

PENOBSCOT NATION
Protection from Abuse (PFA) Code

ARTICLE ONE – PURPOSE, JURISDICTION, AND DEFINITIONS

Section 1: Purpose

Since time immemorial, we, the Penobscot Nation, have resolved disputes and conflicts, maintained community peace, and delivered justice within our Tribal Territory using traditional Penobscot laws, customs, and practices.

The purpose of this Code is to provide policies and guidance for the Penobscot Nation to take an active role in providing for the health, safety, and welfare of Penobscot people, to preserve and strengthen family and tribal ties whenever possible, to protect and preserve the tribal heritage and cultural identity of the residents of the Nation's territory, and to promote cooperation between the Nation and other courts and agencies.

The intent of this law is to promote the health, safety, and welfare of the most valuable resource of the Penobscot Nation, our people. The welfare of our children and families is of the utmost importance. Families and children must receive the care and guidance necessary to allow them to thrive as healthy, content, and productive members of society.

The Penobscot Nation Protection from Abuse Code shall be construed to promote the following:

That violence against family members and others is not in keeping with the Nation's values. The tribal justice system should respond to survivors/victims of domestic violence, sexual assault, and stalking with fairness, compassion, and in a prompt and effective manner. The goal of this code is to provide survivors/victims of domestic violence, sexual assault, and stalking with safety and protection.

The tribal justice system shall be instrumental in setting standards of behavior within the family and tribe that are consistent with traditional Penobscot values. The tribal justice system will be utilized to impose consequences upon offenders for behaviors that violate traditional Penobscot values which hold our people sacred.

Implementation of this code shall recognize that the strength of the Tribe is founded on healthy community, and that the safety of all victims of interpersonal violence, especially women and children, must be ensured by immediate intervention of law enforcement, prosecution, education, counseling, and other appropriate services. The official response to cases of domestic violence, sexual assault, and stalking, be that violent behavior is not tolerated or excused whether or not the abuser or survivor/victim is intoxicated.

Section 2: Declaration authority of the Penobscot Nation to regulate and prohibit domestic violence and abuse within its jurisdictional territory

The Penobscot Nation has inherent authority to regulate the right to reside within Penobscot Indian Territory. The Nation hereby declares that the right to reside within Penobscot Indian Territory carries with it the right to be free from violence or abuse and, with respect to every resident of Penobscot Indian Territory, violence or abuse is prohibited.

The Penobscot Nation has the inherent authority to protect its political integrity and provide for the health, safety, welfare, and economic security of those residing within its territory. The Nation hereby declares that the prevention of violence or abuse within Penobscot Indian Territory is essential to the health, safety, welfare, and economic security of those residing within its territory and this law is essential to the political integrity of the Nation.

The problem of violence within the boundaries of the Penobscot Indian Territory seriously impacts the ability of the Tribe to provide for the health and well-being of its tribal members and other residents. Persons within Penobscot Indian Territory, who commit, or threaten to commit, acts of violence or abuse, threaten the health, safety, and welfare of the Penobscot Nation, its members and territory.

The Penobscot Nation Tribal Court shall have the authority to hear and decide all matters under this Code when one or more of the parties resides within Penobscot Indian Territory or when the cause of action arose within the Penobscot Indian Territory.

Section 3: Definitions

1. **Abuse**" means the occurrence of one or more of the following acts:
 - a. Attempting to cause or causing bodily injury or offensive physical contact, including sexual assaults;
 - b. Recklessly or knowingly attempting to place or placing another in fear of bodily injury through any course of conduct, including, but not limited to, threatening, harassing, or tormenting behavior;
 - c. Compelling a person by force, threat of force, or intimidation:
 - i. To engage in conduct from which the person has a right or privilege to abstain; or
 - ii. To abstain from conduct in which the person has a right to engage;
 - d. Knowingly restricting substantially the movements of another person without that person's consent or other lawful authority by:
 - i. Removing that person from that person's residence, place of business or school;
 - ii. Moving that person a substantial distance from the vicinity where that person was found; or
 - iii. Confining that person for a substantial period either in the place where the restriction commences or in a place to which that person has been moved.
 - e. Communicating to a person a threat to commit, or to cause to be committed, an

act of violence dangerous to human life against the person to whom the communication is made or to another person, where the natural and probable consequence of the threat, whether or not that consequence in fact occurs, is to place the person to whom the threat is communicated, or the person against whom the threat is made, in reasonable fear that the act will be committed;

- f. Communicating to a person a threat to commit, or to cause to be committed, an act of violence against any animal owned, possessed, leased, kept, or held by either party or a minor party residing in the household, where the natural and probable consequence of the threat, whether or not that consequence in fact occurs, is to place the person to whom the threat is communicated in reasonable fear that the act will be committed;
- g. Stalking or following a person as defined in this Chapter;
- h. Using language or behavior that serves no legitimate purpose and is intended to be intimidating, humiliating, threatening, frightening, or otherwise harassing, including language or behavior directed at or referencing a person's culture, heritage, religion, sacred or spiritual objects, cultural items, or regalia and that does or reasonably could intimidate, humiliate, threaten, frighten, or otherwise harass the individual to whom the conduct or language is directed;
- i. Engaging in the unauthorized dissemination of private images as defined in this Chapter; or
- j. Engaging in sex trafficking as defined in this Chapter.
- k. Engaging in economic abuse as defined in this Chapter.
- l. Engaging in harassment by telephonic communication device as defined in this Chapter.

Abuse does not include acts of self-defense.

- 2. **“Dating partners”** means individuals currently or formerly involved in dating each other, whether or not the individuals are or were sexual partners. It anticipates a social relationship of a romantic or intimate nature, the existence of which shall be determined by the following: 1) the length of the relationship; 2) type of relationship; and 3) frequency of interactions between the persons involved.
- 3. **“Economic abuse”** means causing or attempting to cause an individual to be financially dependent by maintaining control over the individual's financial resources, including, but not limited to, unauthorized or coerced use of credit or property, withholding access to money or credit cards, withholding some or all of court ordered child support without good cause, forbidding attendance at school or employment, stealing from or defrauding an individual of money or assets, exploiting the individual's resources for personal gain of the defendant or withholding physical resources such as food, clothing, necessary medications or shelter.
- 4. **“Family or household members”** means spouses, former spouses, parents and children, including parents of the same child, parents expecting a shared child, and persons related by blood or marriage, whether they have lived together at any time or not, and any other persons who are presently residing together or who have resided together in the same household within the past
- 5. **“Harassment”** generally means a course of conduct engaged in with the intent to harass, torment, or threaten another person. Harassment can be verbal or nonverbal, and includes any repeated intrusive or unwanted acts, words, gestures, or any similar acts that are

intended to affect the safety, security, or privacy of another person adversely and unlawfully, including, but not limited to, those acts as defined by Penobscot Nation Tribal Law (including, but not limited to, 5 M.R.S.A. Section 4651 (2)). Harassment can occur via telephone or electronic communication device, as defined in this Chapter.

6. Harassment, as defined above, can occur by telephone or electronic communication device. As used in this section, “**electronic communication device**” means any electronic or digital product that communicates at a distance by electronic transmission impulses or by fiber optics, including any software capable of sending and receiving communication, allowing a person to electronically engage in the conduct prohibited under this section. Harassment by telephone or electronic communication device occurs if:
 - a. By means of a telephone or an electronic communication device a person makes any comment, request, suggestion, or proposal that is, in fact, offensively coarse or obscene, without the consent of the person called or contacted;
 - b. By means of a telephone or an electronic communication device the person, with the intent to cause affront or alarm or for the purpose of arousing or gratifying sexual desire, sends an image or video of a sexual act as defined by Penobscot Nation Tribal Law (e.g., 17-A M.R.S. section 251, subsection 1, paragraph C) or of the actor's or another person's genitals and:
 - i. The person called or contacted is in fact under 14 years of age;
 - ii. The person called or contacted is in fact 14 or 15 years of age and the actor is at least 5 years older than the person called or contacted; or
 - iii. The person called or contacted suffers from a mental disability that is reasonably apparent or known to the actor;
 - c. By means of a telephone or electronic communication device the person sends an image or a video of a sexual act as defined by Penobscot Nation Tribal Law (e.g., 17-A M.R.S. section 251, subsection 1, paragraph C) or of the actor's or another person's genitals without the consent of the person called or contacted after the person called or contacted has notified the actor, in writing or otherwise, that the person does not consent to receiving such images or videos;
 - d. The person knowingly permits any telephone or electronic communication device under the person's control to be used for any purpose prohibited by this section.
7. “**Order for Protection**” means a court order granted for the protection of victims of abuse, stalking, or any other conduct covered by this Chapter.
8. “**Penobscot Indian Territory**” means the Penobscot Indian Reservation and lands held in trust for the Nation by the Secretary of the Interior.
9. “**Petitioner**” means the victim or intended victim of the abuse, stalking, or any of the acts covered by this Code. In the case of a minor or otherwise incompetent victim or intended victim, the “petitioner” means the parent, guardian, or legal or physical custodian of the victim or intended victim, or such other person who by law or tribal custom is authorized to act on behalf of said minor or otherwise incompetent victim or intended victim. Petitioner includes any party defined as being eligible to seek relief in the “Eligibility” section of this Code.
10. “**Physical harm and bodily injury**” mean physical pain or injury, illness, or any impairment of physical condition.
11. “**Private images**” means images, photographs, videos, or other likenesses depicting or

simulating a sexual act or engaged in sexual contact, or depicting any portion of a person's genitals, or buttocks, or of a woman's breast below the top of the areola, that is either uncovered or visible through less-than-fully opaque clothing, which images may reasonably be considered private, intimate, or inappropriate for distribution or publication without that person's consent.

12. **“Respondent”** means the alleged perpetrator of any of the acts covered by this Code, as such person is identified as the ‘respondent’ or ‘defendant’ in a complaint duly filed with the Penobscot Nation Tribal Court.

13. **“Sexual assault”** means any nonconsensual sexual act, including when the victim lacks capacity to consent, as described by the Penobscot Nation Tribal Code, or by federal or state law including, but not limited to:

- a. contact, without express consent, between any part of the defendant’s body or an object and the genitals or anus of another person either directly or through clothing;
- b. contact, without express consent, between the genitals or anus of the defendant and any part of another’s body, either directly or through clothing;
- c. touching of the breasts, buttocks, groin, or inner thigh, directly or through clothing, without express consent, for the purpose of arousing or gratifying sexual desire;
- d. the infliction of bodily injury or physical pain on another person, without express consent, for the purpose of arousing or gratifying sexual desire;
- e. any conduct, in addition to the conduct described above, described in Chapter 11 of Title 17-A of the Maine Criminal Code;
- f. any conduct, in addition to the conduct described above, described in Chapter 109A of Title 18, United States Code;
- g. an attempt, conspiracy, or threat to commit or to engage in conduct described in paragraphs (a)–(f).

14. **“Stalking”**

- a. A person is guilty of stalking if:
 - i. The actor intentionally or knowingly engages in a course of conduct directed at or concerning a specific person that would cause a reasonable person:
 1. To suffer serious inconvenience or emotional distress;
 2. To fear bodily injury or to fear bodily injury to a close relation;
 3. To fear death or to fear the death of a close relation;
 4. To fear damage or destruction to or tampering with property; or
 5. To fear injury to or the death of an animal owned by or in the possession and control of that specific person.
- b. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.
 - i. **“Course of conduct”** means 2 or more acts, including but not limited to:
 1. Acts in which the actor, by any action, method, device or means, directly or indirectly follows, monitors, tracks, observes, surveils, threatens, harasses, or communicates to or about a person;
 2. Approaching or confronting the plaintiff;
 3. Interfering with a person’s property;

4. Threats implied by conduct;
5. Gaining unauthorized access to personal, medical, financial, or other identifying or confidential information;
6. Appearing at the plaintiff's workplace or contacting the plaintiff's employer or coworkers;
7. Appearing at the plaintiff's home or contacting the plaintiff's neighbors;
8. Appearing at the plaintiff's school or school events or contacting others at the plaintiff's school;
9. Entering property owned, leased, or occupied by the plaintiff;
10. Photographing, videotaping, audiotaping, or recording through any means the activities of the plaintiff, regardless of where the act occurs;
11. Contacting the plaintiff by text, telephone, electronic message, electronic mail, social media, or any other form of communication, whether or not the contact results in a conversation or response from the plaintiff;
12. Sending material by any means to the plaintiff or, for the purpose of obtaining information about, disseminating information about, or communicating about the plaintiff, sending material by any means to a member of the plaintiff's family or household or an employer, coworker, or friend of the plaintiff;
13. Sending to the plaintiff any physical or electronic material or contacting the plaintiff by any means, including any message, comment, or other content posted on any Internet site or web application;
14. Sending to a member of the plaintiff's family or household, or any current or former employer, coworker, or friend of the plaintiff any physical or electronic material or contacting such person by any means, including any message, comment, or other content posted on any Internet site or web application for the purpose of obtaining information about, disseminating information about, or communicating with the plaintiff.

Nothing in this definition prohibits a person from gathering information to make a claim or defense on their own behalf.

15. **“Unauthorized Dissemination of Certain Private Images”** A person is guilty of unauthorized dissemination of certain private images if the person, with the intent to harass, torment, threaten, control, demean, denigrate, or damage the reputation of the depicted person or another person, knowingly disseminates, displays or publishes a private image or, photograph, videotape, film or digital recording of another person in a state of partial or full nudity or visible through less-than-fully opaque clothing, or depicting or simulating a sexual act or engaged in sexual contact when the person knows or should have known that the depicted person:
 - a. Is identifiable from the image itself or information displayed in connection with the image; and

- b. Has not consented to the dissemination, display, or publication of the private image.
16. "**Unlawful**" means, in the absence of a particular Tribal Criminal Code provision, acts which are defined as such under Federal, Tribal, or Maine state criminal laws.

Section 4: Eligibility

The following persons are eligible to seek relief under this Title:

1. **Adult.** An adult is a person who is at least 18 years old who resides within Penobscot Indian Territory or are tribal members or are eligible for tribal membership:
 - a. Who has been a victim of abuse as defined in this chapter by a family or household member, a current or former dating partner, an individual related by blood or marriage; or
 - b. Who has been a victim of conduct:
 - i. Described as stalking in this Chapter;
 - ii. Described as sexual assault in this Chapter;
 - iii. Described as unauthorized dissemination of certain private images in this Chapter;
 - iv. Described as harassment by electronic communication device in this Chapter; or
 - v. Described as sex trafficking or aggravated sex trafficking by Penobscot Nation Tribal Law (e.g., 25 U.S.C. 1304 and M.R.S.A. Title 17-A, section 852 or 853, respectively).

For purposes of subsection 1, a minor child that has reached at least the age of 16 years old, or who is emancipated, and otherwise meets the above criteria may file individually under this subsection or may choose to have a petition filed under subsection 2.

For purposes of subsection 1(b), the conduct need not have been perpetrated by a family or household member, a dating partner or an individual related by blood or marriage.

At an eligible adult's request, the Tribal Prosecutor or tribal agency representative on behalf of the eligible adult may file.

2. **Minor child.** Any relative or social services agency or the Penobscot Nation Domestic and Sexual Violence Advocacy Center advocate or Guardian ad Litem, as defined in this Chapter, on behalf of minor children who reside within Penobscot Indian Territory or are tribal members or are eligible for tribal membership, who have been:
 - a. A victim of abuse as defined in this chapter by a family or household member, a dating partner or an individual related by blood or marriage;
 - b. A victim of conduct:
 - i. Described as stalking in this Chapter;
 - ii. Constituting any crime described by Penobscot Nation Tribal Law (as defined at M.R.S.A. Title 17-A, Chapter 11);
 - iii. Described as unauthorized dissemination of certain private images in this Chapter; or
 - iv. Described as sex trafficking or aggravated sex trafficking in Penobscot Nation Tribal Law (as defined at M.R.S.A. Title 17-A, section 852 or 853,

respectively);

- v. Described as sexual exploitation of a minor or dissemination of sexually explicit material in Penobscot Nation Tribal Law (as defined at M.R.S.A. Title 17-A, section 282 or 283, respectively);
- vi. Described as harassment by electronic communication device in this Chapter; or
- vii. Described as a “covered crime” by 25 U.S.C. 1304.

For purposes of subsection 2(b), the conduct need not have been perpetrated by a family or household member, a dating partner or an individual related by blood or marriage.

3. **Elder or dependent adult.** An adult who meets the eligibility requirements in paragraphs (a) as follows:
 - a. The adult is:
 - i. Sixty years of age or older;
 - ii. A dependent adult, as defined in Chapter 16, Art. 3(5) of the Penobscot Nation Tribal Code; or
 - iii. An incapacitated adult, as defined in Chapter 16, Art. 3(9) of the Penobscot Nation Tribal Code; and
 - iv. The adult has been the victim of abuse as defined in Chapter 16, Art. 3(1) of the Penobscot Nation Tribal Code, or as defined in this Chapter.
 - b. The adult victim, the adult victim's legal guardian, or a representative of the department may seek relief.

Section 5: Appointment of Guardian ad Litem for Minor Children:

1. The Court may appoint a guardian ad litem to represent the interest of a minor child in proceedings under this Chapter when:
 - a. No parent, guardian, legal custodian, relative, social services agency, or the Penobscot Nation Domestic and Sexual Violence Advocacy Center working with the child appears at the first or any subsequent hearing in the case;
 - b. The Court finds that there may be a conflict of interest between the child and their parent, guardian, legal custodian, relative, social services agency, or the Penobscot Nation Domestic and Sexual Violence Advocacy Center; or
 - c. The Court finds that it is in the child’s interest and necessary for the child’s welfare regardless of whether a parent, guardian, legal custodian, relative, social services agency, or the Penobscot Nation Domestic and Sexual Advocacy Center is present.
2. Appointment shall only be of an adult whom the Court is satisfied is familiar with this Chapter and with the procedures of the Court and who will sincerely and competently represent the child.
3. The guardian ad litem shall be compensated for their representation at a rate set by order of the Court, unless a guardian ad litem can be found that will perform the duty pro bono.
 - a. In appointing a guardian ad litem, the Court may seek that any involved entity, including but not limited to any party, the Penobscot Nation Department of Social Services, the Penobscot Nation Domestic and Sexual Violence Advocacy Center, or any other involved agency of the Penobscot Nation contribute to the

compensation of the guardian ad litem.

ARTICLE TWO – ORDERS FOR PROTECTION

Section 1: Civil Remedy - Order for Protection

1. **Petition for Protection.** A petition to obtain an order for protection under this Section may be filed by any person who is eligible under Art. 1, Sec. 4 of this Chapter.
2. A petition shall allege the existence of abuse, stalking, and/or any other act covered by this Chapter and shall be verified or supported by an affidavit made under oath stating the circumstances in a short and plain statement justifying the requested order.
3. A petition may be filed regardless of the pendency of any other civil or criminal proceeding related to the allegations in the petition.
4. No filing fee shall be required for the filing of a petition under this section. If an alleged perpetrator has been arrested for an offense involving abuse, and/or any other act covered by this Chapter, the Court or the arresting police officer shall inform the alleged victim of the right to file a petition under this section without cost.
5. The petitioner, or the victim on whose behalf the petition has been filed, is not required to file for annulment, separation, or divorce as a prerequisite to obtaining an order of protection; but the petition shall state whether any other action is pending between the petitioner or victim and the respondent.
6. Court staff shall make all reasonable efforts to have standard, simplified petition forms with instructions for completion available to persons not represented by counsel. The Penobscot Nation Police Department, Tribal Court, and advocates for domestic and sexual violence shall make all reasonable efforts to keep such forms and make them available upon request in-person and/or electronically to victims of abuse and/or any other act covered by this Chapter.
7. If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of identifying information, including but not limited to address and phone number, the information must be sealed by the clerk and not disclosed to the other party or the public.

Section 2: Hearings and Notice

1. Upon the filing of an application seeking an order for protection, with or without the issuance of an ex parte order for protection issued under section 3, the Clerk shall schedule a hearing to be held upon the merits of the application, the need for the continuance of the ex parte order, if any is issued, or the need for the continued enforcement or to modify, enlarge or limit the order for protection, as the case may be.
2. The hearing shall be held at the next scheduled court session unless otherwise specified in any ex parte order for protection which the court may have issued provided said hearing shall be held no sooner than ten (10) business days from the date of filing with the Court and no later than twenty-one (21) business days from the date of filing with the Court.

3. . The petitioner and the respondent shall each be served by the court with written notice of the time, date, and place of said hearing. The respondent shall be personally served by a law enforcement officer while the petitioner, prosecutor, and advocate may be served personally or by mail. Any party may be served by alternative service with permission of the Court. An advocate for survivors and/or the Penobscot Nation Tribal police may be sent notice upon request.
4. The hearing shall be conducted in an informal manner and factual findings shall be made by the court acting without a jury. The Penobscot Nation Rules of Evidence shall still apply.
5. **Burden of Proof.** The burden of proof shall be upon the petitioner. The standard for Protection from Abuse cases shall be preponderance of the evidence. Preponderance of the evidence means sufficient evidence that the claim is more likely than not to be true. Evidence includes, but is not limited to, testimony.
6. The parties shall have the right to be represented by counsel of their choice and at their own expense.
7. **Continuance.** The court may order the hearing to be continued upon the request of the respondent for the purpose of allowing the respondent to prepare their own defense or to obtain counsel. In such an event, the court shall extend the duration of any order it has previously issued and may issue such additional order(s) modifying, enlarging, altering the existing order as facts and circumstances may justify. The court may also order the hearing to be continued upon the request of the petitioner for good cause.
8. Both the respondent and the petitioner shall have the right to subpoena witnesses to testify on their behalf at his or her own expense.
9. The respondent may either admit or deny, in whole or in part, the allegations contained in the application or in a request for modification of an existing tribal court order for protection. Should the respondent deny the allegations, the court may immediately proceed to hear testimony and accept evidence unless (a) either party requests a further continuance and (b) the court is satisfied that such a continuance is reasonable and necessary under the circumstances and is not solely for the purpose of delay.
10. **Final Protection Order.** The court, after a hearing or opportunity for hearing and upon finding that the Defendant has committed the abuse or conduct specified in Article 1, section 4 of this Chapter, may grant a final protection order to bring about the cessation of abuse or alleged conduct. The court may enter a finding that the defendant represents a credible threat to the physical safety of the plaintiff or a minor child residing in the household. The court may enter a finding of economic abuse.
11. **Final Protection Order by Agreement.** The court may approve a final protection order by agreement if all parties agree to the terms, including whether an order includes findings by the court.
12. **Title to Property.** No order or agreement shall affect title to any real property.
13. **Duration.** A protective order or approved consent agreement is presumptively for a fixed period not to exceed two (2) years. Orders may be granted beyond two years by agreement, or the two-year presumption may be rebutted, and an order may be granted beyond two years based on:
 - a. The respondent's history of violence;
 - b. The prolonged nature of alleged conduct;

- c. The severity of the allegations at issue;
 - d. Continued harassment or other behavior in addition to abuse;
 - e. The evidence presented at hearing; and/or
 - f. Any other factor the Court, in its discretion finds relevant.
14. **Extension.** Upon request, the court may issue an extension of a protection order for a discrete duration or permanently based upon the court's discretion considering what is necessary to protect the petitioner or the petitioner's family, the respondent's history of violence, the severity of conduct in any previous orders, or any violation of a previous order.
15. **No Mutual Orders.** The court shall not issue a mutual restraining order for protection nor an order for protection against one who has applied for an order for protection from abuse or harassment except where a cross or counter application has been served and filed by the respondent and the court, after hearing the matter, makes written findings and conclusions that such an order is justified under the facts and the law.
16. **Post-Judgment Motions.** Either party may subsequently move the court for an order dismissing, modifying, enlarging, extending, or otherwise altering the terms of the order for protection previously issued. Service of such a motion shall be made in accordance with court rules. No such motion shall be granted or denied until a hearing has been held before the court to which all parties have been summoned or noticed to appear.

Section 3: Procedure for Issuance of an Ex Parte Order of Protection.

Upon the filing of a petition for order of protection, the Court shall:

- a. Immediately grant an ex-parte order of protection without bond if, based on the specific facts stated in the affidavit or the verified petition, the Court has probable cause to believe that the petitioner or the person on whose behalf the petition has been filed is the victim of an act of abuse, stalking, or any other act covered by this Chapter, committed by the respondent, and issuance of the ex-parte order is necessary to protect the victim and/or the children from further abuse. The ex-parte order may include some or all of the provisions listed in Section 4.
- b. Cause an ex-parte order of protection, together with notice of hearing, to be served immediately in accordance with Section 2(3) above.

Section 4: Contents of an Order of Protection

An order of protection entered after notice and hearing may include provisions:

- 1. Restraining the respondent from committing any acts of abuse, stalking, and/or any other act covered by this Chapter;
- 2. Excluding the respondent from the residence of the victim, whether or not the respondent and the victim share that residence;
- 3. Restraining the respondent from any direct or indirect contact with the victim upon a showing that there is a reasonable cause to believe that physical harm may otherwise result;

4. Awarding temporary custody or establishing temporary visitation rights regarding minor children of the respondent on a basis that gives primary concern to the safety of the claimed victim of abuse and the minor children;
 - a. If the Court finds that the safety of the claimed victim and the minor children will be jeopardized by unsupervised or unrestricted visitation, the Court shall set forth conditions or restrict visitation as to the time, place, duration, or supervision, or deny visitation entirely, as needed, to guard the safety of the claimed victim and the minor children;
 - b. Any temporary custody shall provide for child support and temporary support for the person having custody of the children, in amounts deemed proper by the Court;
5. Enjoining the respondent from being at or in close proximity to the dwelling or residence and the place of employment or education, if applicable, of the victim(s);
6. Prohibiting the respondent from using or possessing a firearm or other weapons specified by the Court;
7. Ordering temporary guardianship with regard to an elderly or handicapped victim of abuse or other covered conduct under this Chapter if necessary for the safety of the elderly or handicapped person;
8. Mandating counseling, or any other intervention programs, as the Court finds necessary.
 - a. In no event shall the Court mandate the petitioner and respondent attend joint counseling.
 - b. The Court may make the respondent responsible for any fees or costs associated with a program the respondent is mandated to attend.
9. With respect to property within Penobscot Indian Territory, restraining one or both parties from transferring, removing, encumbering, mortgaging, concealing, disposing, altering of property except as authorized by the Court, and requiring that an accounting be made to the Court for all authorized transfers, encumbrances, disposition, and expenditures;
10. With respect to property within Penobscot Indian Territory, awarding temporary use and possession of property of the parties;
11. With respect to property within Penobscot Indian Territory, ordering the respondent to timely pay mortgage or rental payments or other payments necessary to maintain the claimed victim in his/her residence;
12. Describing any prior orders of the Court relating to domestic matters which are superseded or altered by the order of protection;
13. Notifying the parties that the willful violation of any provision of the order by the respondent constitutes contempt of court, which may be punishable by a civil penalty, the removal by the Chief and Council from Penobscot Indian Territory and, by imprisonment;
14. Ordering, in the Court's discretion, any other lawful relief as it deems necessary for the protection of any petitioner or the petitioner's family, including orders or directives to the Penobscot Nation Tribal Police or any other appropriate law enforcement; and orders prohibiting the respondent from being within Penobscot Indian Territory.
15. Directing appropriate law enforcement agencies to enforce the terms of its orders; and
16. With respect to pets or animals within Penobscot Indian Territory, directing the care, custody, or control of any animal owned, possessed, leased/kept or held by either

party or a minor child residing in the household.

Section 5. Discovery in Protection from Abuse Matters

- 1. Applicability.** This rule does not apply to family matter or protective custody actions.
- 2.** Without specific court approval, which shall be granted only in extraordinary cases, parties to protection from abuse or protection from harassment matters may not engage in any discovery practice, including, but not limited to, depositions, service of interrogatories and subpoenas for documents.
- 3. Protective Order.** Upon motion and a showing of good cause, the court may make any order that justice requires to protect sensitive and confidential information from further disclosure or use.
- 4. Further Dissemination Prohibited.** Unless specified by law or court order, or for the purpose of transferring the file to successor counsel, the receiving party may not disclose or further disseminate any items produced in discovery.

Section 6: Dismissal of Protection from Abuse and Harassment Matters

- 1. Applicability.** This rule does not apply to family matter or protective custody actions.
- 2. Motion for Dismissal.** The court shall not grant a party's motion to dismiss a protection from abuse or protection from harassment action unless it finds the dismissal is upon such terms and conditions as the court deems proper. If granted, a plaintiff's first motion to dismiss shall be without prejudice. Thereafter, the motion to dismiss shall be granted with prejudice only if the motion was made in bad faith, to delay the proceedings, or for other good cause, in the court's discretion.

ARTICLE THREE – LAW ENFORCEMENT REQUIREMENTS

Section 1: Duties of Police Officers

- 1. Primary Duty of Police Officers.** The primary duty of police officers when responding to abuse, as covered within this Chapter, within Penobscot Indian Territory is to enforce the laws and to ensure safety.
- 2. Notification to Victim.** If the victim is present when the officer intervenes to protect a victim of abuse, stalking, or any other conduct covered by this Chapter, the officer shall advise the victim of reasonable means to prevent further abuse, the availability of a shelter and other services in the community, including but not limited to the Penobscot Nation Domestic and Sexual Violence Advocacy Center, and shall provide immediate notice of any legal rights and remedies available in accordance with policies and protocols that have been adopted in accordance with the Penobscot Nation Protection from Abuse Code.
- 3. Notification of Rights.** The victim shall be furnished with a copy of the following rights entitled to victims of abuse and/or any other conduct covered by this Chapter.
 - a.** You can report conduct to Penobscot Nation law enforcement, or
 - b.** You have the right to file a petition with the court requesting an Order for

Protection. The order could include the following:

- i. An order restraining the abuser from further acts of abuse;
 - ii. An order directing the abuser to leave your household;
 - iii. An order preventing the abuser from entering your home, school, business, or place of employment;
 - iv. An order awarding you custody of or visitation with your minor child(ren); or
 - v. An order directing the abuser to pay child support to you and the minor child(ren).
- c. You have the right to notification if prosecution of the case is declined or criminal charges are dismissed.

Section 2: Protection of the Victim

1. A law enforcement officer responding to an allegation of abuse or other conduct covered by this Chapter shall use all reasonable means to protect the victim and prevent further violence, including but not limited to:
 - a. Taking action necessary to provide for the safety of the victim and any family or household member.
 - b. Transporting or obtaining transportation for the victim or any minor child (or children) to a temporary shelter.
 - c. Assisting the victim and any minor child (children) in obtaining immediate medical treatment, including obtaining transportation to a medical facility.

ARTICLE FOUR – PENALTIES AND REMEDIES

Section 1: Civil Penalties

1. The Court may exercise its civil contempt powers, if necessary, to enforce any orders which may be issued pursuant to this Code.
2. A Respondent who willfully violates the terms of an order for protection issued by the Penobscot Nation Tribal Court is guilty of civil contempt and may be subject to a civil fine of upto five thousand dollars (\$5,000).

Section 2: Criminal Penalties

1. **Applicable Law.** The Nation shall be guided by Penobscot Nation Tribal Law, the Indian Civil Rights Act (25 U.S.C. §§ 1301–1304), and where applicable, the Maine Implementing Act, with respect to the imposition of criminal sanctions.
 - a. Criminal violation of a protection order prosecuted in the Penobscot Nation Tribal Court may upon a plea or finding of guilt be subject to a sentence of up to 1 year in jail and a criminal fine of up to two thousand dollars (\$2,000).
 - b. Criminal violation of a protection order that constitutes a Class C felony under the Maine Criminal Code may be referred for prosecution to the state of Maine, which upon a plea or finding of guilt may impose a sentence of jail and/or a criminal fine greater than in subsection (a) above.
 - c. The above subsections at 1(a) and 1(b) are based upon Tribal, federal, and state law as of the date of implementation of the amendment of this Chapter.

If any Tribal, federal, or state law updates the penalties for the violation of a protection order and/or updates the ability of the Penobscot Nation to prosecute crimes other than Class D and Class E misdemeanors, as defined in the Maine Criminal Code, then subsections 1(a) and 1(b) shall not limit the jurisdiction or authority of the Penobscot Nation in any way.

2. **Special Tribal Criminal Jurisdiction.** It is the intent of the Nation to implement Special Tribal Criminal Jurisdiction. In its exercise of this jurisdiction, as it may relate to this Chapter, the Court shall be guided by Penobscot Nation Tribal Law, the Indian Civil Rights Act (25 U.S.C. §§ 1301–04), and any other applicable rules or statutes.

Section 3: Other Remedies

The Court may also, in its discretion, impose other remedies that are relevant to Penobscot Nation culture to assist survivors or to promote compliance with the law.

ARTICLE FIVE – FULL FAITH AND CREDIT

1. Any order for protection issued by a state or other tribal court that is consistent with the provisions of 18 U.S.C. section 2265 (Violence Against Women Act of 1994), and any amendment thereto, shall be given full faith and credit and enforced as if it were an order of the Tribal Court.
2. **Severability.** If any provision of this Chapter, or the application thereof, to any person is held invalid, such invalidity shall not affect the provisions or the application of this Chapter which can be given effect without the invalid provisions, and to this end the provisions of this Chapter are declared severable.
3. **Statutory References.** The statutes referenced in this Chapter are referred to as they are written as of the date of implementation of the amendment of this Chapter. If the statutes or rules of Maine or the United States referenced within this Chapter are repealed, amended, or renumbered, then the Court shall use its discretion and authority to interpret the most relevant Tribal, state, and/or federal law to best enforce the purpose of this Chapter.

ARTICLE SIX – APPEALS

1. **Who Can Appeal.** Any party to a proceeding pursuant to this code may appeal a final court order.
2. **Appeals Procedure.** All appeals from proceedings under this Code shall be heard pursuant to the Penobscot Nation Appellate Procedures.
3. The decision of the Penobscot Nation Tribal Court shall be given full force and effect pending an appeal.