



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

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This Act supersedes 4 HCC § 5 (2000), DOMESTIC ABUSE ACT OF 2000 as amended by Legislative Resolution: 03-18-08 B.

Contents

Chapter I	General Provisions
Chapter II	Definitions
Chapter III	Civil Orders for Protection
Chapter IV	Family and Children
Chapter V	Stalking
Chapter VI	Domestic Abuse Leave Clause
Chapter VII	Advocates, Community Officers, and Shelters
Chapter VIII	Firearms Disqualification Clause
Chapter IX	Prevention and Intervention
Chapter X	Violation of Court Order, Reporting, Liability, Severability

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

Ho-Chunk Nation Legislature

Domestic Abuse Act of 2000

Page 2 of 22

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.
- d. Many persons are subjected to abuse and violence within the family and clan setting.
- e. Family members are at risk to be killed or suffer serious physical injury as a result of abuse and violence within the family and clan setting.
- f. Children suffer lasting emotional damage as direct targets of abuse and violence, and by witnessing the infliction of abuse and violence on other family and clan members.
- g. The elderly Ho-Chunk residents are at risk for abuse and violence, the lack of services available for these citizens, and the changing family structure indicates that laws

Ho-Chunk Nation Legislature

Domestic Abuse Act of 2000

Page 3 of 22

are necessary to insure the protection of elders within the family and clan setting, and in their caretaking settings.

- h. All persons have the right to live free from violence, abuse, or harassment.
- i. Abuse and violence in all its forms poses a major health and law enforcement problem to the Ho-Chunk Nation.
- j. Abuse and violence can be prevented, reduced, and deterred through the intervention of law.
- k. The legal system's efforts to prevent abuse and violence in the family and clan setting will result in a reduction of negative behavior outside the family and clan setting.
- l. Abuse and violence among family and clan members is not just a "family matter," which justified inaction by law enforcement personnel, prosecutors, or courts, but an illegal encounter which requires full application of protective laws and remedies.
- m. An increased awareness of abuse and violence, and a need for its prevention, gives rise to the legislative intent to provide maximum protection to victims of abuse and violence in the family and clan setting.
- n. The integrity of the family, clan, Ho-Chunk culture and society can be maintained by legislative efforts to remedy abuse and violence.

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 affect 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:

Ho-Chunk Nation Legislature

Domestic Abuse Act of 2000

Page 4 of 22

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

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 domicile.

(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. “Confidential hearings” means the hearings where the parties to the action and their legal advocates including necessary court personnel, are privy, whereby not disclosed to the public.

g. “Contact” means to get in communication with by any means.

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

Ho-Chunk Nation Legislature

Domestic Abuse Act of 2000

Page 5 of 22

i. “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 emotional, financial, physical harm, bodily injury, or assault.

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

j. “Domicile” means a person’s permanent home, legal home, or main residence.

k. “Harassment” means words, conduct or action (usually persistent or repeated) that, being directed at a specific person, annoys, alarms, or causes substantial emotional distress in that person and serves no legitimate purpose.

l. “Family or household member” for the purpose of this Act means any of the following:

(1) Spouse.

(2) Former spouse.

(3) Persons who have a child in common or who are expecting a child in common, regardless of whether they have been married or have lived together at any time.

(4) Persons eighteen years of age or older who are related by blood or marriage.

(5) Persons

Persons eighteen years of age or older who are presently residing together or who have resided together in the past.

(6) Persons sixteen years of age or older who have or have had a dating relationship.

(7) Persons who have a biological or legal parent-child relationship including stepparents and stepchildren and grandparents and grandchildren.

(8) Physically or mentally disabled persons and their caregivers.

(9) Elders sixty years of age or older and their caregivers.

m. “Mandatory Reporter” is a person whom is compelled to report acts of domestic violence to the Ho-Chunk Nation Department of Social Services.

Ho-Chunk Nation Legislature

Domestic Abuse Act of 2000

Page 6 of 22

n. "Officer" means a member of the Ho-Chunk Police Department or Neighborhood Watch Patrol.

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

p. "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;
- (3) Offers classes or instruction to perpetrators of domestic or family violence;
- (4) Domestic Violence Court.

q. "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.

r. "Territorial Jurisdiction" is territory over which the Ho-Chunk Nation government, one of its Courts, or one of its subdivisions has jurisdiction; including any land owned or leased by the Ho-Chunk Nation whether it is in fee simple, trust, or heirship status, including Non-Profits chartered by the Ho-Chunk Nation.

s. "TLOA" means the Tribal Law and Order Act of ?????.

t. "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, is found, or if the act occurs 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

Ho-Chunk Nation Legislature

Domestic Abuse Act of 2000

Page 7 of 22

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. The standard forms for protection shall instruct the Petitioner to not disclose her or his address, telephone number, or other similar identifying information.

(2) For purposes of determining jurisdiction, the Petitioner shall provide her or his address on a separate form that shall be kept strictly confidential with the Court,

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

b. 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 up to 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 domicile and a reasonable area surrounding the domicile, school, place of employment, or destinations frequented by other party, even if invited to do so by the petitioner. In no event is the order for protection voided.

c. The 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) [?LOCATION?] A violation can include public posting in the social media when a restraining order is in place or ???.

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

a. 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

Ho-Chunk Nation Legislature

Domestic Abuse Act of 2000

Page 8 of 22

pending proceedings. The Court must not delay granting relief because of the existence of a pending action between the parties.

b. Petitioner shall be instructed to omit her or his address or telephone number from all documents filed with the Court. The petitioner must provide the Court a mailing address which the Court shall keep strictly confidential.

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 emergency 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.

(a) Ho-Chunk Nation Police Department shall be the first preference of service of process.

(b) Immediate initial hearing shall be issued upon issuance of Ex Parte order.

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

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

Ho-Chunk Nation Legislature

Domestic Abuse Act of 2000

Page 9 of 22

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

(3) An emergency order removing or excluding a party from the domicile of the other party and a reasonable area surrounding the domicile, regardless of ownership of the domicile.

(4) An emergency order requiring the parties to stay away from the domicile, school, place of employment, or any specified place frequented or temporarily occupied by the other party and any designated family or household member.

(5) An emergency order prohibiting the respondent from using or possessing a firearm or other weapon specified by the Court including the confiscation of such weapons or such weapons shall be surrendered.

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

(7) An emergency order granting immediate temporary custody of a minor child to the petitioner, including an order designating visitation, transfer and placement while the protection order is in place.

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

(9) An emergency 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 within 72 hours of service.

f. Confidentiality of victim's address or telephone number. The emergency order for protection shall not disclose the address or telephone number or similar identifying information and location of the petitioner.

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;
- (2) Hold an immediate initial hearing within 72 hours;
- (3) 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 sua sponte 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) The court may issue any relief available in accordance with paragraph 10c;
- (2) The court may issue an order specifying arrangements for visitation with any minor child by the parties 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 parties;
- (3) The court may issue an order prohibiting the parties from transferring, encumbering or otherwise disposing of specified property mutually owned or leased by the parties;
- (4) The court may issue an order requiring the parties to pay attorney's fees;
- (5) The court may issue an order requiring the parties to:
 - (a) Pay rent or make payment on a mortgage on the parties' domicile and pay for the support of the party;
 - (b) Provide financial assistance for the minor child if the party is found to have a duty to support the party or minor child;
 - (c) 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, cost of child care, and any other reasonable expenses;

- (d) Pay the cost and fees incurred in bringing the action as a debt to the Ho-Chunk Nation;
 - (e) Pay an award for emergency monetary relief to the petitioner and other dependents, if any, as a debt to the Ho-Chunk Nation;
 - (f) Pay compensation for pain and suffering, and punitive damages where appropriate as a debt to the Ho-Chunk Nation;
- d. Confidentiality of victim's address or telephone number. The court order shall not disclose the address or telephone number similar identifying information of the petitioner.
- e. 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;
 - (4) Transmit a copy of the order to the state registry;
 - (5) Confirm that prior to releasing an order that the address or telephone number or similar identifying information of the alleged victim is not on the order.
- f. 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; except, where treatment for domestic violence issues is voluntarily sought by the parties.

12. Required Hearings; Duty of the Court When an Ex Parte Order for Protection is Issued.

- a. 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, unless publication is required.

Ho-Chunk Nation Legislature

Domestic Abuse Act of 2000

Page 12 of 22

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:

(1) Awards temporary custody of a minor child to the petitioner;

(2) Excludes the respondent from the domicile of the petitioner;

(3) 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. 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.

d. In a hearing held pursuant to paragraphs 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.

e. 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.

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 Court may, in its discretion, issue a final order for protection extending the duration to a 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 have been no violations of the order for protection to determine that no further need for the order exists.

14. Effect of Action by Petitioner or Respondent on Order. If a respondent is excluded from the domicile 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 filing 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. The Court may 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, into a Registry;

(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

Ho-Chunk Nation Legislature

Domestic Abuse Act of 2000

Page 14 of 22

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 Domicile 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 Judge has the discretion as to whether or not a "change in circumstance" warrants such modification, the finding that domestic abuse has occurred warrants such modification since the last custody determination.

24. Conditions of Visitation in Cases Involving Domestic Abuse.

a. The Court may grant 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, agency, or third party; if the Court allows visitation then it must establish conditions to be followed during visitation.

(3) Order the perpetrator of domestic abuse to attend and complete, to the satisfaction of the Court, a program of intervention for perpetrators including designated counseling or other available appropriate options, 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 or visitation can be forfeited.
 - (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 are 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 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.
- 25. Duties of the Indian Child Welfare Program.**
- 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 Program 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 an 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 against same 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 , community officer, attorney, or court personnel, 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 place an advocate, community officer, attorney, or court personnel, 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, advocate or attorney 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 this clause to prohibit the possession of a firearm by any person who is a party to a Temporary Restraining Order. To ensure the respondent 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 does not possess a firearm.

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

- a. Is subject to restraining order from any court of competent jurisdiction that prohibits the person from possessing a firearm, except that this paragraph shall apply only to those orders that:
 - (1) Were issued after a hearing of which such person received a credible 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; and
 - (3) Is registered with the Ho-Chunk Nation Trial Court.
 - b. Has been convicted in any 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, 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’ domicile, 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.”

Ho-Chunk Nation Legislature

Domestic Abuse Act of 2000

Page 20 of 22

- (1) An order preventing 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 domicile, regardless of ownership of the domicile.
- (4) An order directing your abuser to stay away from your domicile, 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 costs, attorney fees, or any other relief that the Court deems appropriate.

“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 and exclusion 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 mandatory reporter 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.

Ho-Chunk Nation Legislature

Domestic Abuse Act of 2000

Page 22 of 22

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.
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.
03/13/08 Placed on Administrative Committee's Agenda to address issue of keeping petitioner's address, telephone number, and similar identifying information confidential.
3/20/08 Amended by Legislative Resolution 3-18-08 B to keep petitioner's address, telephone number, and similar identifying information confidential.
02/21/12 **Legislature adopts Resolution 02-21-12 J places proposed amendments out for 45 day Public comment.**
04/17/12 **Legislature adopts Resolution 04-17-12B adopts the proposed amendments presented to the full Legislature and posted for 45 day Public Review on 2/21/12.**