

**WHITE EARTH NATION
DOMESTIC VIOLENCE CODE**

TITLE 18
CHAPTER ONE
PURPOSE, JURISDICTION AND DEFINITIONS

Section 1. Purpose

The White Earth Domestic Violence Code is construed to promote the following:

1. That violence against family members is not in keeping with Ojibwe values. It is the expectation that the criminal justice system respond to victims of domestic violence with fairness, compassion, and in a prompt and effective manner. The goal of this code is to provide victims of domestic violence with safety and protection.
2. It is also the goal to utilize the criminal justice system in setting standards of behavior within the family that are consistent with traditional Ojibwe values and, as such, the criminal justice system will be utilized to impose consequences upon offenders for behaviors that violate traditional Ojibwe values that hold women and children sacred. These consequences are meant as responses that will allow offenders the opportunity to make positive changes in their behavior.
3. The prevention of future violence in all families through prevention and public education programs that promote cultural teachings and traditional Ojibwe values so as to nurture non-violence within Ojibwe families and respect for Ojibwe women.

Section 2 Authority of the White Earth Tribe to regulate and prohibit domestic violence in its jurisdictional territory.

1. The White Earth Tribe has the inherent authority to protect its political integrity and provide for the welfare of its members and others who choose to live within its territory.
2. The problem of domestic violence within the boundaries of the White Earth Nation is seriously impacting the ability of the tribe to provide for the health and well-being of its tribal members and threatens the political integrity of the tribe.
3. Domestic violence is also being perpetrated by or against persons who are not members of the White Earth Band. These activities of non-members and non-Indians, who have entered into consensual relations with tribal members, will be regulated under this ordinance just as the activities of tribal members.

Section 3 Definitions

1. “Assault” means (a) the intentional infliction of or an attempt to inflict bodily harm upon another or (b) an act done with the intent to cause fear in another of imminent bodily harm or death;
2. “Petitioner” means the victim or intended victim of the domestic violence or abuse or, in the case of a minor or otherwise incompetent victim or intended victim, the “petitioner” means the parent, guardian or legal or physical custodian of the victim or intended victim, or such other person who by law or tribal custom is authorized to act on behalf of said minor or otherwise incompetent victim or intended victim;
3. “Dating Relationship” means a social relationship of a romantic or intimate nature the existence of which shall be determined by the following: 1) the length of the relationship; 2) type of relationship; and 3) frequency of interactions between the persons involved;
4. “Domestic violence/abuse” means the occurrence of one or more of the following acts by a family or household member, but does not include acts of self defense:
 - a. Attempting to cause or causing physical harm to another family or household member;
 - b. Placing a family or household member in fear of physical harm; or
 - c. Causing a family or household member to engage involuntarily in sexual activity by force, threat of force, or duress.
5. “Family or household members” means spouses, former spouses, parents and children, persons related by blood within the second degree of whether they have been married or have lived together at any time, and any other persons who are presently residing together or who have resided together in the same household within the past. “Family or household member” also includes a man and woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time.
6. “Harassment” means repeated intrusive or unwanted acts, words, or gestures, including repeatedly placing telephone calls or any form of electronic messaging to another’s residence or place of employment or education for no lawful purpose, or any similar acts that are intended to adversely and unlawfully affect the safety, security, or privacy of another;
7. “Order for Protection” means a court order granted for the protection of victims of domestic violence.

8. “Physical harm and bodily injury” means physical pain or injury, illness, or any impairment of physical condition.
9. “Unlawful” means, in the absence of a Band criminal code, acts which are defined as such under federal, tribal, or Minnesota state criminal laws.

CHAPTER TWO ORDER FOR PROTECTION

Section 1 Civil Remedy – Order for Protection

1. Jurisdiction. The Tribal Court has the jurisdiction to hear a cause of action for an order for protection and issue such an order if either the petitioner or the respondent resides within the territorial jurisdiction of the Tribal Court as defined in the White Earth Judicial Code.
2. Availability of Petition
 - (a) A petition to obtain an order for protection under this Section may be filed by:
 - (1) Any person claiming to be the victim of domestic violence;
 - (2) Any credible adult, family member or tribal agency representative on behalf of a person alleged to be the victim of domestic violence at the victims request;
 - (3) The Tribal Prosecutor at the victim’s request;
 - (4) Any relative or social services agency on behalf of minor children who have been subject to domestic violence.
 - (b) A petition shall allege the existence of domestic violence, and shall be verified or supported by an affidavit made under oath stating the specific facts and circumstances justifying the requested order.
 - (c) A petition may be filed regardless of the pendency of any other civil or criminal proceeding related to the allegations in the petition.
 - (d) No filing fee shall be required for the filing of a petition under this section. If an alleged perpetrator has been arrested for the offense of domestic violence, the Court or the arresting police officer shall advise the alleged victim of the right to file a petition under this section without cost.
 - (e) The petitioner, or the victim on whose behalf a petition has been filed, is not required to file for annulment, separation, or divorce as a prerequisite to obtaining an order of protection; but the petition shall state whether any

other action is pending between the petitioner or victim and the respondent.

- (f) Standard, simplified petition forms with instructions for completion shall be available to persons not represented by counsel. The White Earth Police Department, Tribal Court and advocates for domestic violence shall keep such forms and make them available upon request to victims of domestic violence.

Section 2 Hearings and Notice

1. Upon the filing of an application seeking an order for protection, with or without the issuance of an ex parte order for protection, the Clerk shall schedule a hearing to be held upon the merits of the application, the need for the continuance of the ex parte order, if any is issued, or the need for the continued enforcement or to modify, enlarge or limit the state of other tribal court order for protection, as the case may be.
2. The hearing shall be held at the next scheduled court session unless otherwise specified in any ex parte order for protection which the court may have issued provided said hearing shall be held no sooner than ten (10) business days from the date of filing with the Court Administrator.
3. The respondent, the petitioner, the White Earth Tribal Police and Advocate for Victims of Domestic Violence shall each be served with written notice of the time, date and place of said hearing. The respondent shall be personally served by a law enforcement officer while the petitioner, prosecutor and advocate may be served personally or by mail.
4. The hearing shall be conducted in an informal manner and factual findings shall be made by court acting without a jury.
5. The burden of proof shall be upon the petitioner who shall be represented, if so requested, by the prosecutor and/or an advocate for victims of domestic violence who is licensed to practice before the Tribal Court.
6. The respondent shall have the right to be represented by counsel of his or her choice and at his or her own expense.
7. The court may order the hearing to be continued upon the request of the respondent for the purpose of allowing the respondent to obtain counsel or to prepare his or her own defense. In such an event, the court shall extend the time period of any order it has previously issued and may issue such additional order(s) modifying, enlarging, altering the existing order as facts and circumstances may justify.

8. Both the respondent and the petitioner shall have the right to subpoena witnesses to testify on their behalf.
9. The respondent may either admit or deny, in whole or in part, the allegations contained in the application or in a request for modification of an existing state or other tribal court order for protection. Should the respondent deny the allegations, the court may then and there proceed to hear testimony and accept evidence unless either party requests a further continuance and the court is satisfied under the circumstances that such a continuance is reasonable and necessary under the circumstances and is not solely for the purpose of delay.
10. Upon the conclusion of the hearing the court shall make its findings and conclusions and enter its order either granting a permanent order for protection or dismissing the proceedings. The permanent order will be valid for not more than one year, but the order may be renewed for additional periods of time at the request of the petitioner.
11. The court shall not issue a mutual restraining order for protection nor an order for protection against one who has applied for an order for protection from domestic violence or abuse except where a cross or counter application has been served and filed by the respondent and the court, after hearing the matter, makes written findings and conclusions that such an order is justified under the facts and the law.
12. Either party may subsequently move the court for an order dismissing, modifying, enlarging, extending, or otherwise altering the terms of the order for protection previously issued. Service of such a motion shall be made in accordance with the White Earth Nation Rules of Civil Procedure. No such motion shall be granted or denied until a hearing has been held before the court to which all parties have been summoned or noticed to appear.
13. An Order granting relief authorized in Section 4, subd. 2 is not voided by the admittance of the abusing party into the dwelling from which the abusing party is excluded.

Section 3 Procedure for Issuance of an Order of Protection.

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

1. Immediately grant an ex-parte order of protection without bond if, based on the specific facts stated in the affidavit or the verified petition, the Court has probable cause to believe that the petitioner or the person on whose behalf the petition has been filed is the victim of an act of domestic violence committed by the respondent, and issuance of the ex-parte order is necessary to protect the victim and/or the children from further abuse.

2. Cause an ex-parte order of protection, together with notice of hearing, to be served immediately on the respondent. Service may be made by leaving the notice at the last known address of the respondent and by publication if personal service cannot be completed within seventy-two (72) hours.
3. Within fifteen (15) days after the granting of the ex-parte order of protection, hold a hearing to determine whether the order should be vacated, extended for an additional fifteen (15) days, or modified in any respect.
4. If an ex-parte order is not granted, serve notice to appear upon both parties and hold a hearing on the petition for order of protection within seventy-two (72) hours after the filing of the petition; provided that, if notice of hearing cannot be personally served within seventy-two (72) hours, the parties shall be served by posted notice, and the court shall hold a hearing on the petition within fifteen (15) days after the filing of the petition.

Section 4 Contents of an Order of Protection

An ex-parte order of protection or an order of protection entered after notice and hearing shall, when deemed appropriate by the Court, include provisions:

1. Restraining the respondent from committing any acts of domestic violence.
2. Excluding the respondent from the residence of the victim, whether or not the respondent and the victim share that residence.
3. Restraining the respondent from any contact with the victim [upon a showing that there is a reasonable cause to believe that physical harm may otherwise result].
4. Awarding temporary custody or establishing temporary visitation rights with regard to minor children of the respondent on a basis which gives primary consideration to the safety of the claimed victim of domestic violence and the minor children.
 - a. If the Court finds that the safety of the claimed victim or the minor children will be jeopardized by unsupervised or unrestricted visitation, the Court shall set forth conditions or restrict visitation as to the time, place, duration, or supervision, or deny visitation entirely, as needed, to guard that safety of the claimed victim and the minor children.
 - b. Any temporary custody shall provide for child support and temporary support for the person having custody of the children, in amounts deemed proper by the Court.
 - c. Enjoining the actor from being act or in close proximity to the dwelling or

residence and the place of employment or education, if applicable, of the victim(s);

- d. Prohibiting the actor from using or possessing a firearm or other weapon specified by the Court;
- e. Ordering temporary guardianship with regard to an elderly or handicapped victim of domestic violence if necessary for the safety of the elderly or handicapped person;
- f. Restraining one or both parties from transferring, removing, encumbering, mortgaging, concealing, disposing, altering or property except as authorized by the Court, and requiring that an accounting be made to the Court for all authorized transfers, encumbrances, disposition, and expenditures;
- g. Awarding temporary use and possession of property of the parties;
- h. Ordering the respondent to timely pay any existing debts of the respondent, including mortgage or rental payments, necessary to maintain the claimed victim in his/her residence;
- i. Describing any prior orders of the Court relating to domestic matters which are superseded or altered by the order of protection;
- j. Notifying the parties that the willful violation of any provision of the order by the respondent constitutes contempt of court punishable by a fine or imprisonment or both and constitutes a violation of this Code for which civil penalties may be assessed;
- k. Ordering, in the Court's discretion, any other lawful relief as it deems necessary for the protection of any claimed or potential victim of domestic violence, including orders or directives to the White Earth Police Department or any other appropriate law enforcement;
- l. Directing appropriate law enforcement agencies to enforce the terms of its orders;
- m. Setting a date, time and place for a hearing to be held upon the allegations contained in said application and requiring the actor to appear before the Court at such hearing to respond.

CHAPTER THREE LAW ENFORCEMENT REQUIREMENTS

Section 1 Duties of Police Officers

1. **Primary Duty of Police Officers.** The primary duty of police officers when responding to a domestic violence situation is to enforce the laws and to ensure safety.
2. **Notification to Victim.** If the victim is present when the officer arrests a person for domestic violence, the officer shall advise the victim of reasonable means to prevent further abuse, the availability of a shelter and other services in the community, let the victim know that a victim's advocate will be contacting them and give the victim immediate notice of any legal rights and remedies available in accordance with policies and protocols that have been adopted in accordance with the White Earth Domestic Violence Code.
3. The victim shall be furnished with a copy of the following rights entitled to victims of domestic assault:
 - a. You can ask the city or county attorney to file a criminal complaint;
 - b. You also have the right to file a petition with the court requesting an Order for Protection from domestic abuse. The order could include the following:
 - i. An order restraining the abuser from further acts of abuse;
 - ii. An order directing the abuser to leave your household;
 - iii. An order preventing the abuser from entering your home, school, business, or place of employment;
 - iv. An order awarding you or the other parent custody of or visitation with your minor child(ren); or
 - v. An order directing the abuser to pay child support to you and the minor child(ren).
 - c. You also have the right to notification if prosecution of the case is declined or criminal charges are dismissed.

Section 2 Protection of the Victim.

A law enforcement officer responding to an allegation of domestic violence shall use all reasonable means to protect the victim and prevent further violence, including but not limited to:

- a. Taking action necessary to provide for the safety of the victim and any family or household member.
- b. Transporting or obtaining transportation for the victim or any minor child (or children) to a temporary shelter.
- c. Assisting the victim and any minor child (children) in obtaining immediate medical treatment, including obtaining transportation to a medical facility.

Section 3 Notification of Release of a Perpetrator.

1. When a perpetrator is scheduled to be released from custody, the White Earth Police Department and/or Tribal Prosecutor shall make reasonable efforts to notify the victim or victim's advocate prior to, or upon release of, the perpetrator from custody.

CHAPTER FOUR
PENALTIES

Section 1. Civil Penalties

1. The Court may exercise its civil contempt powers, if necessary, to enforce any orders which may be issued pursuant to this Title.
2. A respondent who willfully violates the terms of an order for protection issued by the White Earth Nation Tribal Court is guilty of civil contempt and may be incarcerated for a period of time up to one year in jail or a civil fine of five thousand dollars (\$5,000) or both.

Section 2. Criminal Penalties. Will be guided by Minnesota Statute 518B.01 subd. 14 until such time as the White Earth Nation has the ability to enforce criminal sanctions.

CHAPTER SIX
FULL FAITH AND CREDIT

Section 1 Full Faith and Credit. Any order for protection issued by a state or other tribal court that is consistent with the provisions of 18 U.S.C. section 2265 (Violence Against Women Act of 1994), and any amendment thereto, shall be given full faith and

credit and enforced as if it were an order of the Tribal Court.

Section 2 Severability. If any provision of this Title, or the application thereof, to any person is held invalid, such invalidity shall not affect the provisions or applications of this Title which can be given effect without the invalid provisions, and to this end the provisions of this Title are declared severable.

CHAPTER SEVEN APPEALS

Section 1 Who Can Appeal. Any party to a domestic violence proceeding pursuant to this code may appeal a final court order.

Section 2. Appeals Procedure. All appeals from proceedings under this Code shall be heard pursuant to the White Earth Nation Appellate Procedures.