



# NHBP TRIBAL COURT

NOTTAWASEPPI HURON BAND OF THE POTAWATOMI

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## COURT RULES FOR DOMESTIC VIOLENCE PROCEEDINGS CHAPTER 15

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# NOTTAWASEPPI HURON BAND OF THE POTAWATOMI TRIBAL COURT

## COURT RULES FOR DOMESTIC VIOLENCE PROCEEDINGS CHAPTER 15

### Section 1. Title

This Chapter of Court Rules will be known as the *Court Rules for Domestic Violence Proceedings*.

### Section 2. Purpose

The purpose of this Chapter of Court Rules is to facilitate proceedings filed pursuant to the *Nottawaseppi Huron Band of the Potawatomi Domestic Violence Code* and to establish procedures by which the intent and purpose of the *Nottawaseppi Huron Band of the Potawatomi Domestic Violence Code* can be carried out to benefit all persons coming under the authority of that Code and before the Domestic Violence Court, a division of Nottawaseppi Huron Band of the Potawatomi Tribal Court, established in Article V § 7.4-9. Domestic Violence Court of the *Nottawaseppi Huron Band of the Potawatomi Domestic Violence Code*.

### Section 3. Definitions

A. This Chapter of Court Rules recognizes and adopts, for the purposes of this Chapter, the definitions found in Article IV § 7.4-8 of the *Nottawaseppi Huron Band of the Potawatomi Domestic Violence Code* (“Domestic Violence Code”), unless otherwise modified by this Chapter.

1. “*Abuse*” means the intentional infliction of physical harm, bodily injury, emotional abuse, sexual assault, or the infliction of the fear of imminent physical harm, and includes but is not limited to assault and battery as defined in the NHBP Law and Order Code.
2. “*Defendant*” and “*Perpetrator*” are interchangeable and discussed in the Acknowledgment Section of the Domestic Violence Code, Article III § 7.4-7 as follows: ...[t]here are numerous views on the terminology for identifying those who abuse their partners. Most federal laws and many federal programs use the

term “perpetrator”. This term also reflects decades of advocating for domestic violence to be treated as a crime and those committing the crime of domestic violence to be characterized accordingly. However, some batterer intervention agencies advocate for terms that include the potential for rehabilitation versus only their status within the criminal justice system. The use of the term “defendant”, a general term for any individual accused of a crime in the Tribal Court, reflects domestic violence as a crime for which an individual must be held accountable, as well as the approach to criminal cases wherein programs and services are available to them as tools to change their behavior. This Code, therefore, uses the terms “perpetrator” and “defendant” interchangeably to reference federal law as appropriate, recognize domestic violence as a crime, ensure that individuals who commit domestic violence are held accountable for their actions and provide access to resources that could assist the individual with stopping their abusive behavior. Neither “perpetrator” nor “defendant” indicates the guilt or innocence of the accused individual; a person is presumed innocent until proven guilty beyond a reasonable doubt.

3. “*Advocate*” means a person who is employed to provide services to victims of domestic violence and/or sexual assault or who volunteers to do so after receiving training, and is bound by confidentiality policies.
4. “*Aggravated Domestic Violence*” means domestic violence, as defined by this chapter, which also involves one or more of the following elements:
  - a. A dangerous weapon was used during the commission of the domestic violence;
  - b. Strangulation of the victim occurred during the domestic violence;
  - c. The domestic violence caused an injury which required medical treatment;  
or
  - d. The defendant has a prior conviction for domestic violence, or its legal equivalent
5. “*Assault*” means an act which places another in fear of an immediate battery by a person who had the ability to commit the battery, appeared to have the ability to commit the battery, or believed he/she had the ability to commit the battery.

6. “*Battery*” means a forceful, violent, or offensive touching of a person or something closely associated with a person, done with the intent to commit battery or place another in fear of battery. The act must be intentional, not accidental and must be done against the victim’s will. It does not matter whether the touching caused an injury.
7. “*Calendar Day*” means a consecutive days of the year, excluding recognized holidays.
8. “*Coercion*” means to restrain, compel, persuade, or dominate by force or threat.
9. “*Contact*” includes, but is not limited to:
  - a. Repeatedly coming into and/or remaining in the visual or physical presence of the victim;
  - b. Following the victim;
  - c. Waiting outside the home, property, place of work or school of the victim;
  - d. Sending or making written communications in any form, including text messaging, instant messaging, and social media, to the victim;
  - e. Speaking with the victim by any means, including leaving a voicemail message;
  - f. Communicating with the victim through a third person;
  - g. Committing a crime against the victim;
  - h. Communicating with a third person who has some relationship to the victim with the intent of impacting the third person’s relationship with that victim;
  - i. Communicating with business entities with the intent of affecting some right or interest of the victim;
  - j. Damaging the victim’s home, property, place of work or school; or
  - k. Delivering directly or through a third person any object to the home, property, place of work or school of the victim.
10. “*Court*” means the NHBP Tribal Court.
11. “*Course of Conduct*” means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose.

12. “*Dating Relationship*” means a social relationship of a romantic or intimate nature. In determining whether parties have a “dating relationship,” the trier of fact shall consider:
  - a. The length of time the relationship existed;
  - b. The nature of the relationship; and
  - c. The frequency of the interaction between the parties.
13. “*Domestic Violence*” means an assault and/ or a battery committed by a current or former spouse, an intimate partner, an individual with whom the victim has a child in common, or an individual with whom the victim has or has had a dating relationship.
14. “*Economic Abuse*” means making or attempting to make an individual financially dependent by maintaining control over financial resources, withholding access to money, or forbidding attendance at school or employment.
15. “*Electronic Communications*” means any form of expression or exchange of information by speech, photographs or written form using electronic means. Electronic communication includes, but is not limited to, communication via telephone, facsimile, electronic mail, social media and other electronic forms.
16. “*Electronic Surveillance*” means monitoring the behavior, activities, or whereabouts by electronic means.
17. “*Emotional Distress*” In this code, means a reaction such as anguish, grief, fright, humiliation, or fury.
18. “*Elder*” Means a person fifty or more years old.
19. “*Essential Personal Effects*” Means those items necessary for a person’s health, welfare and livelihood.
20. “*Ex Parte*” In this code, means that only the requesting party is heard by the Court, and that notice and an opportunity to contest the facts are not available to the party adversely affected by the Court’s action until after the Court has taken action.
21. “*Family or Household Member*” means
  - a. Persons who are related by blood, marriage, or adoption.
  - b. Minor children, by blood, marriage, or adoption.

- c. Minor children who are part of the household.
  - d. Persons who reside or have resided together in the past who are not or have not been intimate partners.
22. “*Family Violence*” means the same or similar acts as defined as domestic violence, but are directed towards a family or household member instead of an intimate partner. The dynamics of power and control may, or may not, be present.
23. “*Firearm*” Means any handgun, rifle, shotgun, machine gun, automatic or semi-automatic rifle, or any gun, device or instrument in the nature of a weapon constructed to include any weapon from which a dangerous projectile may be propelled by using explosives, gas or air as a means of propulsion, except any smooth bore rifle or handgun designed and manufactured exclusively for propelling BB’s not exceeding .177 caliber by means of spring, gas or air.
24. “*Foreign Protection Order*” means an injunction or other order related to domestic violence or family violence, harassment, sexual abuse, or stalking, for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with, or physical proximity to another person, issued by a court of another state, territory, or possession of the United States, the Commonwealth of Puerto Rico, the District of Columbia, any United States military tribunal, or a Tribal Court, in a civil or criminal action.
25. “*Indian Country*” means:
- a. All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation;
  - b. All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state;
  - c. All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same; and
  - d. The territory of the Band shall encompass the Band’s historical land base known as the Pine Creek Reservation in Athens Township, Michigan, and all lands now held or hereafter acquired by or for the

Band, or held in trust for the Band by the United States, including lands in which rights have been reserved or never ceded by the Nottawaseppi Huron Band of the Potawatomi in previous treaties, or as may otherwise be provided under federal law. This includes lands upon which FireKeepers Casino and Hotel is located.

26. “*Immediate Family*” means a spouse, parent, child, sibling, live-in partner, or any other person who regularly resides in the household or who in the past regularly resided in the household.

27. “*Juvenile*” or “*Minor*” means any person under the age of eighteen years of age.

28. “*No Contact Order*” means a Court order issued pursuant to a criminal case that prohibits a criminal defendant from having contact with the victim.

29. “*Noeg Meshomsenanek Kenomagewenen*” means Seven Grandfather Teachings.

In carrying out the powers of self-government in a manner that promotes and preserves our Bode’wadmi values and traditions, the Tribe strives to be guided by the Seven Grandfather teachings in its deliberations and decisions. The rights and limitations contained in this Code are intended to reflect the values in the Seven Grandfather teachings to ensure that persons within the jurisdiction of the Tribe will be guided by the Seven Grandfather teachings:

- a. Bwakawen – Wisdom
- b. Debanawen – Love
- c. Kejitwawenindowen – Respect
- d. Wedasewen – Bravery
- e. Gwekwadzewen – Honesty
- f. Edbesendowen – Humility
- g. Debwewin - Truth

30. “*Protection Order*” means:

- a. A temporary or permanent civil or criminal Court order, injunction, restraining order, or other order related to domestic violence or family violence, harassment, sexual abuse, or stalking, granted for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with, or physical proximity to another person,

who is a victim or alleged victim of domestic violence or family violence, dating violence, sexual assault or stalking; and

- b. Includes any temporary or final order issued by a civil or criminal court, whether obtained by filing an independent action or as part of another or pending Court proceeding, if the civil or criminal order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection.
31. “*Perpetrator*” means the person who has committed an act of domestic violence or family violence. The perpetrator may also be referred to as “defendant” in a criminal case or “respondent” in a civil case.
  32. “*Police Officer (Peace Officer, Law Enforcement Officer, or Officer)*” means any person employed or commissioned as a police or law enforcement officer by the NHBP, Calhoun County, State of Michigan, any agency of the Federal government, or any law enforcement agency having jurisdiction within the NHBP Indian Reservation, including non-Tribally deputized officers who may make arrests on the Reservation.
  33. “*Probable Cause*” for arrest means that the Police Officer, acting as a person of reasonable caution, has reasonable grounds to believe that the person to be arrested has committed an offense as defined by this code, based on all the facts known to the officer, including the officer’s personal observations, statements made by parties involved in the incident, statements made by witnesses, if any, and any other reliable information.
  34. “*Repeated*” means two or more times.
  35. “*Safe House*” means a safe home/safe house that provides temporary refuge and other services on a 24-hour, seven-days-per-week basis, to victims of domestic violence and their children.
  36. “*School*” means a public or private institution of learning or a child care facility.
  37. “*Service Area*” means the U.S. Department of Interior's administrative designation of Allegan, Barry, Branch, Calhoun, Kalamazoo, Kent, and Ottawa counties.

38. “*Spouse*” or “*Intimate Partner*” means:
- a. Spouses;
  - b. Former spouses;
  - c. Persons who are or have been in a marital-like relationship, including same-sex relationships;
  - d. Persons who have a child in common, regardless of whether they have been married or have lived together at any time in a romantic relationship; or
  - e. Persons who are dating or have dated in the past, as determined by:
    - i. Length of the relationship;
    - ii. Nature of relationship; and
    - iii. Frequency of interaction between the persons involved in relationship.

39. “*Survivor*” and “*Victim*” are interchangeable and discussed in the Acknowledgment Section of the Domestic Violence Code, Article III § 7.4-7, as follows: There are many views regarding the appropriate terminology for identifying an individual who has experienced or is currently experiencing domestic violence. Most federal laws and many federal programs use the term “victim”. The use of this term reflects decades of advocating for domestic violence to be treated as a crime and those victimized by domestic violence to have access to resources in the same manner as victims of other crimes. In contrast, many agencies that provides services to individuals who have experienced or are currently experiencing domestic violence use the term “survivor”. There are numerous reasons for the use of the term “survivor”, ranging from the recognition of the strength of the individual in enduring domestic violence to serving as a term of hope that healing is possible. Of additional consideration in determining terminology is the goal of empowering individuals who have experienced or are currently experiencing domestic violence. With domestic violence being rooted in the dynamics of power and control, including the taking of decision-making power, one reason for using these terms interchangeably is to empower the individual to decide how to

identify. This Code, therefore, uses the terms “victim” and “survivor” interchangeably to reference federal law when appropriate, ensure access to federal resources, and, most importantly, empower individuals in choosing the term with which they identify.

40. “*Traumatic Brain Injury*” means a traumatic brain injury (TBI) and is defined as a specific type of damage to the brain that is caused by external physical force and is not present at birth or degenerative. A blow, or blows, to the head, shaking of the brain, loss of oxygen, (anoxia), colliding with a stationary object and exposure to blasts can cause TBI. Based on this definition, the use of physical force by a spouse or an intimate partner during incidents of domestic violence can cause traumatic brain injury as abusive partners often cause injury to a victim’s head, neck (including strangulation), and to their face.
  41. “*Tribal or State Certified Domestic Violence Perpetrator Treatment Program*” means a State or Tribally certified program for abusers in which they are held accountable for their abusive actions and/or controlling behavior and in which their belief systems are sought to be changed that adopts at a minimum the Michigan Batterer Intervention Standards, June 1998.
  42. “*Weapon*” means any instrument, firearm, article, or substance which, regardless of its primary function, is readily capable of being used to produce death or serious bodily harm. This includes: a dirk; dagger; stiletto; a double-edged non-folding stabbing instrument of any length; any knife having the appearance of a pocket knife, the blade or blades of which can be opened by the flick of a button, pressure on the handle, spring, other mechanical contrivance, or other device in the handle; pistol; revolver; slingshot; sword cane; billy-club; knuckles made of any metal or other hard substance; knife having a blade at least 4 inches long; non-safety type razor; electro-muscular disruption device; or any other deadly weapon, except a hunting knife adapted and carried as such.
- B. This Chapter of Court Rules also uses the following definitions not taken from the *Code*:
1. “*Arraignment*” refers to the court appearance when the defendant comes before the Court and is advised of the charges against them, is advised of their legal rights and bond is determined and set.

2. “*Attorney*” and “*Counselor*” and “*Lawyer*” are synonymous and mean an individual admitted to practice before the courts of any state and in good standing, and who is admitted to practice before the Nottawaseppi Huron Band of the Potawatomi Tribal Courts.
3. “*Band*” and “*Nation*” and “*Tribe*” are synonymous and mean the Nottawaseppi Huron Band of the Potawatomi (NHBP).
4. “*Batterer Intervention Program* (“BIP”)” is synonymous with “Tribal or State Certified Domestic Violence Perpetrator Treatment Program”.
5. “*Bond*” cash or surety given to the Court to ensure a defendant’s appearance at Court proceedings after pretrial release. A surety is a guarantee by someone other than the Defendant to pay a specified amount if the Defendant does not appear at Court. Bonds may be kept by the Court if the Defendant fails to appear at Court.
6. “*Court Clerk*” refers to the Tribal Court Administrator or person designated to perform such duties by the Chief Judge or the Tribal Court Administrator.
7. “*Defendant*” means a person formally charged and accused of a crime by the NHBP Tribal Prosecutor in a legally acceptable complaint.
8. “*Indigent*” means a person who is financially unable to retain an attorney to represent them in a criminal trial. A person is presumed to be indigent if he or she receives public assistance such as food stamps, aid to families of dependent children, Medicaid, disability insurance or other similar public assistance

#### **Section 4. Jurisdiction**

- A. Pursuant to Article V § 7.4-10 of the Domestic Violence Code, the Domestic Violence Court has general jurisdiction over domestic and family violence matters in accordance with Title VIII, Judiciary; Law and Order Code and applicable NHBP Tribal Court Rules, or any other applicable section of the NHBP Tribal Code. In addition, the NHBP Tribal Court shall retain jurisdiction over members of Federally recognized Indian tribes and any violations of orders of protection entered pursuant to this code which are alleged to have occurred outside of the boundaries of the NHBP Indian Reservation where such orders are entitled to recognition outside Reservation boundaries as a matter of full faith and credit.

- B. Pursuant to Article V § 7.4-11 of the Domestic Violence Code, the Domestic Violence Court has special domestic violence criminal jurisdiction over all persons only if he or she:
1. Resides within the Indian Country of the NHBP; or
  2. Is employed within the Indian Country of the NHBP; or
  3. Is a spouse, intimate partner, or dating partner of:
    - a. A member of the NHBP; or
    - b. A member of another federally recognized Indian tribe who resides within the Indian Country of the NHBP.
- C. Pursuant to Article V § 7.4-12 of the Domestic Violence Code, the Domestic Violence Court has special domestic violence criminal jurisdiction of a defendant for criminal conduct that falls into one or more of the following categories:
1. An act of domestic violence that occurs within the Indian Country of the NHBP against Native American Victims.
  2. An act that violates a protections order where the act occurs within the Indian Country of the NHBP, and:
    - a. Violates the portion of a protection order that:
      - i. Prohibits or provides protection against violent or threatening acts of harassment against, sexual violence against, contact or communication with, or physical proximity to the person protected by the order;
      - ii. Was issued against the defendant;
      - iii. Is enforceable by the NHBP; and
      - iv. Is consistent with 18 U.S.C. 2265(b).

**Section 5. Reference to Chapter 12 – Court Rules for Criminal Proceedings and Nottawaseppi Huron Band of the Potawatomi Domestic Violence Code**

- A. Any Court processes or procedures not specifically referenced in this Chapter of Court Rules shall be governed by *Chapter 12 – Court Rules of Criminal Procedures*.
- B. Any provisions in the Nottawaseppi Huron Band of the Potawatomi Domestic Violence Code for which there are not specific Court processes or procedures in this Chapter of

Court Rules or *Chapter 12 – Court Rules of Criminal Procedure* shall be governed by the provisions of the Domestic Violence Code.

### **Section 6. Fundamental Rights of Defendants**

- A. All criminal defendants that appear in the Domestic Violence Court, a division of the Tribal Court, are presumed to be innocent until proven guilty beyond a reasonable doubt.
- B. All criminal defendants have the right to a speedy and public trial pursuant to Tribal Law.
- C. All criminal defendants are entitled to court-appointed assistance of counsel if the defendant is charged under the Domestic Violence Code and is indigent
  1. If the defendant is found to be indigent by the Court upon submission of a notarized affidavit by the defendant that confirms that he or she is indigent.
  2. The Court may require partial or full reimbursement to the Court of the cost of providing court-appointed counsel.
  3. A defendant may waive court-appointed counsel on the record after complete advice of rights. Waiver at one proceeding does not mean waiver at all following proceedings. The Court shall inquire of defendants who otherwise qualify for court-appointed counsel throughout the proceedings whether the defendant wants representation.
- D. Criminal defendants have the right to trial by a jury.
- E. Criminal defendants have the right to confront witnesses called to testify against them, and if representing themselves, to the Court's assistance in the preparation and service of subpoenas on their own behalf.
- F. Any Court costs associated with the issuance of a subpoena(s) on behalf of a defendant can be charged as court costs.
- G. No criminal defendant can be compelled to be a witness against themselves.
- H. No criminal defendant can be put in jeopardy for the same offense a second time. Jeopardy attaches after opening statements and the first witness has been sworn in a bench trial, and in a jury trial it is after the jury has been sworn.
- I. The rights of criminal defendants under the Indian Civil Rights Act and the VAWA 2013 not listed above are hereby incorporated.

## **Section 7. Writ of Habeas Corpus**

- A. Pursuant to Article V § 7.4-11 of the Domestic Violence Code, every defendant has the privilege of the writ of habeas corpus to test the legality of his or her detention and may petition the Court to stay further detention pending the habeas proceeding
1. The Court shall, at minimum, notify the defendant at the arraignment and the first pretrial Court proceeding
  2. The Court shall grant a stay if the Court:
    - a. Finds that there is a substantial likelihood that the habeas corpus petition will be granted; and
    - b. After giving each alleged victim in the matter an opportunity to be heard, finds by clear and convincing evidence that under conditions imposed by the Court, the Petitioner is not likely to flee or pose a danger to any person or the community if released.

## **Section 8. Victim Rights**

- A. Pursuant to § 7.4-43 of the Domestic Violence Code and notwithstanding other provisions of the Domestic Violence Code, a victim of a crime under this chapter shall have the following rights:
1. The right to be reasonably protected from the accused;
  2. The right to reasonable, accurate, and timely notice of any public Court proceeding, or any probation proceeding, involving the crime or of any release or escape of the accused;
  3. The right not to be excluded from any such public Court proceeding, unless the Court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding;
  4. The reasonable right to confer with the Prosecutor in the case;
  5. The right to full and timely restitution as provided in law;
  6. The right to proceedings free from unreasonable delay;
  7. The right to be treated with fairness and with respect for the victim's dignity and privacy; The victim has the right to provide a victim impact statement. A victim

impact statement is a written or oral statement given to the sentencing judge by the victim. Such statements may include the impact of the crime on the victim, and how the crime affected the victim psychologically, financially, and physically. The Prosecutor may assist the victim to provide this statement, or the victim's advocate may also assist. The Court shall make all reasonable efforts to accommodate the participation of the victim at the sentencing hearing, being mindful of the unique emotional and psychological barriers victims may experience when facing a perpetrator in Court.

### **Section 9. Victim Confidentiality**

- A. Pursuant to Article VIII § 7.4-28 (A) of the Domestic Violence Code, the Court shall not release the address or location of the victim, including to the attorneys, the defendant or any interested person during a criminal domestic violence proceeding.
  - 1. The victim may consent to release of his or her address or location by submitting a form provided by the Court.
  - 2. Pursuant to the Request for Information from the Nottawaseppi Huron Band of the Potawatomi Tribal Court Administrative Order, the release of any Court information requires permission from the Chief Judge.
    - a. To request the address or location of the victim, an individual must complete a Court Information Request Form.
      - i. Pursuant to Article VIII § 7.4-28 (A) of the Domestic Violence Code, “[t]he Court may order release of the information to other persons upon good cause shown”.
- B. Pursuant to Article VIII § 7.4-28 (A) of the Domestic Violence Code, Defense Counsel may not reveal to his or her client the address or location of the victim without authorization of the Court.
  - 1. Defense Counsel may file a motion to request permission of the Court to disclose the address or location of the victim to the defendant.
- C. Pursuant to Article VIII § 7.4-28 (B) of the Domestic Violence Code, a petitioner in a civil matter or a victim of domestic violence in a criminal matter may request to use a

Safe House address as his or her address for service of process and other purposes, or address of any other home that provides temporary refuge.

1. A petitioner in a civil matter or a victim of domestic violence in a criminal matter may request to use a Safe House address or address of any other home that provides temporary refuge by submitting a completed form provided by the Court.

### **Section 10. Secure Waiting Area**

A. Pursuant to Article XI § 7.4-58 of the Domestic Violence Code, whenever practical, the Court shall provide a secure waiting area or bailiff supervision prior to and during Court proceedings for a victim, and his or her family, of domestic violence, family violence, sexual assault, dating violence, or stalking, which will not require them to be in close proximity to the defendant or their families or friends.

1. The Domestic Violence Victim Advocate shall advise the victim of the availability of a secure waiting area or bailiff supervision throughout the court process.
2. The Domestic Violence Victim Advocate shall coordinate a secure waiting area and/or or bailiff supervision as soon as the need arises, but preferably one (1) business day in advance of a Court appearance.
3. The Domestic Violence Victim Advocate shall coordinate with Court personnel and the NHBP Police Department to establish safety protocols as the circumstances and resources permit including, but not limited to:
  - a. Establish a secure waiting area in the Tribal Courts and Police Building for the victim and the victim's family
    - i. If established in advance of the Court proceeding, the Domestic Violence Victim Advocate may coordinate arrival at a specific time or location so that the victim and victim's family are not entering the Tribal Courts and Police Building at the same time as the defendant and defendant's family
    - ii. Establish how Court personnel will advise the Domestic Violence Victim Advocate that the proceedings have begun or that the

victim or victim's family have been called to testify, give a victim impact statement or other request from the Court

- b. Provide a police escort from the parking lot to the secure waiting area or the Courtroom as needed
  - c. Coordinate seating in the Courtroom so that the victim and victim's family are not in close proximity to the defendant or the defendant's family or friends by:
    - i. Reserving specific seats for the victim and the victim's family
    - ii. Reserving, but not filling, seats around the victim and the victim's family
    - iii. Reserving specific seats for the defendant's family and friends
  - d. Provide a secure waiting area for the victim and victim's family to wait until the defendant and the defendant's family and friends have left the Tribal Courts and Police Building, the parking lot or NHBP tribal land, depending upon the circumstances
  - e. Provide a police escort to the victim and victim's family from the Courtroom to their vehicles or other predetermined location, depending upon the circumstances
4. If the victim and victim's family are in the Tribal Courts and Police Building, but not the Courtroom, the Court Clerk shall advise on the record that the victim is available at the Court's request
- a. The Court shall not presume that the defendant or defendant's family or friends have engaged in any inappropriate conduct towards the victim and victim's family purely through the use of the safety protocols under this provision
    - i. If the defendant or defendant's family or friends have engaged in any conduct that violates bond conditions or other Court order, allegations may be made pursuant to the appropriate provisions under this Chapter of Court Rules

## **Section 11. Right of Victim to Have Advocate at All Judicial Proceedings**

- A. Pursuant to Article IX § 7.4-42 of the Domestic Violence Code as it relates to Court proceedings, if requested by the victim, an advocate of the victim's choosing shall be present at any judicial proceeding related to criminal acts committed against the victim.

## **Section 12. Law Enforcement Petition for Emergency Criminal No Contact Order**

- A. Pursuant to Article VII § 7.4-20 of the Domestic Violence Code, law enforcement personnel may request an Emergency Criminal No Contact Order from the on-call Judge, including third party contact, if the officer has probable cause to believe that a crime involving domestic violence or family violence has occurred.
- B. To request an Emergency Criminal No Contact Order, the Law Enforcement Officer shall:
1. If during standard business hours, call the Court Clerk at the Court or, if outside of standard business hours, call the on-call Court Clerk, and advise that the Officer is requesting an Emergency Criminal No Contact Order from the on-call Judge
  2. Complete the form provided by the Court, that includes:
    - a. The reasons they believe there is probable cause that a crime involving domestic violence or family violence has occurred; and
    - b. The reasons they believe an Emergency Criminal No Contact Order should be issued
  3. Submit the completed form, hereinafter called the Officer Petition, to the Court Clerk
  4. Provide availability for the remainder of the Officer's shift or, if the Officer's shift is ending or he or she will be off-site, the Officer's contact information to the Court Clerk in the event the Judge requires sworn testimony.
- C. The Court Clerk shall:
1. Immediately contact the on-call Judge
  2. Forward the Officer Petition in the manner requested by the on-call Judge
  3. Facilitate the testimony of the Law Enforcement Officer, if requested by the Judge

- D. The on-call Judge shall:
1. Grant or deny the Petition; and
  2. Immediately forward the Order to the on-call
- E. If granted, the Officer shall:
1. Serve a copy of the Emergency Criminal No Contact Order on the Defendant;
  2. File Proof of Service with the Court by noon on the next calendar day that the Court is open; and
  3. Provide a copy of the Order to the Victim
- F. If granted, the Court shall dismiss the Emergency Criminal No Contact Order at the Arraignment
1. The Court may issue a No Contact Order as a Bond Conditions at the Arraignment

### **Section 13. Criminal Complaints**

- A. All Criminal Complaints for crimes under the Domestic Violence Code shall be:
1. Filed by the Tribal Prosecutor;
  2. Be in writing on a form provided by the Court that includes:
    - a. The names and addresses of the Tribal Prosecutor and defendant;
    - b. The specific crimes that the defendant is being charged, including the applicable Code citation
    - c. For each crime charged, whether the crime is a misdemeanor or felony
      - i. For a crime that is a felony as a habitual offender pursuant to Article IX § 7.4-44 of the Domestic Violence Code, the Tribal Prosecutor shall specifically state in the Criminal Complaint that the crime is being charged as a felony pursuant to this provision under the Domestic Violence Code
    - d. A statement that provides the substance of the accusation against the defendant
    - e. State that the information provided is being provided under oath and is true to the best of the Tribal Prosecutor's knowledge, information and belief

- f. Be signed and dated by the Tribal Prosecutor.
- A. The Court may allow amendment of a Criminal Complaint through a written decision
  1. If such amendment would not prejudice the defendant or the Nottawaseppi Huron Band of the Potawatomi;
  2. Upon motion of the Court or upon written motion of either party; and
  3. Following a hearing on the record

#### **Section 14. Arraignment**

- A. Pursuant to § 7.4-19 (D) of the Domestic Violence Code, a person arrested for domestic violence shall be held without bond until their Arraignment.
- B. Arraignment is the bringing of the accused defendant before the Tribal Court for the following purposes:
  1. To inform the accused of the criminal charges filed against him or her;
  2. To inform the accused of his or her legal rights;
  3. To allow the accused the opportunity to make a plea of “not guilty”, “guilty”, “no contest”, “guilty but mentally ill” or “not guilty by reasons of insanity” to the filed charges;
  4. To set conditions of pretrial release and/or to establish a bond;
  5. To inform the accused of the maximum authorized penalty if convicted of the filed charges; and
  6. To provide the accused with a copy of the filed complaint containing the charges.
- C. Pursuant to Title VIII-08, Chapter 4 § 401 (b), an arraignment shall be held in open Court without unnecessary delay, but no later than seventy-two (72) hours after being taken into custody
- D. A copy of the police report shall be submitted to the Court prior to the arraignment to assist the Court in establishing conditions for pretrial release.
- E. If the defendant was arrested without a warrant, and the prosecutor wants the defendant to remain in custody, the Trial Court shall determine, at arraignment, whether there is probable cause to believe that an offense(s) against Tribal Law has been committed and whether there is probable cause to believe that the defendant committed that offense(s).

1. The Court may require the Prosecutor to bring forth witnesses and other evidence to establish probable cause
  2. The Court may call witnesses to establish probable cause
  3. Any probable cause hearing and all arraignments are to be open to the public unless the Court, after taking proofs on the record, finds that there is good cause for the arraignment and/or probable cause hearing to be closed.
- F. If the defendant chooses to plead “guilty” or “no contest” the Court may accept that plea at arraignment pursuant to Section 21: Pleas and Plea Taking of this Court Rule under the following conditions:
1. The Court must receive a factual basis for the plea;
  2. The Court must determine that the plea is freely, voluntarily and understandingly made;
  3. The Court must determine that the accused understands the legal consequences of the plea; and
  4. The plea must be on the record.
- G. If the defendant chooses not to enter a plea, the Court shall enter a “not guilty” plea on his or her behalf.

### **Section 15. Pretrial Release, Bond Conditions and Amendments to Bond**

- A. At the arraignment, the Judge shall decide whether to release the defendant pending trial or sentencing. In extraordinary situations, the Court may travel to the place where the defendant is incarcerated to conduct an arraignment or may conduct the arraignment by video or other electronic means as is deemed fair and appropriate by the Court and the detention facility.
1. The Court shall set a cash, surety or percent bond or an unsecured own recognizance bond;
  2. The Court may place restrictions on travel or personal contacts and make any condition reasonably necessary to assure the appearance of the defendant as required. The Court shall also consider in determining conditions of pretrial release the safety of any persons or victims;

3. If the defendant fails to appear for any Court proceeding, the Court may modify or revoke the conditions of release that were imposed at the time the defendant was notified of the pending charges.
  4. The Court may also modify the conditions of release, or modify the issuance of any bond, if it determines that the conditions will not reasonably assure the appearance of the defendant or the safety of any victim or other person.
- B. Pursuant to Article VIII § 7.4-29 (A) of the Domestic Violence Code, any person arrested for a crime involving domestic violence, family violence, or violation of a protection order or no contact order shall be held in custody without bail pending the person's first appearance before the Court, at which time bail and conditions of release shall be established. Thereafter the Court shall consider the following factors when setting bail:
1. The person has been charged with a crime of violence and
    - a. The person has been recently convicted of another crime of violence, or
    - b. The person has committed this offense while on probation or other release for another crime of violence
  2. The person has been charged with obstructing justice by having threatened, injured, or intimidated a judge, witness, or juror, or has attempted such threat, injury or intimidation;
  3. There is strong likelihood of flight to escape trial.
    - a. This requires a documented history of such flight, or evidence or circumstances indicating that such flight is potential
  4. The person represents a danger to the community.
    - a. This requires a pattern of behavior evidenced by past and present conduct; and
    - b. No conditions for release are available which would reasonably assure the safety of the community.
- C. Pursuant to Article VIII § 7.4-29 (B) of the Domestic Violence Code, the Court may enter a No Contact Order as a condition for pretrial release.
1. In issuing a No Contact Order, the Court shall consider:
    - a. Different bond requirements; and
    - b. Whether the firearms prohibition provisions of this chapter apply.

2. A No Contact Order shall not be vacated without:
    - a. Notice to the Prosecutor;
    - b. Notice to the victim; and
    - c. A hearing.
- D. Pursuant to Article VIII § 7.4-29 (C) of the Domestic Violence Code, a warrant issued in a domestic violence or family violence crime
1. Cannot be quashed without:
    - a. Notice to the Prosecutor; and
    - b. A hearing.
  2. A bond is not available unless
    - a. Approved by the Court; and
    - b. After input from the Prosecutor.
  3. The use of GPS monitoring may be required pre-trial or post-trial:
    - a. At the recommendation of the Prosecutor or Probation Officer; and
    - b. At the defendant's expense.
- E. The Court may order any other lawful relief as it deems necessary for the protection of any claimed or potential victim of domestic violence or family violence, including orders or directives to the NHBP Police Department
- F. In dealing with multiple defendants, the Court may in its discretion:
1. Join for trial or sever for separate and individual trials, more than one defendant accused of committing the same offense.
  2. In the interests of justice and judicial economy, the Prosecutor may also petition the Court for joinder or severance of criminal defendants.
  3. On a defendant's motion, the Court must sever unrelated offenses for separate trials.
- G. The Court may modify or revoke the conditions of release imposed at arraignment:
1. Upon motion by the Prosecutor or the Defendant for good cause;
  2. If the Defendant violates the conditions of his or her release; or
  3. For the safety of any persons or victims.

## **Section 16. Pretrial Procedures**

- A. Pretrial proceedings are actions that take place up to, but before, the bench or jury trial begins.
- B. Discovery
  - 1. The Court may order such pretrial discovery as it determines to be necessary in the interests of fairness and justice.
  - 2. Every accused defendant is legally entitled to:
    - a. Copies of police reports prepared for the Tribal Prosecutor including any testing results, reports, warrants, search warrants and returns; and
    - b. Any other document in the possession of the Prosecutor or police that the defendant can show is necessary to aid in the preparation of his or her defense.
  - 3. The Court on its own motion may order the Tribal Prosecutor to provide a defendant with a bill of particulars describing the essential facts of the alleged offense or offenses.
  - 4. The Court may allow the Tribal Prosecutor to amend a criminal complaint, unless the proposed amendment would unfairly surprise or prejudice the defendant.
  - 5. Upon request, the Tribal Prosecutor must provide each defendant any information or evidence known to the Tribal Prosecutor discovered at any time prior to the conclusion of the case that is material and relevant to the defense.
  - 6. Notwithstanding any other provision of this rule, there is no right to discover information that is constitutionally protected from disclosure or protected pursuant to Tribal ordinance or statute, or tribally recognized privilege.
- C. The Court may schedule a hearing or hearings after arraignment and before trial. These hearings will be referred to as “Pretrial Hearings” and can be scheduled to:
  - 1. Hear motions;
  - 2. Review bond and other conditions of release;
  - 3. Settle scheduling matters;
  - 4. Take a negotiated plea and/or give the Tribal Prosecutor and Defendant an opportunity to discuss a plea negotiation; and
  - 5. To deal with any other matter necessary.

- D. Mental Competency Hearing. A mental competency hearing in a criminal case shall be governed by MCL 330.2020 et seq. unless and until superseded by a mental health code adopted by the Tribe.

### **Section 17. Witness Testimony**

- A. Pursuant to § 7.4-34 (A) of the Domestic Violence Code and Title VIII, Chapter 8, Section 306, the Prosecutor or the defendant may request a Material Witness Warrant to compel a witness to appear before the Court.
- B. To request a Material Witness Warrant, the Prosecutor or Defendant shall
1. File a motion with affidavit; or
  2. Make an oral motion on the record
- C. The written or oral motion shall state that:
1. The witness is material to the party's case;
  2. The witness has refused to submit to a deposition ordered by the Court;
  3. The witness has failed or refused to appear before the Court
    - a. The witness has refused to obey a lawfully issued subpoena; or
    - b. It may become impracticable to secure the presence of the witness by subpoena
  4. Other means of securing the witness's presence at trial have proved futile.
  5. Unless otherwise ordered by the Court, the warrant shall be executed and returned in the same manner as an arrest warrant.
  6. The Court shall hold a hearing no later than the next day the Court is open after arrest
    - a. At the hearing, the Witness shall be entitled to:
      - i. Secure representation at his or her own expense; or
      - ii. A court-appointed attorney at the discretion of the Court and upon a finding that the Witness is indigent by the Court
    - b. If the Court finds that the Witness is material to the party's case and refused to submit to a deposition, refused to appear before the Court, including per a lawfully issued subpoena, the Court may:
      - i. Set a bond and conditions for release; or

- ii. Delay release until the testimony or deposition of the Witness can be taken
- D. A prior statement is admissible as substantive evidence at trial if the victim appears and testifies inconsistently with the statement.
  - 1. In determining the admissibility of the statement, the Court shall consider whether the statement was made subject to the following provisions:
    - a. The witness voluntarily made the statement;
    - b. When the statement was made, there were minimal guaranties of truthfulness, such as a sworn declaration, certified statement, or affidavit signed before a notary.
    - c. The statement should include the following:
      - i. I have read the attached statement or it has been read to me and I know the contents of the statement. I understand that my written statement is made under penalty of perjury by signing below;
      - ii. The witness's signature; and
      - iii. The date the statement was signed
    - d. The statement was taken pursuant to standard procedure; and
    - e. The witness whose statement is being offered is subject to cross-examination when giving the subsequent statement.

## **Section 18. Trials**

- A. Rights of the defendant in a criminal a case are as follows:
  - 1. Not to be put in jeopardy twice for the same offense;
  - 2. Not to be compelled to be a witness against themselves;
  - 3. To a speedy and public trial;
  - 4. Right to court-appointed counsel if the Court has found the defendant to be indigent;
  - 5. Right to a jury trial upon notice to the Court pursuant to *Chapter 11, Court Rules of Jury Proceedings*;
  - 6. Right to subpoena witnesses in their own defense;
  - 7. Right to question and cross-examine witnesses called against them; and

8. Right to present books, records, documents or other physical evidence to the Court for determination of admissibility.

#### B. Bench Trials and Jury Trials

1. Unless a defendant requests a trial by jury, all criminal matters shall be tried by the Domestic Violence Court Judge.
2. If, for reasons placed on the record in open Court, the Domestic Violence Court Judge cannot preside over the case, the Tribal Court Administrator shall arrange for another Tribal Court Judge to preside.
3. All jury trial proceedings shall be governed by *Chapter 11, Court Rules of Jury Procedure*. If the Court does not receive a proper or timely request for a jury trial, the right to jury trial will be presumed to be waived by the defendant. The Court may then set the matter for a bench trial in its discretion.

#### C. Conduct of the Trial

1. The Tribal Prosecutor shall have the burden of proof beyond a reasonable doubt and the burden of going forward with the presentation of evidence.
2. All defendants are presumed innocent until proved guilty beyond a reasonable doubt.
3. The defendant shall be present in Court for the trial and all pretrial proceedings unless the Judge has the defendant removed to maintain decorum in the courtroom.
4. The defendant is not required to present any evidence in their own defense but may do so at their discretion.
5. All testimony shall be given under oath in open court and on the record.
6. *Chapter 7 Rules of Evidence* shall govern evidentiary matters at trial subject to Title VIII-08 Criminal Procedure, Trial Procedures, Section 506(b) which states: "The Tribal Court shall not be bound by formal rules of evidence, but shall use its own discretion as to what evidence it deems necessary and relevant to the case."
7. At the close of proofs, the prosecution and the defense may present arguments to the judge or jury. The prosecution shall go first with the defendant arguing next and then the prosecution may present rebuttal to the defendant's arguments.

Arguments are not to be considered as evidence by the jury and the jury shall be so instructed.

8. If the case is a jury trial, the Court shall instruct the jury as to the applicable law. The jury shall be instructed to determine all questions of fact on the basis of the law given them by the Court. Each party may request, in writing, specific jury instructions be given. Each party is entitled to receive written copies of proposed jury instructions and they may, at the Court's discretion, present arguments for use of their instructions, but these arguments must be made outside of the presence of the jury.
9. After deliberation, the jury shall return a verdict of "not guilty", "guilty", "guilty but mentally ill", or "not guilty by reasons of insanity" with respect to each defendant and each charge. Any verdict of guilty requires a unanimous vote of the jury.

#### **Section 19. Dismissals**

- A. Pursuant to Article IX § 7.4-38 of the Domestic Violence Code, the NHBP does not favor dismissal of domestic violence or family violence charges
  1. When the Prosecutor moves to dismiss a domestic violence or family violence charge against a defendant, the Prosecutor shall provide specific reasons for the dismissal to the Court

#### **Section 20. Designation of Crimes**

- A. Pursuant to Article IX § 7.4-35 of the Domestic Violence Code, or Family Violence Sentencing Designation, this section provides for the designation of a crime as domestic violence or family violence, which gives notice that the NHBP may seek additional conditions at sentencing.
  1. Any crime as defined by Title VIII – Chapter 6, or within this chapter is considered domestic violence if committed against a current or former intimate partner, current or former spouse, an individual with whom the victim has a child in common, or an individual with whom the victim has or has had a dating relationship or family violence if against a family or household member, and is

subject to the provisions of this chapter. Domestic violence or family violence is a Class A Misdemeanor.

2. A crime will be designated as Aggravated Domestic Violence, which also involves one or more of the following elements:
  - a. A dangerous weapon was used during the commission of the domestic violence;
  - b. Strangulation of the victim occurred during the domestic violence;
  - c. The domestic violence caused an injury which required medical treatment;
  - d. The victim suffered a traumatic brain injury; or
  - e. The defendant has a prior conviction for domestic violence, or its legal equivalent.
    - i. Aggravated domestic violence is a felony.
3. The designation of domestic violence or family violence should not be removed as part of a plea bargain.

### **Section 21. Pleas and Plea Taking**

- A. At arraignment or at any time in the course of the criminal proceedings, but before a judgment or verdict of a jury is rendered, a defendant may make a plea of guilty, not guilty, guilty but mentally ill, not guilty by reason of insanity or no contest.
- B. If the defendant chooses to plead “guilty” or “no contest” the Court may accept that plea at arraignment or any proceeding before a judgment or verdict of a jury is rendered under the following conditions:
  1. The Court shall receive a factual basis for the plea;
  2. The Court shall determine that the plea is freely, voluntarily and understandingly made;
  3. The Court shall determine that the accused understands the legal consequences of the plea;
  4. The plea shall be on the record
  5. The Court shall consider a plea of “no contest” the same as a plea of “guilty” for sentencing purposes.

6. The Court shall not accept a plea to an offense other than the one charged without the consent of the Tribal Prosecutor.
- C. The Court Clerk shall prepare an “Advice of Rights” form to be used by the Court in any plea taking and provide a copy to every criminal defendant before a plea is accepted.
1. The Defendant shall sign and date the “Advice of Rights” form after the plea is taken; and
  2. The signed and dated “Advice of Rights” shall be placed in the Court file.
- D. A defendant who has asserted an insanity defense may enter a plea of “guilty but mentally ill”. Before such plea can be entered:
1. A defendant shall comply with a mental health examination if ordered by the Court.
  2. The Court shall:
    - a. Examine any reports prepared
    - b. Convene a hearing and hear evidence that:
      - i. Supports the finding that the defendant was mentally ill at the time of the offense; and
      - ii. That there is a factual basis for the plea
    - c. Advise the defendant after accepting the plea:
      - i. That he or she must seek mental health treatment; and
      - ii. That the Court may order him or her to be committed to a treatment facility for the purpose of diagnosis, treatment and placement
- E. A defendant who has asserted an insanity defense may enter a plea of “not guilty by reason of insanity”. Before such plea can be entered:
1. A defendant shall comply with a mental health examination if ordered by the Court.
  2. The Court shall:
    - a. Examine any reports prepared
    - b. Convene a hearing and hear evidence that supports the finding that:
      - i. The defendant committed the acts charged; and

- ii. A reasonable doubt exists about the defendant’s legal sanity at the time the offense was committed.
  - c. Advise the defendant after accepting the plea:
    - i. That he or she must seek mental health treatment; and
    - ii. That the Court may order him or her to be committed to a treatment facility for the purpose of diagnosis, treatment and placement
- F. The Court may, in its discretion, allow a defendant to withdraw a plea of “guilty” or “no contest” if the following circumstances are met:
  - 1. The defendant is fully advised of the consequences of the plea withdrawal including the maximum penalty upon conviction;
  - 2. The Prosecutor is allowed to address the Court on the record as to the Prosecutor’s position on the plea withdrawal;
  - 3. The withdrawal of the plea is on the record;
  - 4. The Court specifically finds that the withdrawal is in the interests of justice; and
  - 5. The Court upon allowing the withdrawal of a plea may set or continue bond or orders of pretrial release.

**Section 22. Judgments and Verdicts**

- A. In a bench trial, the Court shall state its findings and conclusions:
  - 1. On the record; or
  - 2. In a written opinion made a part of the record
- B. In a jury trial, the jury must return its verdict in open court.
  - 1. The verdict must be unanimous

**Section 23. Pre-Sentence Investigations and Reports**

- A. Upon a plea of “guilty” or “no contest”, a jury verdict of “guilty” or judgment by the Court of “guilty”, the Court may order a pre-sentence investigation, appropriate assessments and that reports be submitted prior to the Sentencing Hearing.

- B. Pursuant to Article VIII § 7.4-30 (A) of the Domestic Violence Code, the Court may, in its discretion, order the Probation Department to prepare a pre-sentence report prior to sentencing if the alleged perpetrator pleads or is found guilty
1. Pursuant to § 7.4-32 (B) of the Domestic Violence Code, upon conviction of a crime involving family violence, the perpetrator shall be required to complete a NHBP Tribes presentence investigation to determine whether treatment is appropriate.
- C. The Pre-Sentence Investigation Report (“PSI Report”) shall:
1. Be in writing and submitted to the Court and served upon the parties:
    - a. Seven (7) calendar days before the Sentencing Hearing if by mail; or
    - b. Not less than two (2) business days before the Sentencing Hearing if by personal service
  2. If the PSI Report is not made available to the Prosecutor and defendant at least two (2) business days before the day of sentencing, the Prosecutor and defendant may be granted an adjournment on oral motion to:
    - a. Review the PSI Report; and
    - b. Prepare any necessary corrections, additions, or deletions to present to the Court.
  3. The PSI Report shall include:
    - a. A complete description of the offense and the circumstances surrounding the offense
    - b. A brief description of the defendant's vocational background and work history, including military record and present employment status
    - c. A brief social history of the defendant, including marital status, financial status, educational background, and other pertinent information
    - d. The defendant's medical history, if pertinent, substance abuse history, if any, and, if indicated, a current psychological or psychiatric report
    - e. Information concerning the financial, social, psychological, or physical harm suffered by the victim
      - i. The restitution needs of the victim

- f. If provided and requested by the victim, a written victim's impact statement as provided by law
  - g. Any statement the defendant wishes to make in the PSI Report
  - h. A specific recommendation for disposition including, but not limited to:
    - i. Batterer Intervention Programs and Services
    - ii. Treatment
    - iii. Cultural programs
  - i. Any other information that may aid the Court in sentencing
4. The PSI Report may include
- a. The Defendant's prior criminal history/convictions, including juvenile adjudications
    - i. Article VIII § 7.4-33 (B) (1) of the Domestic Violence Code, which states that the Prosecutor shall provide to the Court the defendant's criminal history, if any, that occurred under the laws of the NHBP, any state, Federal, territory, possession, Tribe or United States military tribunal, does not preclude the Probation Department from conducting a criminal history for the purposes of its own investigation and/or recommendations
5. The PSI Report shall not include:
- a. Any address or telephone number for the home, workplace, school, or place of worship of any victim or witness, or a family member of any victim or witness,
    - i. Unless an address is used to identify the place of the crime or to impose conditions of release from custody that are necessary for the protection of a named individual.
  - b. Any other address or telephone number that would reveal the location of a victim or witness or a family member of a victim or witness
    - i. Unless an address is used to identify the place of the crime or to impose conditions of release from custody that are necessary for the protection of a named individual.

- D. The Court may order the defendant to complete a domestic violence perpetrator's treatment intake assessment pursuant to Section No.: Batterer Intervention Programs and Services
- E. Pursuant to Article VIII § 7.4-30 (B) of the Domestic Violence Code, the Court may order a chemical dependency evaluation to determine if a treatment plan is an appropriate term of the defendant's sentence
- F. At the time the plea is taken, judgment is delivered or verdict is delivered, the Court may set a specific date or give a time-frame for when the Sentencing Hearing will be held
  - 1. The Court may take into consideration when setting the date or time-frame
    - a. Requests from the parties
    - b. Requests from the victim
    - c. Requests from the Probation Department
    - d. The time-frames for the completion of assessments that the facts of the case indicate may be helpful or necessary

#### **Section 24. Victim Impact Statements**

- A. Pursuant to Article IX § 7.4-43 (I) of the Domestic Violence Code, the victim has the right to provide a victim impact statement
  - 1. The victim impact statement may be written or oral
  - 2. The victim may discuss, but is not limited to the following:
    - a. The impact of the crime;
    - b. How the crime affected them psychologically, financially, and physically;  
and
    - c. Recommendations for sentencing and/or treatment.
  - 3. The victim may be assisted to provide the victim impact statement by:
    - a. The Prosecutor; or
    - b. The Domestic Violence Victim Advocate
  - 4. Pursuant to Article IX § 7.4-43 (I), the Court shall make all reasonable efforts to accommodate the participation of the victim at the sentencing hearing, being mindful of the unique emotional and psychological barriers victims may experience when facing a perpetrator in Court.

5. The impact on the victim, after consultation with the victim, may also be represented by:
  - a. The Prosecutor
  - b. The Probation Department in the PSI Report
  - c. Domestic Violence Victim Advocate

## **Section 25. Batterer Intervention Programs and Services**

- A. Pursuant to Article VIII § 7.4-31 of the Domestic Violence Code, the Court shall order appropriate domestic violence perpetrator's treatment for any person convicted of a crime involving domestic violence, family violence, or stalking
- B. Pursuant to § 7.4-32 of the Domestic Violence Code, any person convicted of a crime of domestic violence shall be required to complete a domestic violence perpetrator's treatment program or one approved by the Court.
- C. Pursuant to Article VIII § 7.4-30 of the Domestic Violence Code, the certified domestic violence perpetrator treatment program that the court orders a defendant to attend must consist of at least the following:
  1. The defendant shall attend and cooperate in an intake session for a domestic violence perpetrator's treatment program.
  2. The intake shall be completed by the perpetrator treatment program not later than 10 calendar days after entry of the order requiring treatment, unless the Court extends that time period for good cause shown.
  3. A copy of the recommended treatment plan shall be provided to the Court.
  4. In the discretion of the Court, the defendant's participation in treatment sessions based on the domestic violence program's treatment plan may be in lieu of confinement and/or fine, or the execution of any such penalty may be suspended pending completion of the treatment ordered by the Court. However, once this service is ordered it must be completed prior to dismissal unless probation is revoked.
  5. The domestic violence program or other services provider shall submit written progress reports to the Court at least every six (6) calendar weeks.

- a. The Court may order that reporting be coordinated through the Probation Department.
- D. Pursuant to Article No. § 7.4-31 of the Domestic Violence Code, the domestic violence perpetrator or batterer intervention program intake assessment should include the following considerations:
1. An official copy of current and past criminal history;
  2. All violence history whether or not it resulted in a conviction; family and cultural issues; substance abuse issues; and
  3. A treatment plan that adequately and appropriately addresses the treatment needs of the individual Pursuant to Article No. § 7.4-31 of the Domestic Violence Code, the domestic violence perpetrator or batterer intervention program intake
    - a. The intake may not be based solely on the defendant’s self-report and the evaluator must make reasonable efforts to contact the victim.
    - b. The defendant must sign privacy releases for the evaluator to obtain any confidential information that is necessary to the evaluation.

**Section 26. Sentencing Hearing**

- A. Sentencing of criminal defendants is governed by the Nottawaseppi Huron Band of the Potawatomi Indians Law and Order Code, Title VIII – 06 and, for offenses under the Domestic Violence Code, in conjunction with the sentencing provisions in the Domestic Violence Code.
- B. Either party may introduce evidence or testimony concerning the information in front of the Court
  1. The rules of evidence concerning hearsay shall not be applicable at sentencing.
- C. The Probation Department shall present the PSI Report
  1. Each party shall have the opportunity to:
    - a. Challenge the accuracy or relevancy of any information in the PSI Report
    - b. Address any information in the PSI Report, including providing an explanation for factors that were taken into consideration for the sentence recommended by the Probation Department
    - c. Request consideration of other factors

- D. Pursuant to Article IX § 7.4-43 (I) of the Domestic Violence Code, the victim has the right to provide a victim impact statement
1. Pursuant to Article IX § 7.4-43 (I), the Court shall make all reasonable efforts to accommodate the participation of the victim at the sentencing hearing, being mindful of the unique emotional and psychological barriers victims may experience when facing a perpetrator in Court.
  2. The impact on the victim, after consultation with the victim, may also be represented by:
    - a. The Prosecutor
    - b. The Probation Department in the PSI Report
    - c. Domestic Violence Victim Advocate
- E. Pursuant to Article VIII § 7.4-33 (B) of the Domestic Violence Code, in sentencing for the crime of domestic violence or family violence as defined in the Domestic Violence Code, the Prosecutor shall provide for the Defendant's criminal history, if any, that occurred under the laws of the NHBP, any state, Federal, territory, possession, Tribe or United States military tribunal as provided in Section No. 23 (C) (4) (i) of this Chapter of Court Rules.
- F. The domestic violence perpetrator assessment, if ordered as part of the pre-sentencing investigation process
- G. The chemical dependency evaluation, if ordered as part of the pre-sentencing investigation process
- H. Any other assessments or reports ordered by the Court as part of the pre-sentencing investigation process
- I. All other information deemed relevant by the Court and permitted under the law and Court Rules

## **Section 27. Sentencing**

- A. Pursuant to Article VIII § 7.4-31 of the Domestic Violence Code, when entering a judgment upon conviction for a crime involving domestic violence, family violence, or stalking, the Court shall:

1. Consider the entry of orders for the protection of the victim, including those set out within the Domestic Violence Code and this Court Rule;
  2. Order restitution as warranted; and
  3. Order appropriate domestic violence perpetrator's treatment pursuant to Section 25: Batterer Intervention Programs and Services of this Chapter of Court Rules
- B. Pursuant to Article VIII § 7.4-33 of the Domestic Violence Code, in sentencing for a crime of domestic violence, family violence, or stalking as defined in Article IX - Criminal Actions and Remedies, the Court shall consider, among other factors, whether:
1. The firearms prohibition provisions of the Domestic Violence Code apply;
  2. The Defendant suffered a continuing pattern of coercion, control, or abuse by the Victim of the offense and the offense is a response to that coercion, control, or abuse;
  3. The offense was part of an ongoing pattern of psychological, physical, or sexual abuse of a victim or multiple victims manifested by multiple incidents over a prolonged period of time; and
  4. Whether the offense occurred within sight or sound of the Victim's or the Defendant's Minor Children.
- C. In sentencing for the crime of domestic violence or family violence as defined in the Domestic Violence Code, the Prosecutor shall provide for the Court's review:
1. The Defendant's criminal history, if any, that occurred under the laws of the NHBP, any state, Federal, territory, possession, Tribe or United States military tribunal
    - a. For the purposes of sentencing, criminal history includes all previous convictions and orders of deferred prosecution and stipulated orders of continuance, as otherwise available to the Court or Prosecutor, before the date of sentencing.
- D. The Victim Impact Statement
- E. Pursuant to Article VIII § 7.4-30 (B) of the Domestic Violence Code, the Court may order a chemical dependency evaluation and treatment plan, if applicable

- F. Pursuant to Article VIII § 7.4-30 (C) of the Domestic Violence Code, the Court may issue a no contact order prohibiting the defendant from having any contact with the victim irrespective of whether the victim consents.
1. If a defendant is excluded from the residence of or ordered to stay away from the victim, an invitation by the victim to the perpetrator, and any acceptance of that invitation, does not waive or nullify an order for protection. Further, the victim cannot be considered by such invitation as having violated, or be subject to arrest for a violation of his/her own ex parte or permanent order of protection.
- G. Pursuant to Article VIII § 7.4-30 (D) and § 7.4-32 (A) of the Domestic Violence Code, the Court may/shall order that the defendant participate in a certified domestic violence perpetrator treatment program, Batterer Intervention Program (BIP) or other program approved by the Court that must consist of at least the following:
1. The perpetrator shall attend and cooperate in an intake session for a BIP.
  2. The intake shall be completed by the BIP not later than 10 calendar days after entry of the order requiring treatment, unless the Court extends that time period for good cause shown.
  3. A copy of the recommended treatment plan shall be provided to the Court.
  4. In the discretion of the Court, the defendant's participation in treatment sessions based on the BIP's treatment plan may be in lieu of confinement and/or fine, or the execution of any such penalty may be suspended pending completion of the treatment ordered by the Court.
    - a. Once this service is ordered it must be completed prior to dismissal unless probation is revoked.
    - b. The BIP or other services provider shall submit written progress reports to the Court at least every six calendar weeks.
- H. Pursuant to Article VIII § 7.4-32 (C), the Court may, at the request of the Prosecutor, issue an order of exclusion, which excludes the perpetrator from all or a portion of the NHBP Indian Reservation and territory consistent and subject to the scope and conditions as may be prescribed in the Exclusion Code.

- I. Pursuant to Article VIII § 7.4-32 (D) of the Domestic Violence Code, the Court may order publication of the perpetrator's name and photograph in the NHBP Turtle Press described as a domestic violence or family violence perpetrator.
  1. The Court may not publish the victim's name(s) or identifying information.
- J. Pursuant to Article VIII § 7.4-32 (E) of the Domestic Violence Code, within the Court's discretion, the Court may order any combination of such confinement, publication, fines, fees and costs, restitution and exclusion.
  1. Pursuant to Article VIII § 7.4-32 (F) of the Domestic Violence Code, the Court shall withhold the NHBP per capita payment of any person convicted under the Domestic Violence Code and apply it to the following until the costs and/or restitution are paid in full, to be satisfied in the following order:
    - a. Any restitution ordered by the Court for the victim and/or the victim's property;
    - b. Costs incurred by the NHBP for imprisonment;
    - c. Costs for services; or
    - d. Costs incurred by the NHBP for exclusion of the convicted person.
  2. Pursuant to Article VIII § 7.4-32 (G) of the Domestic Violence Code, if a defendant is not an NHBP Tribal Citizen, the Court shall reduce the restitution and costs to a judgment and shall send it to collections.
    - a. Attorney fees and costs of collections shall be added to the NHBP Court judgment.
- K. All sentences shall be put forth by the Court:
  1. In open court;
  2. On the record; and
  3. With the defendant present
    - a. Unless there is good cause to exclude the defendant.
- L. Within seven (7) days after sentencing, or as otherwise agreed upon by the Court and the parties, the Court shall date and sign a written judgment of sentence which states:
  1. The sentence for each conviction;
  2. Any incarceration or probation period for each conviction;
  3. If incarceration is ordered, the place of detention or incarceration;

4. Fines, costs or fees for each conviction;
  5. If restitution is ordered stating the amount and terms of payment; and
  6. Any other conditions incident to the conviction.
- M. Pursuant to Article IX § 7.4-47 of the Domestic Violence Code, the Court shall direct the Probation Officer to provide the defendant with a sufficiently clear and specific written statement that sets forth all of the conditions to which the sentence is subject, which is to serve as a guide for the defendant's conduct and for such supervision as is required.
1. This statement shall be signed and dated by defendant when received.
- N. The Court may correct an invalid sentence or mistakes in the sentencing document, but the Court may not modify a valid sentence after it has been imposed except as otherwise provided by law.
1. Pursuant to Article IX § 7.4-46 of the Domestic Violence Code, upon violation of a judgment and sentencing order, the Court may modify, reduce, or enlarge the conditions of probation at any time prior to the expiration or termination of the term of probation and the provisions applicable to the initial setting of the conditions of probation.
    - a. The Court may not set aside or modify the requirement to complete domestic violence perpetrators treatment without notice to the Prosecutor and a hearing.

## **Section 28. Disposition of Weapons Seized**

- A. Pursuant to Article VII § 7.4-23 of the Domestic Violence Code, the NHBP Police Department is responsible for seizing weapons:
1. Incident to arrest and that are alleged to have been involved or were threatened to be used in the commission of the crime
  2. Weapons that are in plain view of the officer or that are discovered pursuant to a consensual search, an officer safety pat-down, or a search incident to arrest as necessary for the protection of the officer or other persons; and
  3. Weapons from a person who is prohibited from possessing or using them

- B. Pursuant to Article VII § 7.4-23 (D) of the Domestic Violence Code these weapons may be destroyed, retained by the Tribal Police Department, or sold at public sale after appropriate public notice, pursuant to the direction of the Tribal Court.
- C. If any weapons are seized, the Police Department or Tribal Prosecutor shall, within ten (10) days of the verdict, submit in writing to the Court:
  - 1. A list of all weapons seized;
  - 2. Whether the defendant lawfully owns the weapon;
  - 3. Recommendations for disposition of each weapon based on the verdict
- D. The Court Clerk shall, upon receipt of the filing, submit copies of the filing to the defendant.
- E. If the Defendant pled “no contest” or “guilty” to the offense or was found “guilty” following a bench or jury trial, the disposition of the weapons shall be addressed at the Sentencing Hearing
- F. If the Defendant was found “not guilty” following a bench or jury trial or the charges were dismissed, the Court Clerk shall, in consultation with the presiding Judge:
  - 1. Set a date for the matter to be heard
  - 2. Send notice of hearing to the parties.
- G. The Court shall issue a written order that states, for each weapon seized whether the weapon:
  - 1. Shall be destroyed
  - 2. Retained by the NHBP Police Department
  - 3. Sold at public sale after appropriate notice as ordered by the Court
  - 4. Returned to the Defendant if:
    - a. The weapon is legal;
    - b. The weapon is legally owned by the Defendant;
    - c. There are no civil protection orders against the Defendant

**Section 29. The Crime of Stalking**

- A. Pursuant to Article IX § 7.4-41 (E) of the Domestic Violence Code, the Court shall use the following definitions for cases involving the charged crime of Stalking:

1. “Follows” means deliberately maintaining visual or physical proximity to a specific person over a period of time. A finding that the alleged stalker repeatedly and deliberately appears at the person’s home, school, place of employment, business, or any other location to maintain visual or physical proximity to the person is sufficient to find that the alleged stalker follows the person. It is not necessary to establish that the alleged stalker follows the person while in transit from one location to another;
  2. “Harasses” for the purpose of this section means engaging in a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or is detrimental to such person, and that serves no legitimate or lawful purpose. The course of conduct shall be such as would cause a reasonable person to suffer substantial emotional distress, and shall actually cause substantial emotional distress to the victim, or, when the course of conduct is contact of a minor child by a person over age 18, that would cause a reasonable parent to fear for the well-being of that child
  3. “Protective order” means any temporary or permanent Court order prohibiting or limiting violence against, harassment of, contact or communication with, or physical proximity to another person, including but not limited to a domestic violence civil protection order issued pursuant to Section 7.4-49 of the Domestic Violence Code, no contact order issued pursuant to Section 7.4-29(B) of the Domestic Violence Code, sexual assault protection order pursuant to Sections 7.4-79 through 7.4-87 of the Domestic Violence Code, or any successor articles to the Domestic Violence Code.
  4. “Repeatedly” means two or more times.
- B. Pursuant to Article IX § 7.4-41 of the Domestic Violence Code, a person commits the crime of stalking if without lawful authority:
1. He or she intentionally and repeatedly harasses or repeatedly follows another person; and
  2. The person being harassed or followed is placed in fear that the stalker intends to injure the person, another person, or property of the person or of another person.

The fear must be one that a reasonable person would experience under the same circumstances; and

3. The stalker either:
  - a. Intends to frighten, intimidate, or harass the person; or
  - b. Know or reasonably should know that the person is afraid, intimidated, or harassed even if the stalker did not intend to place the person in fear or intimidate or harass the person.
- C. It is not a defense to the crime of stalking:
  1. That the stalker was not given actual notice that the person did not want the stalker to contact or follow the person; or
  2. That the stalker did not intend to frighten, intimidate, or harass the person.
- D. Pursuant to Article IX § 7.4-41 (C) of the Domestic Violence Code, the Court shall consider attempts to contact or follow the person after being given actual notice that the person does not want to be contacted or followed constitute prima facie evidence that the stalker intends to intimidate or harass the person.
- E. Pursuant to Article IX § 7.4-41 (D) of the Domestic Violence Code, a person who stalks another person is guilty of a Class A Misdemeanor except that the person is guilty of a Felony if any of the following applies
  1. The stalker has previously been convicted in the Tribal Court under Title VIII, Chapter 6, Part 3, Section 304; convicted in the State of Michigan or any other state of any crime of harassment or under similar statute of another jurisdiction;
  2. The stalking violates any protective order protecting the person being stalked;
  3. The stalker has previously been convicted of an offense under this section or of a gross misdemeanor or felony stalking offense under Federal or Michigan State law;
  4. The stalker was armed with a dangerous weapon while stalking the person;
  5. The stalker's victim is or was a law enforcement officer, judge, juror, attorney, victim advocate or children's advocate, legislator, or community corrections officer, probation officer or staff, and the stalker stalked the victim to retaliate against the victim for an act the victim performed during the course of official duties or to influence the victim's performance of official duties; or

6. The stalker's victim is a current, former, or prospective witness in an adjudicative proceeding, and the stalker stalked the victim to retaliate against the victim as a result of the victim's testimony or potential testimony.
- F. Pursuant to Article IX § 7.4-41 (F) of the Domestic Violence Code, provisions of Title VIII, Judiciary; Law and Order Code Section 304 Stalking shall apply if applicable

### **Section 30. Habitual Domestic Violence or Family Violence Offender**

- A. Pursuant to Article IX § 7.4-44 of the Domestic Violence Code, any person with two or more convictions for crimes of domestic violence or family violence shall be deemed a habitual domestic violence or family violence offender and any subsequent violation shall be a Felony.

### **Section 31. Assaulting NHBP Staff or Safe House Staff**

- A. Pursuant to Article IX § 7.4-45 of the Domestic Violence Code, Any written or verbal threat or any assault upon a person acting in an official or professional capacity in the protection of victims of domestic violence or family violence, sexual assault, stalking or dating violence shall be considered to be an assault of the most serious nature and a Felony.

### **Section 32. Violations by Juveniles – Arrest (Article IX § 7.4-48)**

- A. Whenever a Police Officer has grounds under Section 7.4-19 – Arrest, or Section 7.4-24 – Arrest Without a Warrant for Violations of Civil Protection Orders or Criminal No Contact Orders (of the Domestic Violence Code), to arrest a person who is a juvenile, the officer shall arrest the juvenile as provided in this section, and the provisions of this chapter shall govern the arrest and all subsequent proceedings.
- B. A juvenile held in custody under this chapter shall be held in any of the following places:
1. Juvenile detention facility;
  2. Juvenile halfway home; or
  3. Any other suitable place approved by the Court.
- C. All civil and criminal proceedings against a juvenile under this chapter shall be within the jurisdiction of the Tribal Court rather than the Juvenile Court.

- D. The arrest and prosecution of a juvenile under this chapter does not bar proceedings in an appropriate Juvenile Court.
- E. A petition for a protection order under Section 7.4-49 – Civil Protection Orders, may be filed against a juvenile who is alleged to have committed an act of domestic violence, and the provisions of this chapter shall govern all subsequent proceedings in the action.
- F. If the juvenile is alleged to have committed a violent crime of domestic violence, the Prosecutor maintains the discretion to evaluate the case on an individual basis and whether the juvenile is to be tried in the same manner as an adult. For purposes of this Section, 7.4-48, a juvenile is one who has attained the age of sixteen (16) years but who is under the age of eighteen (18). Provisions of NHBP Title VIII, Chapter 6, Section 2002, shall apply, if applicable.

## **CIVIL PERSONAL PROTECTION ORDERS**

### **Section 33. Purpose of Personal Protection Orders**

- A. Pursuant to Article X § 7.4-49 of the Domestic Violence Code:
  - 1. A personal protection action is an independent action commenced by filing a petition with the Court.
  - 2. There are no fees for filing a personal protection action and no summons is issued.
  - 3. A petition may be filed regardless of whether there are any other civil or criminal proceedings related to the allegations in the petition.
  - 4. If an alleged perpetrator has been arrested for the offense of domestic violence, family violence, dating violence or stalking, the Court shall advise the alleged victim of the right to file a petition under this section without cost.
- B. The Domestic Violence Victim Advocate shall advise individuals seeking services, whether for the individual's personal safety or for the safety of friends or family, Tribal Citizens and Tribal employees, of the right to file a petition under this section without cost.
  - 1. Services through the Domestic Violence Victim Advocate shall not require or be dependent upon filing a petition for a personal protection order.

### **Section 34. Who May File a Petition for a Personal Protection Order**

- A. Pursuant to Article X § 7.4-49 of the Domestic Violence Code, a person may seek a personal protection order:
1. Whether or not the person has contacted law enforcement officers to report a crime;
  2. Without prior notice to the respondent to ensure the immediate protection of the victim and any family or household members, and to prevent further violence; and/or
    - a. Orders may be modified or extended, with or without prior notice to the respondent or a hearing, consistent with this purpose.
  3. Whether or not relief is available in another action.
- B. Pursuant to Article X § 7.4-50 of the Domestic Violence Code, a petition to obtain a protection order under this section may be filed by:
1. Any person claiming to be the victim of domestic violence, family violence, dating violence or stalking; or
  2. Any family member or household member of a minor or vulnerable adult alleged to be the victim of domestic violence, family violence, dating violence or stalking on behalf of the minor or vulnerable adult; or
  3. The Tribal Prosecutor; or
  4. Any person acting in an official capacity in the protection of domestic violence, family violence, dating violence or stalking survivors, elder abuse case managers or advocates, therapists, or other advocate acting in a professional capacity.
- C. Pursuant to Article X § 7.4-51 (D) of the Domestic Violence Code, 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 a protection order. However, the petition shall state whether any other action is pending between the petitioner or victim and the respondent.

### **Section 35. How to File a Petition for a Personal Protection Order**

- A. To request a Protection Order, the Petitioner shall complete a form provided by the Court, hereinafter called the “Petition”, that shall also serve as the Affidavit.

- B. The Domestic Violence Victim Advocate or his or her designee shall meet with all individuals seeking a personal protection order to:
1. Provide applicable Court-approved forms;
  2. Answer any questions;
  3. Provide assistance with compiling the Petition, if requested;
  4. Review the completed Petition, complete the appropriate cover sheet to the Court and submit both to the Court Clerk;
    - a. The Domestic Violence Victim Advocate shall not communicate directly with the Court about the substance of the Petition, including advocating for the granting or denial of the Petition
  5. Communicate the decision of the Court to the Petitioner;
  6. Assist with service, if the Petition is granted;
  7. Provide referrals, if requested
- C. The Petition shall:
1. Be in writing;
  2. Provide the names and addresses of the Petitioner and Respondent
    - a. The Petitioner may omit his or her residence address from the documents filed with the Court, but must provide the court with a mailing address.
    - b. Pursuant to Article VIII § 7.4-28 (B) of the Domestic Violence Code, a Petitioner in a civil matter may request to use a Safe House address as his or her address for service of process and other purposes, or address of any other home that provides temporary refuge.
      - i. A Petitioner may request to use a Safe House address or address of any other home that provides temporary refuge by submitting a completed form provided by the Court.
  3. State the detailed facts of domestic violence, family violence, dating violence, or stalking;
  4. State the relief sought and the conduct to be restrained;
  5. State whether an ex parte order is being sought;
    - a. If the Petitioner requests an ex parte order, the Petitioner must state specific facts showing that immediate and irreparable harm will result to

the petitioner from the delay required to provide notice or from the risk that notice will itself result in harm before an order can be issued.

6. State whether there are any other pending actions in this or any other court, or orders or judgments already entered by the Tribal Court or any other court affecting the parties, including the name of the court and the case number, if known.
  - a. If the petition is filed in the same court as a pending action or where an order or judgment has already been entered by that court affecting the parties, it may be assigned to the same judge.
  - b. If there are pending actions in another court or orders or judgments already entered by another court affecting the parties, the court may contact the court where the pending actions were filed or orders or judgments were entered, if practicable, to determine any relevant information.
7. State that the information provided is being provided under oath and is true to the best of the Petitioner's knowledge, information and belief
8. Be signed and dated by the Petitioner

### **Section 36. Procedure When Ex Parte Personal Protection Order is Issued**

- A. Upon receipt of a Petition for Personal Protection Order, the Court Clerk shall:
  1. Immediately contact the on-call Judge by phone to inform him or her that the Court is in receipt of a Petition for Personal Protection Order;
  2. Conduct a criminal background check according to Court policy and attach the report(s) to the Petition; and
  3. Fax or email a copy of the Petition to the Judge, who will grant the request, deny the request or request additional information
- B. The Court shall:
  1. Immediately rule on a request for an ex parte order upon filing of the Petition.
    - a. The Court may hold the record open and request additional information if the submitted information is insufficient at the time of filing.

- i. The record must be completed within 72 hours and at that time the order must be granted or denied.
    - ii. The Court Clerk shall communicate the additional information requested to the Petitioner and Domestic Violence Victim Advocate
  2. Evaluate the petition for protection, on protecting the petitioner and any other family members during this initial process; and:
  3. The Court shall grant an Ex Parte Protection Order without bond if, based on the specific facts stated in the Petition:
    - a. 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, family violence, dating violence, or stalking committed by the Respondent, and issuance of the ex parte order is necessary to protect the victim from further abuse.
  4. Not dismiss the Ex Parte Personal Protection Order without a Court hearing.
- C. The Court Clerk shall, upon receipt of an Ex Parte Protection Order and in consultation with the presiding Judge:
  1. Pursuant to Article X § 7.4-52 (D) of the Domestic Violence Code, schedule a hearing not more than fourteen (14) days after the date of the Order for the Court to determine whether the Order should be vacated, extended, or modified in any respect.
  2. Draft the notice of hearing;
  3. Provide a certified copy of the Petition for Personal Protection Order and a copy of the Notice of Hearing:
    - a. To the Petitioner;
    - b. To an authorized person for service; and
    - c. To the Tribal Court Domestic Violence Victim Advocate for his or her records, including for grant reporting purposes, if applicable.
- D. Pursuant to Article X § 7.4-55 of the Domestic Violence Code, an authorized person shall attempt personal service of the Ex Parte Personal Protection Order upon the Respondent within 48 hours of issuance of the Order.

1. However, failure to make service does not affect the order's validity or effectiveness.
  2. Authorized persons include:
    - a. Officers of the Tribal Court;
    - b. Law Enforcement Officers; and
    - c. Individuals authorized by NHBP law or the Court Rules of the NHBP Tribal Court
- E. Upon issuance of an Ex Parte Personal Protection Order, the Court Clerk shall attempt to facilitate personal service by:
1. Providing a certified copy of the Ex Parte Personal Protection Order, a copy of the Notice of Hearing to a person authorized to perform service pursuant to the Domestic Violence Code, other laws of the NHBP and Court Rules of the NHBP Tribal Court and notice of when the 48 hours will expire
    - a. The Court Clerk, Tribal Court Domestic Violence Victim Advocate or other Court Personnel may request accompaniment from the NHBP Police Department
  2. If the Respondent cannot be located within 48 hours, the Court Clerk shall within one (1) day of being notified that personal service was not successful:
    - a. Send the Order by certified mail with return receipt requested; and
    - b. Send the Order by regular mail to the respondent's last known address.
  3. If the Respondent has not been personally served or served by certified mail with the receipt returned to the Court with the signature of the Respondent by the first Court hearing, the Court Clerk shall facilitate service by publication in accordance with NHBPCR Chapter 5 – Court Rules of Civil Procedure, Section 5(D) Service of Process – Notice By Posting of Publication as follows:
    - a. Upon motion by the Petitioner and a showing that personal service is not possible, the Court may permit notice by posting or publication
      - i. The information posted may not include any identifying information about the victim
    - b. The Court shall designate all manners for posting including, but not limited to:

- i. The Courthouse;
  - ii. The Turtle Press;
  - iii. The local newspaper in the city and/or county where the Respondent was last known to reside; and
  - iv. Any other location the Court deems necessary
- c. The notice shall run for not less than three (3) consecutive weeks in all publications required by the Court.
- d. The Petitioner shall file a proof of service including all locations where the publication ran and the dates.
  - i. However, failure to make service does not affect the order's validity or effectiveness.

**Section 37. Procedure When Ex Parte Personal Protection Order is Not Issued**

- A. Pursuant to Article X § 7.4-52 (F) of the Domestic Violence Code, if an ex parte order is not granted, the Court shall hold a hearing on the petition within 72 hours after the filing of the Petition.
- B. The Court Clerk shall, upon receipt of a denial of a Petition for Ex Parte Personal Protection Order, advise the Petitioner that the Petition was denied and the opportunity for a Hearing where both parties would be present and have the opportunity to present witnesses and evidence, and make arguments to the Court:
  1. If the Petitioner requests a Hearing, the Court Clerk shall:
    - a. Pursuant to Article X § 7.4-52 (F) of the Domestic Violence Code and in consultation with the presiding Judge, schedule a Hearing on a Petition for Personal Protection Order for not more than 72 hours after the filing of the Petition;
    - b. Draft the Notice of Hearing;
    - c. Provide a certified copy of the Ex Parte Personal Protection Order and a copy of the Notice of Hearing to:
      - i. To the Petitioner;
      - ii. To an authorized person for service; and

- iii. To the Domestic Violence Victim Advocate for his or her records, including for grant reporting purposes, if applicable
- C. Pursuant to Article X § 7.4-55 of the Domestic Violence Code, an authorized person shall attempt personal service of the Notice of Hearing and Petition for Ex Parte Personal Protection Order Hearing upon the Respondent.
  1. Authorized persons include:
    - a. Officers of the Tribal Court;
    - b. Law Enforcement Officers; and
    - c. Individuals authorized by NHBP law or the Court Rules of the NHBP Tribal Court
- D. The Court Clerk shall attempt to facilitate personal service by:
  1. Providing a copy of the Notice of Hearing and copy of the Petition for Ex Parte Personal Protection Order to:
    - a. To the Petitioner;
    - b. To an authorized person for service; and
      - i. The Court Clerk, Tribal Court Domestic Violence Victim Advocate or other Court Personnel may request accompaniment from the NHBP Police Department
    - c. To the Domestic Violence Victim Advocate for his or her records.
- E. Pursuant to the Domestic Violence Code, service shall be provided consistent with NHBPCR Chapter 10 – Court Rules for Restraining Orders – Section 5, Judicial Review of the Emergency Restraining Order as follows:
  1. If the Respondent cannot be located prior to the Hearing, the Court Clerk shall send the Notice of Hearing to the Respondent in writing, by FAX, by e-mail or regular mail, as circumstances permit.
- F. The Respondent may file an answer or objection to the Petition for Personal Protection Order, in writing, with the Court Clerk before the convening of the Hearing.
  1. The Court Clerk shall provide a copy of the Respondent’s response to the Petitioner.

### **Section 38. Hearings**

- A. In all hearings commenced within the Court;
  - 1. The witnesses shall be sworn;
  - 2. The hearing shall be conducted on the record; and
  - 3. The Judge shall conduct the hearing in a manner so as to do substantial justice between the parties according to the rules of substantive and procedural law and in harmony with the traditional values of the Nation.
- B. A moving party shall coordinate with the Court Clerk to schedule any hearings by motion and service notice on all parties:
  - 1. If by mail, fourteen days prior to the date of the hearing; or
  - 2. If by personal service, seven (7) days prior to the date of the hearing; and
  - 3. File proof of service with the Court.
- C. The petitioner's address shall not be disclosed if confidential for safety reasons.
  - 1. The Court Clerk shall assist with service if the petitioner's address is confidential.

### **Section 39. Service of Permanent Personal Protection Order**

- A. If the Court grants a Permanent Personal Protection Order after hearing, the Court Clerk shall attempt personal service upon the Respondent within 48 hours of issuance of the order.
  - 1. However, failure to make service does not affect the order's validity or effectiveness.
- B. If the Respondent cannot be located within 48 hours, the Court Clerk shall within one (1) day of being notified that personal service was not successful:
  - 1. Send the Order by certified mail with return receipt requested; and
  - 2. Send the Order by regular mail to the respondent's last known address.
- C. If the Respondent has not been personally served or served by certified mail with the receipt returned to the Court with the signature of the Respondent by the first Court hearing, the Court Clerk shall facilitate service by publication in accordance with NHBPCR Chapter 5 – Court Rules of Civil Procedure, Section 5(D) Service of Process – Notice By Posting of Publication as follows:

1. Upon motion by the Petitioner and a showing that personal service is not possible, the Court may permit notice by posting or publication
  2. The Court shall designate all manners for posting including, but not limited to:
    - a. The Courthouse;
    - b. The Turtle Press;
    - c. The local newspaper in the city and/or county where the Respondent was last known to reside; and
    - d. Any other location the Court deems necessary.
  3. The publication may not reveal the identity or location of the petitioner.
  4. The notice shall run for not less than three (3) consecutive weeks in all publications required by the Court.
  5. The Petitioner shall file a proof of service including all locations where the publication ran and the dates.
- D. If the Court grants a Permanent Personal Protection Order after granting an Ex Parte Personal Protection Order at the conclusion of a Hearing, the Court may issue the Order and personally serve the Petitioner and Respondent before adjourning the Hearing.
1. Pursuant to Article X § 7.4-55 of the Domestic Violence Code, if the Respondent does not appear at the Hearing and there is proof of service on file with the Court that the Respondent received the Notice of Hearing, the Court is not required to serve the Permanent Personal Protection Order on the Respondent
    - a. Actual knowledge shall include:
      - i. Personal service; and
      - ii. A certified mail receipt with the Respondent's signature.

#### **Section 40. Contents of a Personal Protection Order**

- A. Pursuant to Article X § 7.4-53 of the Domestic Violence Code, an Ex Parte Personal Protection Order or a Personal Protection Order entered after notice and hearing may, when deemed appropriate by the Court, include provisions:
1. Restraining the respondent from committing acts of domestic violence, family violence, dating violence, or stalking

- a. Excluding the respondent from the residence, workplace, school, and grounds of the dwelling of the victim or other specific location where the victim can be found on a regular basis, whether or not the respondent and the victim share that residence
2. Restraining the respondent from any contact with the victim and his or her family or household members as is necessary for their safety and welfare.
3. Awarding temporary custody or establish temporary visitation rights with regard to minor children of the respondent on a basis that gives primary consideration to the safety of the claimed victim of domestic violence and the minor children
  - a. 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 violence or family violence 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 violence or family violence.
  - b. 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 violence, family violence, sexual assault, or stalking 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 violence, family violence, sexual assault, or stalking in the location of that parent's choice.
  - c. In every proceeding where there is at issue the modification of an order for custody or visitation of a minor child, the finding that domestic violence, family violence, sexual assault, or stalking has occurred, since the last custody determination, constitutes a finding of a change in circumstances.
  - d. 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.

- e. In determining custody and/or visitation, the Court must consider 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.
- f. If a parent is absent or relocated because of an act of domestic violence or family violence by the other parent, the absence or relocation is not a factor that weighs against the parent in determining custody or visitation.
- g. Any temporary custody order shall provide for child support and temporary support for the person having custody of the children, in amounts deemed proper by the Court.
- h. In a visitation order, the Court may:
  - i. Order an exchange of a minor child to occur in a protected setting;
  - ii. Order that visitation be supervised by another person or agency at the perpetrator's expense;
  - iii. Order the perpetrator of domestic violence or family violence to attend and complete, to the satisfaction of the Court, a program of intervention for perpetrators or other designated counseling as a condition of the visitation;
  - iv. Order the perpetrator of domestic violence or family violence to abstain from possession or consumption of alcohol, controlled substances or abuse of prescription drugs during the visitation and for 24 hours preceding the visitation, may order submission of a urinary analysis or PBT prior to the visit;
  - v. Prohibit overnight visitation;
  - vi. Require a Court-approved bond from the perpetrator of domestic violence or family violence for the return and safety of the minor child; and
  - vii. Impose any other condition that is deemed necessary to provide for the safety of the minor child, the victim of domestic violence or family violence, or other family or household member

- i. Whether or not visitation is allowed, the Court may order the address of the minor child and the victim to be kept confidential.
  - j. The Court may refer but may not order an adult who is a victim of domestic violence or family violence to attend counseling relating to the victim's status or behavior as a victim, as a condition of receiving custody of a minor child or as a condition of visitation.
  - k. If the Court allows a family or household member to supervise visitation, the Court must establish, in writing, conditions to be followed during visitation.
  - l. The Court shall notify the restrained party that the willful violation of any provision of the protection order is a criminal offense and punishable by imprisonment and/or a fine.
4. Ordering temporary guardianship with regard to an elderly or vulnerable adult victim of domestic violence, family violence, sexual assault, or stalking if necessary for the safety of the elderly or vulnerable adult until the matter can be addressed through an action.
5. Awarding temporary use and possession of property of the respondent.
6. Restraining one or both parties during the pendency of the action from transferring, encumbering, concealing, or disposing of property except as authorized by the Court and requiring that an accounting shall be made to the Court for all such transfers, encumbrances, dispositions, and expenditures.
7. Ordering the respondent to timely pay any existing debts of the petitioner, including mortgage or rental payments, necessary to maintain the claimed victim in his/her residence.
8. Describing any prior orders of the Court relating to domestic matters which are superseded or altered by the protection order.
9. Notifying the parties that the willful violation of any provision of the order constitutes contempt of court punishable by a fine or imprisonment or both and constitutes a violation of this chapter for which civil penalties may be assessed.
10. If the victim or alleged victim is awarded temporary use of the house and is listed on the rental agreement, the landlord, including Tribal housing, shall at the

request of the petitioner change the locks within 24 business hours of issuance of the order.

11. Ordering law enforcement to assist the victim in removing essential personal effects from a shared home.
  12. 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 or family violence, including orders or directives to the NHBP Police Department.
- B. Pursuant to Article X § 7.4-54 (A) of the Domestic Violence Code, the provisions of a Protection Order shall remain in effect for the period of time stated in the order.
1. A Permanent Personal Protection Order may not exceed one (1) year unless extended by the Court at the request of any party.

#### **Section 41. Modification of a Permanent Protection Order**

- A. Pursuant to Article X § 7.4-54 (B) of the Domestic Violence Code, the Court in its discretion may, upon request of either party, modify a protection order:
1. By the Petitioner. Before the Court may modify or reconsider a protection order at the request of the petitioner, if children live in the home, the Court may require petitioner to attend a domestic violence support group, with a session focused on the effects of domestic violence on children.
  2. By the Respondent. Before the Court may modify or reconsider a protection order at the request of the respondent, he or she shall provide the Court with all pertinent documents, affidavits, compliance forms or any other information required by the Court for either reconsideration or modification of protection orders. The Court may require respondent to attend a domestic violence perpetrator treatment program, with a session focused on the effects of domestic violence on children

#### **Section 42. Copy of Protection Order to Police Department and Other Jurisdictions**

- A. Pursuant to Article X § 7.4-56 of the Domestic Violence Code, and processes of the Court, the Court Clerk shall, within 24 hours of the granting or issuance of a protection order, forward a copy of the Order by fax or email to:

1. The NHBP Police Department;
2. Calhoun County Circuit Court;
3. Other applicable jurisdiction; and
4. Until such time that the Tribal Court can enter its orders into the state-wide data system, any jurisdiction necessary for the entry of the order into the state-wide data system.

### **Section 43. Penalties for Violation of a Protection Order**

- A. Pursuant to Article X § 7.4-57 of the Domestic Violence Code, violation of a protection order is a crime.
  1. Violation of a protection order is a Class B Misdemeanor
  2. The second or subsequent violation of a protection order is a Class A Misdemeanor
  3. Consent by the victim is not a defense to a violation of a protection order.

### **Section 44. Fees Not Permitted**

- A. Pursuant to Article XI § 7.4-59 of the Domestic Violence Code, a public agency/the Court shall not charge a fee for the filing or preparation of certified, authenticated, or exemplified copies to:
  1. A person entitled to protection who seeks relief under the Domestic Violence Code;
  2. A foreign prosecutor; or
  3. A foreign law enforcement agency seeking to enforce a protection order.

### **Section 45. Initial Hearing on Alleged Violation of Court Orders**

- A. Pursuant to Article VII § 7.4-24 (A) of the Domestic Violence Code, a person may be arrested without a warrant where the violation is of one of the following, regardless of whether the issuing authority of the NHBP Tribal Court or another court:
  1. A criminal no contact order;
  2. A civil domestic violence protection order;
  3. A sexual assault protection order;

4. A civil protection order issued in the context of a family law action;
  5. A vulnerable adult protection order;
  6. A youth in need of care protection order; or
  7. A foreign protection order.
- B. Pursuant to Title VIII-08, Chapter 4 § 401 (b), arraignment or an initial hearing shall be held in open Court without unnecessary delay, but no later than seventy-two (72) hours of being taken into custody pursuant to Section No.: Arraignment
- C. The defendant shall be held without bail pending the first hearing at which time the Court shall:
1. Set bail; and
  2. Order conditions of release pursuant to Section No.: Arraignment
- D. Pursuant to Article IX § 7.4-39 of the Domestic Violence Code, consent by the victim is not a defense to a violation of a domestic violence no contact order.
- E. Pursuant to Article VII § 7.4-24 (B) of the Domestic Violence Code, If the individual arrested is a minor and suspected to have violated a Court order, this Chapter and specifically Section 7.4-48 - Violations by Juveniles - Arrest, shall govern the arrest and all subsequent proceedings. Violation of a no contact order is a Class B Misdemeanor.
- F. A second or subsequent violation of a no contact order is a Class A Misdemeanor.
- G. Pursuant to Article IX § 7.4-39 of the Domestic Violence Code, violation of a no contact order subjects the defendant to:
1. Criminal penalties under the Domestic Violence Code; and
  2. The Court may, upon finding the Defendant guilty of violating the terms of a no contact order may also:
    - a. Hold the Defendant in contempt of court; and
    - b. Impose such sanctions as it deems appropriate.

#### **Section 46. Violation of No Contact Order - Penalties**

- A. Pursuant to § 7.4-39 of the Domestic Violence Code, a Police Officer shall arrest without a warrant and take into custody any person who the Police Officer has probable cause to believe has willfully violated a no contact order issued under Section 7.7-29 – Pre-Trial and Release Conditions.

- B. All provisions of an order issued under Section 7.7-29 – Pre-Trial and Release Conditions, shall remain in full force and effect until the order terminates or is modified by the Court.
- C. Pursuant to Article IX § 7.4-39 of the Domestic Violence Code Violation of a no contact order subjects the defendant to criminal penalties under this chapter. Any defendant who is found guilty of violating the terms of a no contact order may also, subject to the Court’s discretion, be held in contempt of court, and the Court may impose such sanctions as it deems appropriate.
  - 1. Violation of a no contact order is a Class B Misdemeanor.
  - 2. A second or subsequent violation of a no contact order is a Class A Misdemeanor
  - 3. A foreign law enforcement agency seeking to enforce a protection order.

**Section 47. Interfering with the Reporting of Domestic Violence or Family Violence**

- A. Pursuant to § 7.4-36 of the Domestic Violence Code, any person who prevents or attempts to prevent a victim or witness of domestic violence or family violence from calling 911, the NHBP Tribal Police, or other law enforcement agency, or from obtaining medical assistance or making a report to any Tribal, State or Federal law enforcement official, has committed the crime of interfering with the reporting of domestic violence or family violence.
  - 1. Interfering with the reporting of domestic violence or family violence is a Felony.

**Section 48. Firearms Disqualifications (Article XI § 7.4-65)**

- A. Purpose. It shall be the purpose of this section to prohibit any person from possessing or purchasing a firearm who has been convicted of a felony or misdemeanor crime of domestic violence, family violence, sexual assault, stalking, or dating violence, as defined under the laws of the NHBP, who is subject to a protection order based upon a finding that the person represents a credible threat to the physical safety of the victim; any person who is found mentally incompetent to stand trial; or any person committed for mental health reasons after a domestic violence, family violence, sexual assault, stalking, or dating violence offense, from possessing or purchasing a firearm.

- B. It shall be unlawful for any person to possess or purchase a firearm who:
1. Is subject to any court order from a court of competent jurisdiction that restrains such person from harassing, stalking, threatening, having contact or assaulting an intimate partner or family member as defined in this code or engaging in any other conduct that would place an intimate partner or family member in reasonable fear of physical harm to the intimate partner or family member, except that this subsection shall apply only to those orders that:
    - a. Were issued at a hearing at which such person was present and had the opportunity to participate; or at a hearing of which such person had notice and the opportunity to be heard, whether or not the person was present;
    - b. Include a finding that such person represents a credible threat to the physical safety of such household or family member; and
    - c. By its terms explicitly prohibits the use, attempted use or threatened use of physical force against such household or family member.
  2. Has been convicted under the law of any state, territory, possession, tribe, or United States military tribunal of any crime involving domestic violence or family violence, as defined by the laws of the NHBP, which involved the use or attempted use of physical force, or the threatened use of physical force, or the threatened use of a deadly weapon against an intimate partner or family member as defined by this Chapter.
- C. Violation of this section is a Class A Misdemeanor offense and may result in exclusion from the NHBP Pine Creek Reservation as defined within the Exclusion Code. Any violations of related domestic violence or family violence sentences in this section or any violations of other sections of this code shall be served consecutively. The second or subsequent violation of this section is a Felony offense and may result in exclusion from the NHBP Pine Creek Indian Reservation or other lands as defined within the Exclusion Code.

**Section No. 49. Child Custody Disputes (Article XI § 7.4-60)**

- A. Any disputes regarding provisions in foreign protection orders dealing with custody of children, residential placement of children, or visitation with children shall be resolved

judicially. The proper venue and jurisdiction for such judicial proceedings shall be determined in accordance with the Children's Protection Code or its successor, the Indian Child Welfare Act, 25 U.S.C. §§1901-1963, and the Michigan Indian Family Preservation Act, MCL 712B.1.

- B. A police officer shall not remove a child from his or her current placement unless:
  - 1. A writ of habeas corpus to produce the child has been issued by the NHBP Tribal Court, a circuit court of the State of Michigan, or another tribal court; or
  - 2. There is probable cause to believe that the child is abused or neglected and the child would be injured or could not be taken into custody if it were necessary to first obtain a Court order pursuant to the Children's Protection Code.

**Section No. 50. Mediation Not Allowed (Article XI § 7.4-61)**

- A. Mediation is not allowed if a protection order is in effect unless mediation is requested by the victim of the alleged domestic violence after consultation with counsel or an advocate, and is provided by a certified mediator who is trained in domestic violence in a specialized manner intended to protect the safety of victims. The victim is permitted to have a support person of his or her choice in attendance at the mediation.

**Section No. 51. Domestic Violence Leave Act (Article XI § 7.4-62)**

- A. Purpose. Victims of domestic violence are often 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 sometimes respond by terminating or disciplining such employees. It is the purpose of this section to preclude all NHBP employers from terminating any employee who can document within 14 days an instance of domestic abuse which contributed to his/her absence from employment. Employers have the option of granting such employees leave with or without pay because of domestic violence related absences. Absences are not to exceed 12 weeks. An employee may take reasonable leave from work, intermittent leave, or leave on a reduced work schedule, with or without pay, to:
  - 1. Seek legal or law enforcement assistance or remedies to ensure the health and safety of the employee or employee's family members including, but not limited

to, preparing for, or participating in, any civil or criminal legal proceeding related to or derived from domestic violence or family violence, sexual assault, stalking or dating violence;

2. Seek treatment by a health care provider for physical or mental injuries caused by domestic violence or family violence, sexual assault, stalking, or dating violence, or to attend to health care treatment for a victim who is the employee's family member;
3. Obtain or assist a family member in obtaining services from a domestic violence safe house, rape crisis center, or other social services program for relief from domestic violence, family violence, sexual assault, stalking, or dating violence;
4. Obtain, or assist a family member in obtaining, mental health counseling related to an incident of domestic violence, family violence, sexual assault, stalking or dating violence, in which the employee or the employee's family member was a victim of domestic violence or family violence, sexual assault, stalking or dating violence; or
5. Participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or employee's family members from future domestic violence or family violence, sexual assault, stalking, or dating violence.

**Section No. 52. Discharges for Absence of Employment Due to Domestic Violence Prohibited (Article XI § 7.4-63)**

- A. It shall be a violation of this chapter for any employer located within the exterior boundaries of the NHBP Reservation 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 method satisfactory to the employer, that he/she has been the victim of domestic violence, family violence, sexual assault, stalking or dating violence, and that such violence contributed to his/her absence(s) from work or tardiness to work. In lieu of disciplinary action, the employer shall grant the employee leave with or without pay, dependent upon the policies of the employer, for such absences.

**Section No. 53. Penalty for Violation (Article XI § 7.4-64)**

- A. Any employer who willfully violates this article shall be subject to a maximum civil penalty of up to \$1,000 payable to the NHBP in addition to any other remedies the wrongfully discharged employee may have against the employer. Nothing in this article shall preclude a private party from commencing a wrongful termination action against an employer for violation of this article. Any funds collected for a violation of this article shall be used for the victims and placed in the appropriate Victim's fund.

**CRIMINAL PROTECTION ORDERS**

**Section No. 54. Full Faith and Credit Clause (Article XII § 7.4-66)**

- A. The purpose of this Article is to ensure compliance with the full faith and credit provision of the Violence Against Women Act of 1994 (VAWA) as set forth in 18 U.S.C. 2265, as it may be amended from time to time, and to ensure that victims of domestic violence are able to move across State and Tribal boundaries without losing the ability to enforce protection orders they have previously obtained to increase their safety.
- B. A harassment protection order or a sexual assault protection order issued by the NHBP Tribal Court will be enforceable throughout the State of Michigan pursuant to MCR 2.615.
- C. To ensure that harassment and sexual assault protection orders issued by the NHBP Tribal Court are enforced outside of the boundaries of the Reservation, harassment and sexual assault protection orders issued in the courts of the State of Michigan, or a Tribal Court within the State of Michigan, will be enforced within the boundaries of the reservation pursuant to NHBPCR Chapter 8 – Court Rules for Recognition and Enforcement of Foreign Court Actions, Warrants, and Subpoenas.
- D. Notice of reciprocal enforcement pursuant to this section shall be printed on all harassment and sexual assault protection orders issued by the Court.

**Section No. 55. Recognition and Enforcement of Foreign Court Judgments (Article XII § 7.4-67)**

- A. The NHBP Tribal Court has enacted Court Rules for the recognition of foreign court judgments. NHBP Tribal Court Rules, Chapter 8, Court Rules for the Recognition and Enforcement of Foreign Court Actions, Warrants and Subpoenas, provides for the recognition of these foreign court actions and the procedures for filing. Registration, notice of registration, and objections to the filing of a foreign court action are provided for in Chapter 8.

**Section No. 56. Transmittal of Filed Foreign Protection Orders to Law Enforcement Agency (Article XII § 7.4-68)**

- A. The Clerk of the Court shall forward a copy of a foreign protection order that is filed under this article on or before the next calendar day to the NHBP Police Department and County Sheriff along with the completed information form. The Clerk may forward the foreign protection order to the County Sheriff by facsimile or electronic transmission. Upon receipt of the filed foreign protection order, the NHBP Police Department shall immediately enter the foreign protection order into any computer-based criminal intelligence information system available, listing outstanding warrants. The foreign protection order must remain in the computer for the period stated in the order. The NHBP Police Department shall only expunge from the computer-based criminal intelligence information system foreign protection orders that are expired, vacated, or superseded. Entry into the computer-based intelligence information system constitutes notice to all law enforcement agencies of the existence of the foreign protection order. The foreign protection order is fully enforceable in any county in the State.
- B. The information entered into other computer-based criminal intelligence information systems must include, if available, notice to law enforcement whether the foreign protection order was served and the method of service.

**Section No. 57. Violation of Foreign Orders (Article XII § 7.4-69)**

- A. Whenever a foreign protection order is granted to a person entitled to protection and the person under restraint knows of the foreign protection order, a violation of a provision

prohibiting the person under restraint from contacting or communicating with another person, or of a provision excluding the person from a residence, workplace, school, or daycare, or of a provision prohibiting a person from knowingly coming within, or knowingly remaining within, a specified distance of a location, or a violation of any provision for which a foreign protection order specifically indicates that a violation will be a crime, shall subject the person to the same penalties as if the order were issued by the NHBP Tribal Court.

- B. Upon conviction, and in addition to any other penalties provided by law, the Court may require the person under restraint to submit to electronic monitoring (Global Positioning System (GPS) or similar). The Court shall specify who will provide the electronic monitoring services, and the terms under which the monitoring will be performed. The order also may include a requirement that the person under restraint pay the costs of the monitoring. The Court shall consider the ability of the convicted person to pay for electronic monitoring.
- C. A Peace Officer shall arrest without a warrant and take into custody a person when the Peace Officer has probable cause to believe that a foreign protection order has been issued of which the person under restraint has knowledge and the person under restraint has violated a provision of the foreign protection order for which the foreign protection order specifically indicates that a violation will be a crime. Presence of the order in the law enforcement computer-based criminal intelligence information system is not the only means of establishing knowledge of the order.

**Section 58. Police/Peace Officer Immunity (Article XII § 7.4-70)**

- A. No Police Officer, peace officer, or officer’s legal advisor shall be held criminally or civilly liable for making an arrest under this Article if the Police Officer, peace officer, or the officer’s legal advisor acted in good faith and without malice.

**Section 59. Purpose of Harassment Protection Orders**

- A. Pursuant to Article XII § 7.4-71 of the Domestic Violence Code, the NHBP finds that:
  - 1. The prevention of harassment is important to the health, safety and general welfare of the Tribal community.

2. This Article is intended to provide victims with a speedy and inexpensive method of obtaining civil harassment protection orders preventing all further unwanted contact between the victim and the perpetrator.
- B. Pursuant to Article XII § 7.4-72 of the Domestic Violence Code, for the purpose of this section, “harassment protection order” means a Court order restricting a person from harassing, threatening, contacting, or approaching another specified person for a period of time.
- C. Pursuant to Article XII § 7.4- 75 (C) of the Domestic Violence Code, for the purpose of this Article, “temporary harassment protection order” means a Court order restricting a person from harassing, threatening, contacting, or approaching another specified person
- D. The Domestic Violence Victim Advocate shall advise individuals seeking services, whether for the individual’s personal safety or for the safety of friends or family, Tribal Citizens and Tribal employees, of the right to file a petition under this section without cost.
1. Services through the Domestic Violence Victim Advocate shall not require or be dependent upon filing a petition for a personal protection order.

### **Section 60: Who May File a Petition for a Harassment Protection Order**

- A. Pursuant to Article X § 7.4-73 of the Domestic Violence Code, a petition to obtain a harassment protection order under this section may be filed by:
1. Any person claiming to be the victim of harassment; or
  2. By a parent or guardian if the child is a ward of the Court, on behalf of the child a person may seek a personal protection order:
  3. Whether or not the person has contacted law enforcement officers to report a crime;
  4. Without prior notice to the respondent to ensure the immediate protection of the victim by filing a statement made under penalty of perjury which, to the satisfaction of the Court, shows evidence of harassment of the petitioner by the respondent, and that continued harassment may result if the temporary harassment protection order is not granted.

## **Section 61: How to File a Petition for a Harassment Protection Order**

- A. To request a Protection Order, the Petitioner shall complete a form provided by the Court, hereinafter called the “Petition”, that shall also serve as the Affidavit.
- B. The Domestic Violence Victim Advocate or his or her designee shall meet with all individuals seeking a harassment protection order to:
  1. Provide applicable Court-approved forms;
  2. Answer any questions;
  3. Provide assistance with compiling the Petition, if requested;
  4. Review the completed Petition, complete the appropriate cover sheet to the Court and submit both to the Court Clerk;
    - a. The Domestic Violence Victim Advocate shall not communicate directly with the Court about the substance of the Petition, including advocating for the granting or denial of the Petition
  5. Communicate the decision of the Court to the Petitioner;
  6. Assist with service, if the Petition is granted;
  7. Provide referrals, if requested
- C. The Petition shall:
  1. Be in writing;
  2. Provide the names and addresses of the Petitioner and Respondent
    - a. The Petitioner may omit his or her residence address from the documents filed with the Court, but must provide the court with a mailing address.
    - b. Pursuant to Article VIII § 7.4-28 (B) of the Domestic Violence Code, a Petitioner in a civil matter may request to use a Safe House address as his or her address for service of process and other purposes, or address of any other home that provides temporary refuge.
      - i. A Petitioner may request to use a Safe House address or address of any other home that provides temporary refuge by submitting a completed form provided by the Court.
  3. State the detailed facts of harassment:
    - a. Pursuant to Article XII § 7.4- 74 (E) of the Domestic Violence Code, the parent or guardian of a child under age 18 may petition for a harassment

protection order to restrain a person age 18 years or over from contact with that child upon a showing that contact with the person to be restrained is detrimental to the welfare of the child.

4. State the relief sought and the conduct to be restrained;
5. State whether an ex parte order is being sought;
  - a. If the Petitioner requests an ex parte order, the Petitioner must state specific facts showing that immediate and irreparable harm will result to the petitioner from the delay required to provide notice or from the risk that notice will itself result in harm before an order can be issued.
6. State whether there are any other pending actions in this or any other court, or orders or judgments already entered by the Tribal Court or any other court affecting the parties, including the name of the court and the case number, if known.
  - a. If the petition is filed in the same court as a pending action or where an order or judgment has already been entered by that court affecting the parties, it may be assigned to the same judge.
  - b. If there are pending actions in another court or orders or judgments already entered by another court affecting the parties, the court may contact the court where the pending actions were filed or orders or judgments were entered, if practicable, to determine any relevant information.
7. State that the information provided is being provided under oath and is true to the best of the Petitioner's knowledge, information and belief
8. Be signed and dated by the Petitioner
9. And include the filing fee or Affidavit for Waiver of Fees.

#### **Section 62. Procedure When Ex Parte Harassment Protection Order is Issued**

- A. Upon receipt of a Petition for Harassment Protection Order, the Court Clerk shall:
  1. Immediately contact the on-call Judge by phone to inform him or her that the Court is in receipt of a Petition for Harassment Protection Order;

2. Conduct a criminal background check according to Court policy and attach the report(s) to the Petition; and
  3. Fax or email a copy of the Petition to the Judge, who will grant the request, deny the request or request additional information
- B. The Court shall:
1. Immediately rule on a request for an ex parte order of the filing of the Petition.
  2. Evaluate the petition;
  3. The Court shall grant an Ex Parte Harassment Protection Order without bond if, based on the specific facts stated in the Petition:
    - a. 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 harassment committed by the Respondent, and that continued harassment may result if the ex parte order is not granted
- C. The Court Clerk shall, upon receipt of an Ex Parte Harassment Protection Order and in consultation with the presiding Judge:
1. Pursuant to Article XII § 7.4- 75 of the Domestic Violence Code, schedule a hearing not more than fourteen (14) days after the date of the Order for the Court to determine whether the Order should be vacated, extended, or modified in any respect.
  2. Draft the notice of hearing;
  3. Provide a certified copy of the Ex Parte Harassment Protection Order and a copy of the Notice of Hearing to:
    - a. To the Petitioner;
    - b. To an authorized person for service; and
    - c. To the Tribal Court Domestic Violence Victim Advocate for his or her records, including for grant reporting purposes, if applicable
- D. An authorized person shall attempt personal service of the Ex Parte Harassment Protection Order upon the Respondent within 48 hours of issuance of the Order.
1. However, failure to make service does not affect the order's validity or effectiveness.
  2. Authorized persons include:

- a. Officers of the Tribal Court;
  - b. Law Enforcement Officers; and
  - c. Individuals authorized by NHBP law or the Court Rules of the NHBP Tribal Court
- E. Upon issuance of an Ex Parte Harassment Protection Order, the Court Clerk shall attempt to facilitate personal service by:
  - 1. Providing a certified copy of the Ex Parte Harassment Protection Order, a copy of the Notice of Hearing to a person authorized to perform service pursuant to the Domestic Violence Code, other laws of the NHBP and Court Rules of the NHBP Tribal Court and notice of when the 48 hours will expire
    - a. The Court Clerk, Tribal Court Domestic Violence Victim Advocate or other Court Personnel may request accompaniment from the NHBP Police Department
  - 2. If the Respondent cannot be located within 48 hours, the Court Clerk shall within one (1) day of being notified that personal service was not successful:
    - a. Send the Order by certified mail with return receipt requested;
    - b. Send the Order by regular mail to the respondent's last known address; and/or
    - c. In accordance with procedures outlined in *Chapter 5 – Court Rules of Civil Procedure*.

**Section 63. Contents of a Harassment Protection Order**

- A. Pursuant to Article XII § 7.4-76 of the Domestic Violence Code, the Court shall issue a permanent harassment protection order prohibiting such harassment if the Court finds by a preponderance of the evidence that harassment exists or has occurred.
  - 1. If the respondent does not appear, the Court shall enter a default judgment if the petitioner demonstrates to the Court that he or she effected proper service.
  - 2. In the event that a respondent fails to appear and the petitioner cannot demonstrate service upon him or her, the Court may grant a second ex parte temporary harassment protection order to the same petitioner enjoining the same

respondent and order alternate service according to NHBPCR Chapter 5 – Court Rules of Civil Procedure, or its successor rule.

- a. If a Police Officer investigates an alleged violation of an order issued pursuant to this Article and service has not been effected prior to contact, the officer shall provide service as described herein and within the next calendar day the Court is open file proof of service with the Court.

B. The Court, in granting a harassment protection order, shall have broad discretion to grant such relief as the Court deems proper including but not limited:

1. Restraining the respondent from making attempts to contact the petitioner and all persons listed in the petition.
2. Restraining the respondent from making any attempts to monitor the petitioner by actual or electronic surveillance.
3. Requiring the respondent to stay a specified minimum distance from the petitioner's residence, workplace, and/or school.

C. A Permanent Harassment Protection Order may not exceed one (1) year unless extended by the Court at the request of any party.

1. At any time within three (3) months prior to the expiration of the order, the petitioner may apply for a renewal of the order by filing a written motion for renewal with the Court.
  - a. The motion for renewal shall state the reasons why he or she seeks to renew the order.
  - b. Upon receipt of the motion for renewal, the Court shall order a hearing which shall be held within 14 days from the date of motion.
  - c. The Court shall grant the motion for renewal unless the respondent proves by preponderance of evidence that he will not resume harassment of the petitioner when the order expires.
    - i. The Court may renew the harassment protection order for another fixed period or may enter a permanent order if the Court finds that any future contact with petitioner would result in the harm from which the petitioner originally sought protection.

**Section 64. Copy of Harassment Protection Order to Police Department and Other Jurisdictions**

- A. Pursuant to Article XII § 7.4-77 of the Domestic Violence Code and processes of the Court, the Court Clerk shall, within the next calendar day of the granting or issuance of a harassment protection order by the Court, forward a copy of the Order by fax or email to:
  - 1. The NHBP Police Department;
  - 2. Other applicable jurisdiction; and
  - 3. Until such time that the Tribal Court can enter its orders into the state-wide data system, any jurisdiction necessary for the entry of the order into the state-wide data system.
- B. Proof of service as a result of an officer providing service while investigating an alleged violation shall be filed with the Court no later than the next calendar day after service is provided.

**Section 65. Penalties for Violation of a Harassment Protection Order**

- A. Pursuant to Article XII § 7.4-78 of the Domestic Violence Code, violation of a harassment protection order subjects the respondent to criminal penalties.
  - 1. Violation of a harassment protection order is a Class B Misdemeanor
  - 2. The second or subsequent violation of a protection order is a Class A Misdemeanor
  - 3. Consent by the victim is not a defense to a violation of a protection order.
- B. If a respondent is found guilty of violating the terms of a harassment protection order, the Court may, at its discretion:
  - 1. Order the applicable criminal penalties;
  - 2. Hold the respondent in civil contempt of court, and
  - 3. Impose such sanctions as the Court deems appropriate.

## **Section 66. Purpose of Sexual Assault Protection Orders**

- A. Pursuant to Article XII § 7.4-79 of the Domestic Violence Code, the NHBP finds that:
1. There are times when a victim of a sexual assault or unwanted sexual contact is neither an intimate partner nor family member, thus does not qualify for the protections from these types of orders.
  2. Nevertheless, the victim deserves all the protections afforded within this Chapter because the alleged sexual assault or unwanted sexual contact is such a heinous incident that goes to the heart of the health, safety and general welfare of the NHBP Tribal Community;
  3. Therefore, a protection order provided under this Article is to protect those that have been sexually assaulted:

## **Section 67. Who May File a Petition for a Sexual Assault Protection Order**

- A. Pursuant to Article XII § 7.4-80 of the Domestic Violence Code, a petition to obtain a sexual assault protection order under this section may be filed by:
1. Any person who does not qualify for a domestic violence or family violence protection order and Who is a victim of nonconsensual sexual conduct or nonconsensual sexual penetration, including a single incident of nonconsensual sexual conduct or nonconsensual sexual penetration; or
  2. On behalf of any of the following persons who are victims of nonconsensual sexual conduct or nonconsensual sexual penetration and who does not qualify for a domestic violence or family violence protection order:
    - a. A minor child; or
    - b. A vulnerable adult as defined in the Adult Protection Code; or
    - c. Any other adult who, because of age, disability, health, or inaccessibility, cannot file the petition.
  3. Whether or not the person has contacted law enforcement officers to report a crime;
  4. Without prior notice to the respondent to ensure the immediate protection of the victim by filing a statement made under penalty of perjury which, to the satisfaction of the Court, shows evidence of sexual assault of the petitioner by the

respondent and that gives rise to a reasonable fear of future dangerous acts for which relief is sought.

**Section 68. How to File a Petition for a Sexual Assault Protection Order**

- A. To request a Sexual Assault Protection Order, the Petitioner shall complete a form provided by the Court, hereinafter called the “Petition”, that shall also serve as the Affidavit.
- B. The Domestic Violence Victim Advocate or his or her designee shall meet with all individuals seeking a harassment protection order to:
  - 1. Provide applicable Court-approved forms;
  - 2. Answer any questions;
  - 3. Provide assistance with compiling the Petition, if requested;
  - 4. Review the completed Petition, complete the appropriate cover sheet to the Court and submit both to the Court Clerk;
    - a. The Domestic Violence Victim Advocate shall not communicate directly with the Court about the substance of the Petition, including advocating for the granting or denial of the Petition
  - 5. Communicate the decision of the Court to the Petitioner;
  - 6. Assist with service, if the Petition is granted;
  - 7. Provide referrals, if requested
- C. The Petition shall:
  - 1. Be in writing;
  - 2. Provide the names and addresses of the Petitioner and Respondent
    - a. Pursuant to Article XII § 7.4-81 of the Domestic Violence Code, the Petitioner may omit his or her address if the petition states that disclosure of the petitioner’s address would risk abuse of the petitioner or any member of the petitioner’s family or household.
      - i. If the petitioner has not disclosed an address under this subsection, the petitioner shall designate an alternative address at which the respondent may serve notice of any motions

3. Pursuant to Article XII § 7.4-81 of the Domestic Violence Code, the petition shall allege the existence of nonconsensual sexual conduct or nonconsensual sexual penetration, and shall be accompanied by an affidavit made under oath stating the specific statements or actions made at the same time of the sexual assault or subsequently thereafter which give rise to a reasonable fear of future dangerous acts for which relief is sought.
4. State the relief sought and the conduct to be restrained;
5. State whether an ex parte order is being sought;
  - a. If the Petitioner requests an ex parte order, the Petitioner must state specific facts showing that immediate and irreparable harm will result to the petitioner from the delay required to provide notice or from the risk that notice will itself result in harm before an order can be issued.
6. State whether there are any other pending actions in this or any other court, or orders or judgments already entered by the Tribal Court or any other court affecting the parties, including the name of the court and the case number, if known.
  - a. If the petition is filed in the same court as a pending action or where an order or judgment has already been entered by that court affecting the parties, it may be assigned to the same judge.
  - b. If there are pending actions in another court or orders or judgments already entered by another court affecting the parties, the court may contact the court where the pending actions were filed or orders or judgments were entered, if practicable, to determine any relevant information.
7. State that the information provided is being provided under oath and is true to the best of the Petitioner's knowledge, information and belief
8. Be signed and dated by the Petitioner
9. And include the filing fee or Affidavit for Waiver of Fees.

## **Section 69. Procedure When Ex Parte Sexual Assault Protection Order is Issued**

- A. Upon receipt of a Petition for Sexual Assault Protection Order, the Court Clerk shall:
1. Immediately contact the on-call Judge by phone to inform him or her that the Court is in receipt of a Petition for Sexual Assault Protection Order; and
  2. Fax or email a copy of the Petition to the Judge, who will grant the request, deny the request or request additional information
- B. The Court shall:
1. Immediately rule on a request for an ex parte order of the filing of the Petition.
  2. Evaluate the petition;
  3. The Court shall grant an Ex Parte Sexual Assault Protection Order without bond if, based on the specific facts stated in the Petition:
    - a. The Court finds the petitioner has been a victim of nonconsensual sexual conduct or nonconsensual sexual penetration by the respondent; and
    - b. There is good cause to grant the remedy, regardless of the lack of prior service of process or of notice upon the respondent, because the harm which that remedy is intended to prevent would be likely to occur if the respondent were given any prior notice, or greater notice than was actually given, of the petitioner's efforts to obtain judicial relief.
  4. Any ex parte temporary sexual assault protection order issued under this section shall contain the date and time of issuance and the expiration date and shall be transmitted to the clerk of the court of the county in which the petitioner resides and to the NHBP Police Department within one calendar day after issuance
- C. The Court Clerk shall, upon receipt of an Ex Parte Sexual Assault Protection Order and in consultation with the presiding Judge:
1. Pursuant to Article XII § 7.4-82 of the Domestic Violence Code schedule a hearing not more than fourteen (14) days after the date of the Order for the Court to determine whether the Order should be vacated, extended, or modified in any respect.
  2. Draft the notice of hearing;
  3. Provide a certified copy of the Ex Parte Sexual Assault Protection Order and a copy of the Notice of Hearing to:

- a. To the Petitioner;
  - b. To an authorized person for service; and
  - c. To the Tribal Court Domestic Violence Victim Advocate for his or her records, including for grant reporting purposes, if applicable
- D. An authorized person shall attempt personal service of the Ex Parte Sexual Assault Protection Order upon the Respondent within 48 hours of issuance of the Order.
  1. However, failure to make service does not affect the order's validity or effectiveness.
  2. Authorized persons include:
    - a. Officers of the Tribal Court;
    - b. Law Enforcement Officers; and
    - c. Individuals authorized by NHBP law or the Court Rules of the NHBP Tribal Court
- E. Upon issuance of an Ex Parte Sexual Assault Protection Order, the Court Clerk shall attempt to facilitate personal service by:
  1. Providing a certified copy of the Ex Parte Sexual Assault Protection Order and a copy of the Notice of Hearing to a person authorized to perform service pursuant to the Domestic Violence Code, other laws of the NHBP and Court Rules of the NHBP Tribal Court and notice of when the 48 hours will expire
    - a. The Court Clerk, Tribal Court Domestic Violence Victim Advocate or other Court Personnel may request accompaniment from the NHBP Police Department
  2. If the Respondent cannot be located within 48 hours, the Court Clerk shall within one (1) day of being notified that personal service was not successful:
    - a. Send the Order by certified mail with return receipt requested;
    - b. Send the Order by regular mail to the respondent's last known address; and/or
    - c. In accordance with procedures outlined in *Chapter 5 – Court Rules of Civil Procedure*.

**Section 70. Procedure When Ex Parte Sexual Assault Protection Order is Not Issued**

- A. Pursuant to Article XII § 7.4-82 (B) of the Domestic Violence Code, if the Court declines to issue an ex parte temporary sexual assault protection order, the Court shall:
  - 1. State the particular reasons for the Court’s denial that is filed with the Court; and
  - 2. Set a hearing on the petition.
- B. The Court Clerk shall, upon receipt of a denial of a Petition for Ex Parte Sexual Assault Protection Order, advise the Petitioner that the Petition was denied and the opportunity for a Hearing where both parties would be present and have the opportunity to present witnesses and evidence, and make arguments to the Court:
  - 1. If the Petitioner requests a Hearing, the Court Clerk shall:
    - a. Pursuant to the Domestic Violence Code and in consultation with the presiding Judge, schedule a Hearing on a Petition for Sexual Assault Protection Order within fourteen (14) days of the filing of the Petition;
    - b. Draft the Notice of Hearing;
    - c. Provide a certified copy of the Ex Parte Sexual Assault Protection Order and a copy of the Notice of Hearing to:
      - i. To the Petitioner;
      - ii. To an authorized person for service; and
      - iii. To the Domestic Violence Victim Advocate for his or her records, including for grant reporting purposes, if applicable
- C. An authorized person shall attempt personal service of the Notice of Hearing and Petition for Ex Parte Sexual Assault Protection Order Hearing upon the Respondent.
  - 1. Authorized persons include:
    - a. Officers of the Tribal Court;
    - b. Law Enforcement Officers; and
    - c. Individuals authorized by NHBP law or the Court Rules of the NHBP Tribal Court
- D. The Court Clerk shall attempt to facilitate personal service by:
  - 1. Providing a copy of the Notice of Hearing and copy of the Petition for Ex Parte Sexual Assault Protection Order to:
    - a. To the Petitioner;

- b. To an authorized person for service; and
    - i. The Court Clerk, Tribal Court Domestic Violence Victim Advocate or other Court Personnel may request accompaniment from the NHBP Police Department
  - c. To the Domestic Violence Victim Advocate for his or her records.
- E. Pursuant to the Domestic Violence Code, service shall be provided consistent with NHBPCR Chapter 10 – Court Rules for Restraining Orders – Section 5, Judicial Review of the Emergency Restraining Order as follows:
- 1. If the Respondent cannot be located prior to the Hearing, the Court Clerk shall send the Notice of Hearing to the Respondent in writing, by FAX, by e-mail or regular mail, as circumstances permit.
- F. The Respondent may file an answer or objection to the Petition for Sexual Assault Protection Order, in writing, with the Court Clerk before the convening of the Hearing.
- 1. The Court Clerk shall provide a copy of the Respondent’s response to the Petitioner.

**Section 71. Contents of a Sexual Assault Protection Order**

- A. Any ex parte temporary sexual assault protection order issued under this section shall, within one (1) calendar day:
- 1. Contain the date and time of issuance and the expiration date; and
  - 2. Be transmitted to the clerk of the court of the county in which the petitioner resides; and
  - 3. Be transmitted to the NHBP Police Department.
- B. Any ex parte temporary or final sexual assault protection order may be renewed one or more times, as necessary for victim safety.
- 1. The petitioner may apply for renewal of the order by filing a petition for renewal at any time within the three months before the order expires.
  - 2. If the motion for renewal is uncontested and the petitioner seeks no modification of the order, the order may be renewed on the basis of the petitioner’s motion or affidavit stating that there has been no material change in relevant circumstances since entry of the order and stating the reason for the requested renewal.

**Section 72. Appointment of Counsel (Article XII § 7.4-83)**

- A. The Court may appoint counsel to represent the petitioner.

**Section 73. Permanent Sexual Assault Protection Order (Article XII § 7.4-84)**

- A. Except as otherwise provided in this section, a permanent sexual assault protection order shall be effective for a fixed period of time, not to exceed two years. However, the order may be renewed prior to its expiration.
- B. Any sexual assault protection order which would expire on a Court holiday shall instead expire at the close of the next Court calendar day in which the Court is open.

**Section 74. Request for Reconsideration or Modification of a Sexual Assault Protection Order (Article XII § 7.4-85)**

- A. Upon motion with notice to all parties and after a hearing, the Court may modify the terms of an existing sexual assault protection order. In any situation where an order is terminated or modified before its expiration date, the Clerk of the Court shall, on or before the next calendar day, forward a true copy of the modified order or the termination order to the appropriate law enforcement agency specified in the modified or terminated order. Upon receipt of the order, the law enforcement agency shall promptly enter it in the computer-based criminal intelligence information system, or if the order is terminated, remove the order from the computer-based criminal intelligence information system.

**Section 75. Sexual Assault Protection Orders – Personal Jurisdiction – Nonresident Individuals (Article XII § 7.4-86)**

- A. In a proceeding in which a sexual assault protection order is sought under this article, the NHBP Tribal Court may exercise personal jurisdiction over a nonresident individual if:
  - 1. The individual is personally served with a petition; or
  - 2. The individual submits to the jurisdiction of the Tribe by consent, entering a general appearance, or filing a responsive document having the effect of waiving any objection to consent to personal jurisdiction; or

3. The act or acts of the individual or the individual's agent giving rise to the petition or enforcement of a sexual assault protection order occurred within the Tribe's jurisdiction as defined by NHBPCR Chapter 10 – Court Rules for Restraining Orders, or within this Chapter; or
  4. The act or acts of the individual or the individual's agent giving rise to the petition or enforcement of a sexual assault protection order occurred outside the NHBP reservation but are part of an ongoing pattern of sexual assaults or stalking that has an adverse effect on the petitioner, a member of the petitioner's family or household and the petitioner resides within the exterior boundaries of the NHBP Reservation; or
  5. There is any other basis consistent with laws of NHBP and/or the laws of the United States.
- B. For jurisdiction to be exercised under subsections (A)(1) through (5) of this section, the individual must have communicated with the petitioner or a member of the petitioner's family, directly or indirectly, or made known a threat to the safety of the petitioner or member of the petitioner's family while the petitioner or family member resides within the exterior boundaries of the Pine Creek Indian Reservation. For the purposes of subsections (A)(1) through (5) of this section, "communicated or made known" includes, but is not limited to, regular or electronic mail, telephonic, or a posting on an electronic communication site, medium or social website. Communication on any electronic medium that is generally available to any individual residing in the State shall be sufficient to exercise jurisdiction under subsection (A)(4) of this section if directed at a resident of the Pine Creek Indian Reservation.

**Section 76. Penalties for Violating a Sexual Assault Protection Order (Article XII § 7.4-87)**

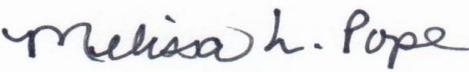
- A. Violation of a sexual assault protection order is a crime.
1. Violation of a sexual assault protection order is a Class B misdemeanor.
  2. A second or subsequent violation of a sexual assault protection order is a Class A misdemeanor.
  3. Consent by the victim is not a defense to a violation of a sexual assault protection order.

**Section 77. Short Title, Effective Date and Citation Format**

- A. **Short Title.** The short title for these *Rules* is “Rules for Domestic Violence Proceedings.”
- B. **Effective Date.** These *Rules* become effective when adopted by the Chief Judge of the Tribal Court.
- C. **Citation.** The official abbreviated citation form to these *Rules* is: NHBPCR Chapter 15.

**CERTIFICATE OF ADOPTION**

The Chief Judge of the Tribal Court adopts the above *Chapter of Court Rules* on June 9, 2016.



\_\_\_\_\_  
Hon. Melissa L. Pope, Chief Judge

\_\_\_\_\_  
June 9, 2016

Date of Adoption

**JUDICIAL HISTORY**

The Chief Judge adopted the *Court Rules for Domestic Violence Proceedings* on June 9, 2016.