



**HO-CHUNK NATION CODE (HCC)
TITLE 4 – CHILDREN, FAMILY, AND ELDER WELFARE CODE
SECTION 5 – DOMESTIC ABUSE ACT OF 2000**

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**CHAPTER I
GENERAL PROVISIONS**

1. Authority.

a. Article V, Section 2(a) of the Ho-Chunk Nation Constitution (“Constitution”) grants the Legislature the power to make laws, including codes, ordinances, resolutions, and statutes.

b. Article V, Section 2(b) of the Constitution grants the Legislature the power to establish Executive Departments, and to delegate legislative powers to the Executive Branch to be administered by such Departments in accordance with the law; any Department established by the Legislature shall be administered by the Executive; the Legislature reserves the power to review any action taken by virtue of such delegated power.

c. Article V, Section 2(h) of the Constitution grants the Legislature the power to enact all laws prohibiting and regulating conduct, and imposing penalties upon all persons within the jurisdiction of the Nation.

d. Article V, Section 2(r) of the Constitution grants the Legislature the power to protect and foster Ho-Chunk religious freedom, culture, language, and traditions.

e. Article V, Section 2(s) of the Constitution grants the Legislature the power to promote public health, education, charity, and such other services as may contribute to the social advancement of the members of the Ho-Chunk Nation.

f. Article V, Section 2(t) of the Constitution grants the Legislature the power to enact laws governing law enforcement on lands within the jurisdiction of the Nation.

g. Article V, Section 2(u) of the Constitution grants the Legislature the power to enact laws to regulate domestic relations of persons within the jurisdiction of the Nation.

h. Article V, Section 2(x) of the Constitution grants the Legislature the power to enact any other laws, ordinances, resolutions, and statutes necessary to exercise its legislative powers delegated by the General Council pursuant to Article III including but not limited to the foregoing list of powers.

2. Findings.

a. Domestic violence is detrimental to the general welfare of the Ho-Chunk Nation as mandated in the preamble of the Constitution of the Ho-Chunk Nation.

b. Domestic abuse is a serious crime against the victim, family, and the Nation.

c. Rules and regulations against domestic abuse must be administered in a consistent and fair manner.

3. Purpose and Construction. The purpose of this Act is to establish law prohibiting domestic abuse by or against any Tribal member within the jurisdiction of the Ho-Chunk Nation and to delegate to the Nation's Departments of Justice and Social Services the power to create and implement the administrative rules and procedures needed to enforce this Act. This Act shall be liberally construed to effect the purpose and scope stated above and shall be interpreted to comport with the customs and traditions of the Ho-Chunk Nation. If tribal law, customs and traditions are inconclusive in any matter arising under this Act, then federal law and, as a last resort, the law of the State of Wisconsin, may be used for guidance.

4. Scope. This Act provides the victim of domestic abuse the maximum protection from further abuse, which the law, and those who enforce the law, can provide. Furthermore, this Act eliminates barriers to meeting the safety, welfare, and other needs of the victim of family violence, holds batterers accountable for their actions, and expands the availability of services to victims and batterers.

CHAPTER II DEFINITIONS

5. **Definitions.** Unless context otherwise requires, terms used in the Ho-Chunk Nation Domestic Abuse Act of 2000 have the following meaning:

a. “Advocate” means an employee of a program that provides services to victims of domestic violence.

b. “Bodily injury” means physical pain, illness, or an impairment of a physical condition.

c. “Causing apprehension of bodily injury” means any physical act, including utterance of verbal threats, which is intended to cause another person reasonably to fear serious bodily injury or death.

d. “Causing emotional distress” means engaging in conduct that would cause a reasonable person emotional distress and does in fact cause emotional distress to the person. Unless the presumption is rebutted by a preponderance of the evidence, the following types of conduct will be presumed to cause emotional distress:

(1) Creating a disturbance at a person’s place of employment or school.

(2) Repeatedly telephoning a person’s place of employment, school or residence.

(3) Repeatedly following a person in a public place or places.

(4) Repeatedly keeping a person under surveillance by remaining present outside his or her home, school, place of employment, vehicle or other place occupied by the person or by peering in the person’s windows.

(5) Improperly concealing a minor child from a person with sole or joint custody of the minor, repeatedly threatening to improperly remove the person’s minor child from the jurisdiction or from his or her physical care, repeatedly threatening to conceal the person’s minor child, or making a single such threat following an actual or attempted improper removal or concealment, unless the removal or attempted removal was made while fleeing from an incident or pattern of domestic violence.

(6) Threatening physical force, confinement or restraint on one or more occasions.

e. “Clerk of Court” means the clerk of court of the Ho-Chunk Nation Trial Court.

f. “Community Officer” means a member of the Ho-Chunk Safety Patrol.

g. “Court” means the Ho-Chunk Nation Trial Court.

h. “Domestic Abuse” means one or more of the following acts, but does not include acts of self-defense by the victim:

(1) Attempting to cause or causing physical harm, bodily injury, or assault on a family or household member.

(2) Placing a family or household member in fear of the infliction of physical harm, bodily injury, or assault.

(3) Causing a family or household member to engage in involuntary sexual activity by force, threat of force, or duress.

i. “Family or household member” for the purpose of this Act means:

(1) Current or former spouse.

(2) Persons who presently live together or who have lived together in the past.

(3) Persons who are dating or have dated in the past.

(4) Persons who are engaged in or were engaged in a sexual relationship.

(5) Persons who have a child in common or who are expecting a child together.

(6) Persons related by blood, adoption, or marriage.

(7) Minor children of persons described in (a) through (f) above.

j. “Police Officer” means a member of any law enforcement agency with criminal jurisdiction on land of the Ho-Chunk Nation.

k. “Program of intervention for perpetrators” means a specialized program that:

(1) Accepts perpetrators of domestic or family violence into treatment or educational classes to satisfy court orders;

(2) Offers treatment to perpetrators of domestic or family violence; or

(3) Offers classes or instruction to perpetrators of domestic or family violence.

l. “Program of intervention for victims” means that program which the Ho-Chunk Nation acknowledges as serving battered men/women and children by providing advocacy, shelter, crisis intervention, counseling, education and other appropriate services.

m. “VAWA” means the federal Violence Against Women Act of 1994.

CHAPTER III CIVIL ORDERS FOR PROTECTION

6. **Jurisdiction.** The Court has jurisdiction to hear a petition for an order for protection and to issue such an order if either the petitioner or the respondent resides within territorial jurisdiction of the Court as defined in the Constitution of the Ho-Chunk Nation Article I of Section 2 and Article VII of Section 5. There is no minimum requirement as to length of residency to file for an order of protection.

7. Eligible Petitioners for an Order.

a. A person who is or has been a victim of domestic abuse may file a petition for an order for protection against a family or household member who has committed an act of domestic abuse.

b. A parent, guardian, or other representative may file a petition for protection on behalf of a minor or dependent person against a family or household member who commits an act of domestic abuse. Minors who are at least 16 years of age or are legally married or emancipated may seek relief for themselves.

8. Standard Form and Required Statements for Petitions and Orders.

a. The Ho-Chunk Trial Court must:

(1) Develop and adopt standard forms for petitions and orders for protection, including but not limited to such orders issued pursuant to divorce, custody, emancipation and other domestic relations hearings; and

(2) Provide the forms to the clerk of court.

b. In addition to any other required information, the petitioner for an order for protection must contain a listing of each civil or criminal domestic abuse action involving both parties filed within the preceding five years.

c. The following statements must be printed in boldface type or in capital letters on the order for protection.

(1) Violation of this order may be punished by confinement in jail for as long as 90 days or shall be fined not more than \$1,000 or both.

(2) If so ordered by the Court, the respondent is forbidden to enter or stay at the petitioner’s residence and a reasonable area surrounding the residence, even if invited to do so by the petitioner or any other person. In no event is the order for protection voided.

d. The Clerk of Court must provide the following to a person requesting an order for protection:

- (1) The forms adopted pursuant to paragraph a, above.
- (2) All other forms required to petition for an order for protection.
- (3) Clerical assistance in filling out the forms and filing the petition.

9. Continuing Duty to Inform Court of Other Proceedings; Effect of Other Proceedings; Delay of Relief Prohibited; Omission of Petitioner's Address.

a. At any hearing in a proceeding to obtain an order for protection, each party has a continuing duty to inform the Court of any civil or criminal action involving both parties filed within the previous five years that was not listed in the petition as required by paragraph 12b for any reason.

b. An order for protection is in addition to and not in lieu of any other available civil or criminal proceeding. A petitioner is not barred from seeking an order because of other pending proceedings. The Court must not delay granting relief because of the existence of a pending action between the parties.

c. 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. 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 in chambers, out of the presence of the respondent, with a sealed record to be made, or
- (3) After a hearing, if the Court takes into consideration the safety of petitioner and such disclosure is in the interest of justice.

10. Emergency Order for Protection; Available Relief; Availability of Judge; Expiration of Order.

a. The Court may issue a written or oral emergency order for protection ex parte when a community or law enforcement officer states to the Court in person or by telephone, and the Court finds reasonable grounds to believe, that the petitioner is in immediate danger of domestic or family violence by the respondent, or the respondent has recently threatened petitioner with additional bodily harm.

b. A community or law enforcement officer who receives an oral order for protection from the court must:

(1) Fill out the order on the form required pursuant to paragraph 8a based on the Court's directive and sign the form in the space provided for officers;

(2) Serve a copy on the respondent;

(3) Immediately provide the petitioner with a copy of the order and copies of Section 2265 and 2266 of VAWA for the petitioner to carry along with the order;

(4) Provide the order to the Court by the end of the next judicial day. The Court will sign the order, after reviewing its contents and making any necessary modifications.

c. The Court may grant one or more of the following relief in an emergency order for protection.

(1) An order enjoining the respondent from threatening to commit or committing acts of domestic abuse against the petitioner and any designated family or household member.

(2) An order prohibiting the respondent from intimidating, harassing, menacing, annoying, telephoning, contacting, or otherwise interfering or communicating with the petitioner, directly or indirectly.

(3) An order removing or excluding the respondent from the residence of the petitioner and a reasonable area surrounding the residence, regardless of ownership of the residence.

(4) An order requiring the respondent to stay away from the residence, school, place of employment of the petitioner, or any specified place frequented by the petitioner and any designated family or household member.

(5) An order prohibiting the respondent from using or possessing a firearm or other weapon specified by the Court.

(6) An order granting possession and use of an automobile and other essential personal effects to the petitioner, and directing the appropriate community or law enforcement officer to accompany the petitioner to the residence of the parties to ensure that the petitioner is safely restored to possession of the residence, automobile, and other essential personal effects, or to supervise the petitioner's or respondent's removal of personal property.

(7) An order granting temporary custody of a minor child to the petitioner.

(8) An order prohibiting the respondent from removing a minor child from the jurisdiction of the Court.

(9) An order granting such relief as the Court deems necessary to protect and provide for the safety of the petitioner and any designated family or household member.

d. A judge with authority to issue an order for protection must be available 24 hours a day to hear petitions for emergency orders for protection.

e. An emergency order for protection expires 10 days after issuance.

11. Order for Protection: Modification of Order; Relief Available after Ex Parte; Relief Available After Hearing; Duties of the Court; Duration of Order.

a. If it appears from a petition for an order for protection or a petition to modify an order for protection that domestic abuse has occurred or a modification of an order for protection is required, the Court may:

(1) Without notice or hearing, immediately issue an order for protection ex parte or modify an order for protection ex parte as it deems necessary to protect the petitioner; or

(2) Upon notice, issue an order for protection or modify an order after a hearing whether or not the respondent appears.

b. The Court may grant any relief available in accordance with paragraph 10c without notice and hearing in an order for protection or a modification issued ex parte.

c. The Court may grant the following relief in an order for protection, or a modification of an order, after notice and hearing, whether or not the respondent appears.

(1) Any relief available in accordance with paragraph 10c.

(2) An order specifying arrangements for visitation with any minor child by the respondent and requiring supervision of that visitation by a third party or deny visitation if necessary to protect the safety of the petitioner or the minor child. Visitation arrangements must not compromise any other remedy provided by the Court by requiring or encouraging contact between the petitioner and the respondent.

(3) An order prohibiting the respondent from transferring, encumbering or otherwise disposing of specified property mutually owned or leased by the parties.

(4) An order requiring the respondent to pay attorney's fees.

(5) An order requiring the respondent to:

(a) Pay rent or make payment on a mortgage on the petitioners' residence and pay for the support of the petitioner and minor child if the respondent is found to have a duty to support the petitioner or minor child.

(b) Reimburse the petitioner for any expenses associated with the domestic abuse, including but not limited to loss of earnings or other support, out-of-pocket losses for injuries sustained, cost of counseling, shelter expenses, moving or other travel expenses, and cost of repairs or replacement of property damaged or taken.

(c) Pay the cost and fees incurred by the petitioner in bringing the action.

(d) Pay an award for emergency monetary relief to the petitioner and other dependents, if any.

(e) Pay compensation for pain and suffering, and punitive damages where appropriate.

d. The Court must:

(1) Cause the order to be delivered for service;

(2) Make reasonable efforts to ensure that the respondent and the petitioner, if present, understand the order for protection;

(3) Transmit, by the end of the next business day after the order is issued, a copy of the order for protection to any non-tribal law enforcement agencies designated by the Court or the petitioner; and

(4) Transmit a copy of the order to the state registry.

e. An order for protection will be binding upon the parties to the action, their officers, agents, servants, employees, attorneys, and any other person in active concert or participation with them.

f. An order for protection or a modification of an order for protection issued ex parte or upon notice and hearing is effective until further order of the Court, notwithstanding the acts of the parties. Temporary reconciliation will not revoke an order. Monetary relief and/or compensation awarded under this section must not exceed \$5,000.

12. Required Hearings; Duty of the Court When Order for Protection is Denied.

a. Except as otherwise provided in paragraph b, below, if the Court issues an order for protection or a modification of an order for protection ex parte, the Court must set a date for a hearing on the petition upon a request by either party made within 30 days after service of the order or modification. The hearing must be held within 30 days after the request for a hearing is filed unless continued by the Court for good cause shown. The Court must notify both parties by first class mail of the time and date of the hearing.

b. The Court must set a date for a hearing on the petition within 15 days after the filing of the petition if the Court issues an order for protection or a modification of an order ex parte, and the ex parte order awards temporary custody of a minor child to the petitioner, excludes the respondent from the residence of the petitioner, or awards possession and use of an automobile to the petitioner. Such a hearing must be given precedence over all matters except older matters of the same character.

c. In a hearing held pursuant to paragraphs a or b, above, relief in accordance with paragraphs 10 and 11 is available. If the respondent seeks relief concerning an issue not raised by the petitioner, the Court may continue the hearing.

d. If the Court denies a petition ex parte or a petition to modify an order for protection that is requested without notice to the respondent, the Court must inform the petitioner of the right of the respondent to request a hearing upon notice of the order.

13. Extension of Final Order for Protection.

a. Prior to the expiration of a final order for protection, the petitioner may apply for a modification of the order for protection that will extend the time period that the order for protection is effective.

b. The final order for protection may be modified by extending the time period for one year, two years or five years. The Court may, in its discretion, issue an order for protection of permanent duration, particularly if the petitioner has been subject to domestic abuse which required hospitalization, or which resulted in life threatening injuries, significant disfigurement, impairment, or disability.

c. If there has been no violation of the existing order for protection prior to the application for extension, the Court will take this fact as evidence of the effectiveness of the order for protection in assuring the safety of the petitioner. The Court may not use the fact that there has been no violations of the order for protection to determine that no further need for the order exist.

14. Effect of Action by Petitioner or Respondent on Order. If a respondent is excluded from the residence of a petitioner or ordered to stay away from the petitioner, an invitation by the petitioner to do an act prohibited by the order does not waive or nullify the order for protection.

15. Denial of Relief Prohibited. The Court must not deny a petitioner relief under a petition solely because of a lapse of time between an act of domestic abuse and the filing of the petition. Previous reconciliation prior to filling the current action must not be grounds for denying or terminating an order for protection.

16. Mutual Orders for Protection Prohibited. The Court must not issue a mutual order for protection to opposing parties. Where opposing parties seek orders for protection against each other, or a party that is the respondent in an order for protection

seeks an order against the petitioner, the Court must determine which party is the primary aggressor. Following such determination, the Court must dismiss the petition filed by the party who is determined to be the primary aggressor.

17. Court-Ordered and Court-Referred Mediation, Marriage Counseling, or Reconciliation of Cases Involving Domestic Abuse Prohibited. The Court must not order or refer parties into mediation, marriage counseling, or reconciliation for resolution of the issues in a petition for protection.

18. Court Costs and Fees. Fees for filing and service of process will not be charged for any proceedings seeking only the relief provided in Chapter 3 of this Act.

19. Registration and Enforcement of Foreign Orders for Protection; Duties of the Clerk of Court.

a. A certified copy of an order for protection issued in another tribal or state court may be filed in the office of the Ho-Chunk Nation Clerk of Court. The Trial Court will afford full faith and credit to the order of protection if the order is consistent with 18 U.S.C. § 2265(b).

b. An order for protection filed in accordance with paragraph a, above, has the same effect and must be enforced in the same manner as an order for protection issued by the Trial Court.

c. The Clerk of Court must:

(1) Maintain a registry in which to enter certified orders for protection issued by other tribal or state courts that are received for filing; and

(2) At the request of another tribal or state court or at the request of a person who is affected by or has a legitimate interest in an order for protection, certify and forward a copy of the order to that court or person at no cost to the requesting party.

CHAPTER IV FAMILY AND CHILDREN

20. Presumptions Concerning Custody. In every proceeding where there is at issue a dispute as to the custody of a minor child, a determination by the Court that domestic abuse has occurred raises a rebuttable presumption that it is detrimental to the child and not in the best interest of the child to be placed in sole custody, joint legal custody, or joint physical custody with the perpetrator of domestic abuse.

21. Factors in Determining Custody and Visitation. In addition to other factors that the Court must consider in a proceeding in which the custody of a minor child or visitation by a parent is an issue and which the Court has made a finding of domestic abuse, the Court must also consider:

a. As primary, the safety and well-being of the minor child and of the parent who is the victim of domestic abuse; and

b. The perpetrator's history of causing physical harm, bodily injury, assault, or causing reasonable fear of physical harm, bodily injury, or assault, to another person. If a parent is absent or relocated because of an act of domestic abuse by the other parent, the absence or relocation is not a factor that weighs against the parent in determining custody or visitation.

22. Presumption Concerning Residence of Minor Child. In every proceeding where there is at issue a dispute as to the custody of a minor child, a determination by the Court that domestic abuse has occurred raises a rebuttable presumption that it is in the best interest of the child to reside with the parent who is not a perpetrator of domestic abuse in the location of that parent's choice.

23. Change of Circumstances. In every proceeding where there is at issue the modification of an order or visitation of a minor child, the finding that domestic abuse has occurred since the last custody determination constitutes a finding of a change in circumstances.

24. Conditions of Visitation in Cases Involving Domestic Abuse.

a. The Court may award visitation by a parent who committed domestic abuse only if the Court finds that adequate provisions for safety of the minor child and the parent who is the victim of domestic abuse can be made.

b. In a visitation order, the Court may:

(1) Order an exchange of a minor child to occur in a protected setting.

(2) Order that visitation be supervised by another person or agency.

(3) Order the perpetrator of domestic abuse to attend and complete, to the satisfaction of the Court, a program of intervention for perpetrators or other designated counseling as a condition of visitation.

(4) Order the perpetrator of domestic abuse to abstain from possession or consumption of alcohol or controlled substances during visitation and for 24 hours preceding the visitation.

(5) Order the perpetrator of domestic abuse to pay a fee to defray the cost of supervised visitation.

(6) Prohibit overnight visitation.

(7) Require a bond from the perpetrator of domestic abuse for the return and safety of the minor child.

(8) Impose any other conditions that is deemed necessary to provide for the safety of the minor child, the victim of domestic abuse, or other family or household members.

c. Whether or not visitation is allowed, the Court may order the address of the minor child and the victim to be kept confidential.

d. The Court may refer but must not order an adult who is a victim of domestic abuse to attend counseling relating to the victim's status or behavior as a victim, individually or with the perpetrator of domestic abuse, as a condition of receiving custody of a minor child or as a condition of visitation.

e. If the Court allows a family or household member to supervise visitation, the Court must establish conditions to be followed during visitation.

25. Duties of the Indian Child Welfare Department.

a. In performing its duty to investigate child abuse, the Indian Child Welfare Program must develop written procedures for screening each referral for abuse or neglect of a child to assess whether abuse of another family or household member is also occurring. The assessment must include, but is not limited to:

(1) Inquiry concerning the criminal record of the parents, and the alleged abusive or neglectful person and the alleged perpetrator of domestic abuse, if not a parent of the child; and

(2) Inquiry concerning the existence of orders for protection issued to either parent.

b. If it is determined in an investigation of abuse or neglect of a child that the child or another family or household member is in danger of domestic abuse and that removal of one of the parties is necessary to prevent the abuse or neglect of the child, Indian Child Welfare must seek the removal of the alleged perpetrator of domestic abuse whenever possible.

c. If it is determined in an investigation of abuse or neglect of a child that a parent of the child is a victim of domestic abuse, services must be offered to the victimized parent and the provisions of such services must not be contingent upon a finding that either parent is at fault or has failed to protect the child.

CHAPTER V **STALKING**

26. **Stalking.**

a. A person commits the act of stalking if:

(1) The person knowingly alarms or coerces another person or a member of that person's family or household by engaging in repeated and unwanted contact with the other person;

(2) It is objectively reasonable for a person in the victim's situation to be alarmed or coerced by the contact; and

(3) The repeated and unwanted contact causes the victim reasonable apprehension regarding the personal safety of the victim or a member of the victim's family or household.

b. Any person who has a active protective order against himself or herself and who knowingly commits an act of stalking as defined in paragraph a, above, shall be deemed guilty of the offense of stalking and upon conviction thereof shall be subject to a fine not to exceed \$1,000. In addition to or in lieu of imposition of such fine, the Court shall order the person convicted of the offense of stalking to participate in a domestic abuse treatment program.

**CHAPTER VI
DOMESTIC ABUSE LEAVE CLAUSE**

27. **Purpose.** Victims of domestic abuse are oftentimes forced to flee from a perpetrator in order to avoid future danger and violence. In so fleeing, victims who are employed frequently miss days of employment and employers respond by terminating or disciplining such employees. It is the purpose of this part to preclude all tribal employers from terminating any employee who can document an instance of domestic abuse, which contributed to his/her absence from employment. Employers have the option of granting such employees leave with or leave without pay because of domestic abuse related absences.

28. **Discharge for Absence of Employment Due to Domestic Violence Prohibited.** It shall be a violation of this Act for any employer located within the exterior boundaries of the Ho-Chunk Nation to terminate or otherwise discipline any employee who has missed work or is tardy to work when such employee demonstrates, either through the filing of criminal or civil proceedings in a court of law or by such other methods satisfactory to the employer, that he/she has been the victim of domestic abuse and that such violence contributed to her/his absence(s) from work or tardiness to work. In lieu of disciplinary action, the employer shall grant the employee leave with or without pay, depending upon the policies of the employer, for such absences.

29. **Penalty for Violation.** Any employer who willfully violates this section shall be subject to a civil penalty of \$500 payable to the Court in addition to any other remedies

the wrongfully discharged employee may have against the employer. Nothing in this section shall preclude a private party from commencing a wrongful termination action against an employer for violation of this section.

CHAPTER VII ADVOCATES, COMMUNITY OFFICERS, AND SHELTERS

30. Protection for Advocates. The HCN recognizes that advocating for those who have been victims of domestic violence can be dangerous for the advocate and community officers because of the potential for violence on the part of the perpetrator. This Act makes it a crime for any person to harass, annoy or intimidate an advocate for a domestic abuse victim with the intent to interfere with the rights of the victim of domestic abuse to pursue any criminal or civil remedies she/he may have in a court of law.

31. Harassment of Domestic Abuse Advocates and Community Officers. It shall be a violation of law for any person to commit any of the following acts with the intent to interfere with the right of any victim of domestic abuse to obtain a civil protection order or pursue criminal charges against a perpetrator of domestic abuse:

a. To make any written or verbal threats to an advocate or community officer for a victim of domestic abuse with the intent to interfere with the right of any victim of domestic abuse to obtain a civil protection order or pursue criminal charges against a perpetrator of domestic abuse.

b. To make any written or verbal threats that places an advocate or community officer in apprehension of bodily injury because of that advocate's representation of a domestic abuse victim.

32. Enhanced Penalty for Crime of Violence Against a Community Officer or Advocate. Any person convicted of a crime of violence against an officer or advocate against domestic abuse and the Nation demonstrates that said crime was committed because of the victim's advocacy on behalf of a domestic abuse victim shall in addition to any other penalty provided by law be ordered to pay a special assessment to the Domestic Abuse program in the amount of \$500. This enhanced penalty shall not be subject to suspension by the Court.

CHAPTER VIII FIREARMS DISQUALIFICATION CLAUSE

33. Purpose. It shall be the purpose of the this clause to prohibit any person who has been convicted of domestic or family violence, as defined, under Chapter V of this Act or any tribal, state or federal law or any person who is subject to an order of protection based upon a finding that the person represents a credible threat of violence to the victim, under HCN, tribal, state, or federal law, to possess a firearm.

34. Firearms Possession. It shall be unlawful for any person to possess a firearm who:

a. Is subject to any court order from a court of competent jurisdiction that restrains such person from harassing, stalking or threatening a family or household member as defined in paragraph 5i or engaging in any other conduct that would place a family or household member, except that this paragraph shall apply only to those orders that:

(1) Were issued after a hearing of which such person received a creditable threat to the physical safety of such opportunity to participate; and

(2) Includes a finding that such person represents a credible threat to the physical safety of such family or household member; or

(3) By its terms explicitly prohibits the use, attempted use or threatened use of physical force against such household or family member.

b. Has been convicted in state, federal or tribal court of any crime involving domestic abuse, as defined in Chapter II of this Act, which involved the use or attempted use of physical force, or the threatened use of physical force, or the threatened use of a deadly weapon against a household or family member.

CHAPTER IX

PREVENTION AND INTERVENTION

35. Domestic Abuse Prevention and Intervention Plan.

a. The Department of Social Services Board of Directors shall assess the impact of domestic violence on the community health of the Nation.

b. The Department of Social Services, in coordination with the Department of Health, shall develop and implement a Domestic Abuse Prevention and Intervention Plan for reducing the incidence of domestic violence within the Ho-Chunk Nation. The following guidance is provided to develop the Domestic Abuse Prevention and Intervention Plan.

(1) The Plan must include but is not limited to community education, including use of various communication media to set forth the community health perspective on domestic violence.

(2) The Plan must be developed in consultation with public and private agencies that provide programs for victims of domestic violence, advocates for victims, and persons who have demonstrated expertise and experience in providing health care to victims of domestic abuse and their children.

(3) The Plan must include the requirement and procedures for reporting domestic abuse in accordance with Chapter X.

(4) Standards for Health Care Facilities, Practitioners, and Personnel. The Department of Health shall develop and include as a section of the Domestic Abuse Prevention and Intervention Plan the standards, procedures, and curricula for health care facilities, practitioners, and personnel.

c. The Domestic Abuse Prevention and Intervention Plan must be completed and submitted to the Legislature for approval within 120 days of the enactment of this Act.

d. The Department of Social Services Board of Directors shall review and update the Plan annually.

36. Notice of Rights of Victims and Remedies and Services Available; Required Information.

a. The health care facilities shall make available to practitioners, personnel, and the health care clinic a written notice of the rights of victims and remedies and services available to victims of domestic violence.

b. A practitioner who becomes aware that a patient is a victim of domestic abuse shall provide to the patient and the health care clinic shall make available to all patients the notice of rights, remedies, and services available to them.

c. The notice to victims of domestic violence must be substantially as follows:

“If you are a victim of domestic violence and you believe that law enforcement protection is needed for your safety, you have the right to request that a police or community officer assist in providing for your safety, including asking for an emergency order for protection. You may also request that the officer assist you in obtaining your essential personal effects and locating and taking you to a safe place including but not limited to a shelter, family member’s or a friends residence, or a similar place of safety. If you are in need of medical treatment, you have the right to request that the officer assist you in obtaining medical treatment. You may request a copy of the report at no cost from the officers.

“You may ask the county attorney to file a criminal complaint. You also have the right to file a petition in the Ho-Chunk Nation Trial Court requesting an order for protection from domestic violence, which could include any of the following orders.

(1) An order enjoining your abuser from threatening to commit or committing further acts of domestic violence.

(2) An order prohibiting your abuser from harassing, annoying, telephoning, or contacting or otherwise communicating with you, directly or indirectly.

(3) An order removing your abuser from your residence, regardless of ownership of the residence.

(4) An order directing your abuser to stay away from your residence, school, place of employment, or any other specified place frequented by you and another family or household member.

(5) An order prohibiting your abuser from using or possessing any firearm or other weapon specified by the court.

(6) An order granting your possession and use of the automobile and other essential personal effects, regardless of ownership.

(7) An order granting you custody of your child or children.

(8) An order denying your abuser visitation.

(9) An order specifying arrangements for visitation, including requiring supervised visitation.

(10) An order requiring your abuser to pay certain costs and fees, such as rent or mortgage payments, medical expenses, expenses for shelter, court cost, and attorney's fees.

"The forms you need to obtain for an order for protection are available from the HCN Trial Court or the Ho-Chunk Nation Domestic Abuse Program within the Department of Social Services. The resources available in the community for information relating to domestic violence, treatment of injuries, and places of safety and shelter are available from the Ho-Chunk Nation Domestic Abuse Program.

"You also have the right to seek reimbursement for losses suffered as a result of domestic violence, including medical and moving expenses, loss of earnings or support, and other expenses for injuries sustained and damages to your property. This can be done by filing a complaint in the Ho-Chunk Nation Trial Court."

d. The written notice:

(1) Must not include the address of shelters, unless the location is public knowledge.

(2) Must be provided in the native language of the victim, if practicable, when the first language of the victim is not English.

37. Health Care Clinic Required to Provide Certain Information to Parents. The Department of Health shall ensure that health care facilities provide information concerning domestic violence to parents of newborn infants and to parents of hospitalized minors. The information must include but is not limited to the effects of domestic

violence on children and available services for the prevention and intervention services available.

CHAPTER X

VIOLATION OF COURT ORDER, REPORTING, LIABILITY, SEVERABILITY

38. Violation of Court Orders. Willful violation of an order issued under this Act shall constitute contempt of court and may, after notice and hearing, be assessed a civil penalty of a freeze of any per capita payments for tribal members or removal from tribal lands all non-members of the Ho-Chunk Nation and/or a penalty in an amount not to exceed \$500.

39. Reporting Domestic Violence.

a. Any physician, nurse, school teacher, psychologist, social worker, community officer, community health representative, or any other person knowing or suspecting that domestic violence is occurring or has occurred shall report the matter orally and immediately by telephone or otherwise to the Ho-Chunk Nation Domestic Abuse Program.

b. Any person, including individuals, corporations, government entities and their agents, who in good faith makes or participates in the making of a report pursuant to this section shall have immunity from any liability, civil or criminal, which might otherwise arise from making that report, and shall have the same immunity with respect to participation in any court proceeding resulting from such a report.

c. Any person who shall make a report of domestic violence knowing that the facts reported are false or misleading, and the report causes the arrest of the person identified in the report, shall be deemed guilty of an offense, and upon conviction thereof shall be fined not to exceed \$500.

d. Any person who fails, neglects, or refuses to report acts of domestic violence known to him/her may, after notice and hearing, be assessed a civil penalty in an amount not to exceed \$500.

40. Liability. No domestic abuse advocate, community or police officer shall be held liable for any actions taken while acting within the scope of their authority, provided he/she acted in good faith and without malice.

41. Severability. If any part or parts, or application of any part, of this act is held invalid, such holding shall not affect the validity of the remaining parts of this act. The Ho-Chunk Nation Legislature hereby declares that it would have passed the remaining parts of this act even if it had known that such part or parts of application of any part thereof would be declared invalid.

Legislative History:

05/16/00 Legislature reviews draft Act and posts for 45-day review period.

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08/22/00 Enacted by Legislative Resolution 8-22-00A.
10/23/01 Restated to conform paragraph numbering with format prescribed by the Legislative
 Organization Act of 2001.