any other law enforcement official of the _____ Tribe who acts in good faith in enforcing a foreign protection order and its terms shall be immune from suit for wrongful arrest or any other civil or criminal action. This immunity shall extend to a tribal officer who effects the arrest of a non-Indian for violation of a protection order.

Role of Tribal Court in Enforcing This Section:

The Tribal Court of the _____ Tribe shall enforce a protection order, either ex parte or permanent, and all provisions of that protection order, including child custody and property awards, if all the following are satisfied:

1. the respondent received notice of the order in compliance with requirements of the issuing jurisdiction;
2. the order remains in effect in the issuing jurisdiction;
3. the issuing court had jurisdiction over the parties and subject matter;
4. the respondent was afforded reasonable notice and the Opportunity to be heard prior to the issuance of a permanent protection order or in the case of an ex parte order it appears from the face of the order that a hearing will be conducted within reasonable time to allow the

respondent to raise any defenses he may have to the issuance of a permanent protection order.

Registration of Foreign Protection Order with the Tribal Court:

Any person who has received a protection order, either ex parte or permanent, from another tribal or state court, may file the protection order in the Clerk of the Tribal Court and request that the Tribal Court of the _____ Tribe grant full faith and credit to that protection order. Immediately upon the filing of that protection order with the Court, a Tribal Judge shall review such filing and if it appears from the face of the protection order it meets the requirements of the foregoing chapter shall enter an order recognizing the protection order. Said order shall immediately be forwarded to tribal and local law enforcement. A person shall be not charged a filing or registration fee for the filing of a foreign protection order. A person protected by a protection order issued by another tribal or state court need not file that protection order with the Tribal Court of the _____ Tribe in order to receive law enforcement protection from the Respondent under this Chapter.

Violation of Foreign Protection Order:

It shall be a Class _____ Misdemeanor, punishable by _____ months in the tribal jail and a fine in the amount of _____ for any person to violate a protection order, either ex parte or permanent, issued by any state or tribal court within the jurisdiction of the _____ Tribe. It is not a defense to this section that a protected person had notified or registered the protection order with the _____ Tribal Court prior to the violation. If the person found to have violated a foreign protection order is a non-Indian, the Tribal Court may exercise civil jurisdiction over said person and impose whatever civil penalties it feels appropriate in accordance with tribal law.