CHAPTER 14

DOMESTIC VIOLENCE CODE

PENOBSCOT NATION
DOMESTIC VIOLENCE CODE

CHAPTER 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 through the use of 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 the Penobscot people, to preserve and strengthen family and tribal ties whenever possible, to protect and preserve tribal heritage and cultural identity of the residents of the Tribe's Indian territory, and to promote cooperation between the Tribe 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 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 Domestic Violence Code shall be construed to promote the following:

1. That violence against family members and others is not in keeping with the Nation's values. It is the expectation that the tribal justice system respond to victims of domestic violence and harassment with fairness, compassion, and in a prompt and effective manner. The goal of this code is to provide victims of domestic violence and harassment with safety and protection.

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

3. Implementation of this code shall recognize that the strength of the Tribe is founded on healthy community, and that the safety of victims of domestic 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 shall be that violent behavior is not to be tolerated or excused whether or not the abuser or victim is intoxicated.

Section 2: Declarations and authority of the Penobscot Nation to regulate and prohibit domestic violence 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 domestic violence or abuse and, with respect to every resident of Penobscot Indian Territory, domestic 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 domestic 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 domestic 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 residing within Penobscot Indian Territory, who commit, or threaten to commit, acts of domestic 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. "Domestic violence/abuse" means the occurrence of one or more of the following acts between family or household members or dating partners or by a family or household member or dating partner upon a minor child or a family or household member or dating partner but does not include acts of self defense:

a. Attempting to cause or causing physical harm;

b. Attempting to place or placing another in fear of physical harm; or

c. Causing another person to engage involuntarily in sexual activity by force, threat of force, or duress.

2. "Petitioner" means the victim or intended victim of the domestic violence or abuse or harassment or, 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;

3. "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;

4. "Family or household members" means spouses, former spouses, parents and children, persons within a direct line of descent 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. "Family or household member" also includes a man and woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time.

5. "Harassment" means repeated intrusive or unwanted acts, words, or gestures, including verbal abuse, repeatedly placing telephone calls or any form of electronic messaging to another's residence or place of employment or education for no lawful purpose, or any similar acts that are intended to adversely and unlawfully affect the safety, security, or privacy of another, including, but not limited to, those acts as defined in Title 5 M.R.S. Section 4651(2).

6. "Order for Protection" means a court order granted for the protection of victims of domestic violence, abuse, stalking or harassment.

7. "Penobscot Indian Territory" means the Penobscot Indian Reservation and lands held in trust for the Nation by the Secretary of the Interior.

8. "Physical harm and bodily injury" means physical pain or injury, illness, or any impairment of physical condition.

9. "Stalking" means repeatedly and without reasonable cause following, either physically or by use of electronic means, including but not limited to GPS, cameras, e-mail and social media, the Petitioner or being at or in the vicinity of the Petitioner's home, school, business or place of employment for no lawful purpose.

10. "Unlawful" means, in the absence of a tribal criminal code, acts which are defined as such under federal, tribal, or Maine state criminal laws.

CHAPTER 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:

(a) Any person residing within Penobscot Indian Territory claiming to be the victim of domestic violence, abuse, stalking and/or harassment;

(b) Any person who is a tribal member or eligible for membership within the Penobscot Nation claiming to be the victim of domestic violence, abuse, stalking and/or harassment;

(c) The Tribal Prosecutor, any credible adult, family member or tribal agency representative on behalf of a person listed in subsections (a) and (b) above, at the victim's request;

(d) Any relative or social services agency on behalf of minor children who reside within Penobscot Indian Territory or are tribal members or are eligible for trial membership, who have been subject to domestic violence, abuse, stalking and/or harassment.

2. A petition shall allege the existence of domestic violence, abuse, harassment and/or stalking and shall be verified or supported by an affidavit made under oath stating the specific facts and circumstances 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 domestic violence, the Court or the arresting police officer shall advise the alleged victim of the right to file a petition under this section without cost.

5. The petitioner, or the victim on whose behalf a 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. Standard, simplified petition forms with instructions for completion shall be available to persons not represented by counsel. The Penobscot Nation Police Department, Tribal Court and advocates for domestic violence shall keep such forms and make them available upon request to victims of domestic violence, abuse, stalking or harassment.

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 respondent, the petitioner, the Penobscot Nation Tribal Police and Advocate for Victims of Domestic Violence 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.

4. The hearing shall be conducted in an informal manner and factual findings shall be made by court acting without a jury.

5. The burden of proof shall be upon the petitioner.

6. The parties shall have the right to be represented by counsel of his or her choice and at his or her own expense.

7. The court may order the hearing to be continued upon the request of the respondent for the purpose of allowing the respondent to obtain counsel or to prepare his or her own defense. In such an event, the court shall extend the time period 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.

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. Upon the conclusion of the hearing the court shall make its findings and conclusions and enter its order either granting a permanent order for protection or dismissing the proceedings. The permanent order will be valid for not more than two years, but the order may be renewed for additional periods of time at the request of the petitioner.

11. 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.

12. 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:

1. 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 domestic violence, abuse, harassment or stalking 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.

2. 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 domestic violence, abuse, harassment and/or stalking

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 with regard to minor children of the respondent on a basis which gives primary consideration to the safety of the claimed victim of domestic violence and the minor children.

a. If the Court finds that the safety of the claimed victim or 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 weapon specified by the Court;

7. Ordering temporary guardianship with regard to an elderly or handicapped victim of domestic violence if necessary for the safety of the elderly or handicapped person;

8. Mandating the Respondent to attend counseling such as anger management or a batterer's intervention program. In no event shall the Court mandate that the victim and Respondent attend joint counseling.

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, if the violator is a member of a federally recognized Indian tribe, by imprisonment;

14. Ordering, in the Court's discretion, any other lawful relief as it deems necessary for the protection of any claimed or potential victim of domestic violence, 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;

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.

CHAPTER 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 a domestic violence situation 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 domestic violence, 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 Violence Agency, 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 Domestic Violence Code.

3. The victim shall be furnished with a copy of the following rights entitled to victims of domestic assault:

a. You can ask the Penobscot Nation Tribal Prosecutor or the Penobscot County District Attorney to file a criminal complaint;

b. You have the right to file a petition with the court requesting an Order for Protection from domestic abuse. 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 domestic violence 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.

CHAPTER FOUR
PENALTIES

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 up to five thousand dollars ($5,000).

Section 2: Criminal Penalties

1. The Nation shall be guided by the Maine Implementing Act with respect to the imposition of criminal sanctions.

CHAPTER FIVE
FULL FAITH AND CREDIT

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.

Severability. If any provision of this Code, or the application thereof, to any person is held invalid, such invalidity shall not affect the provisions or applications of this Code which can be given effect without the invalid provisions, and to this end the provisions of this Code are declared severable.

CHAPTER SIX
APPEALS

1. Who Can Appeal. Any party to a proceeding pursuant to this code my 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.