

RESOLUTION OF THE GOVERNING BODY OF
THE THREE AFFILIATED TRIBES OF THE
FORT BERTHOLD RESERVATION

- WHEREAS, This Nation having accepted the Indian Reorganization Act of June 18, 1934, and the authority under said Act; and
- WHEREAS, The Constitution of the Three Affiliated Tribes generally authorizes and empowers the Tribal Business Council to engage in activities on behalf of and in the interest of the welfare and benefit of the Tribes and of the enrolled members thereof; and
- WHEREAS, Article VI, Section 3(c) of the Constitution of the Three Affiliated Tribes specifically authorizes and empowers the Tribal Business Council to promulgate ordinances and to adopt rules and regulations and codes for the regulation of the domestic relations of members of the Three Affiliated Tribes; and
- WHEREAS, The Tribal Business Council has been approached by representatives of the Fort Berthold Coalition Against Domestic Violence, a nonprofit corporation managed by enrolled members of the Three Affiliated Tribes, which representatives have informed the Council that there exists a crucial need for the enactment and implementation of Tribal legislation which would provide to family members protection from continued domestic violence and abuse engaged in by abusive adults within the family; and
- WHEREAS, The Tribal Business Council recognizes the existence and problem of domestic violence and abuse within the Indian community situated within the exterior boundaries of the Fort Berthold Reservation and, in its considered judgment, deems it not only advisable, but also mandatory, to enact legislation in the interest of the provision of adequate protection to family members, particularly minor children, from domestic violence and abuse;
- NOW, THEREFORE, BE IT RESOLVED, That the Tribal Business Council of the Three Affiliated Tribes hereby formally approves and adopts the legislative provisions entitled "Adult Abuse," a copy of which provisions is attached hereto and made part hereof.
- BE IT FURTHER RESOLVED, That the attached legislative provisions entitled "Adult Abuse" shall become effective immediately and shall be designated as Section 24 of Chapter 5 of the Code of Laws of the Three Affiliated Tribes of the Fort Berthold Reservation.

CERTIFICATION

I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Reservation, hereby certify that the Tribal Business Council is composed of 11 members of whom 7 constitutes a quorum, 9 were present at a Regular Meeting thereof duly called, noticed, convened, and held on the 14 day of February, 1985; that the foregoing Resolution was duly adopted at such meeting by the affirmative vote of 8 members, 0 members opposed, 0 members abstained, 1 members not voting, and that said Resolution has not been rescinded or amended in any way.

Chairman (~~Voting~~) (Not Voting)

CHAPTER 5

SECTION 24

ADULT ABUSE

SECTION

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24.1 Adult abuse defined.

For the purposes of this Section, the term "adult abuse" shall mean and include physical harm to, bodily injury to, or assault on the complaining adult, or the imminent threat thereof.

24.2 Protection order.

A. A civil action praying for the issuance of a protection order, commenced by a verified application alleging the existence of adult abuse, may be brought by any spouse or family member or by a former spouse in the Fort Berthold District Court, irrespective of whether or not a legal separation, divorce, or annulment proceeding is pending therein.

B. Upon its receipt of the application, the Court shall order a hearing to be held no later than fourteen (14) days from the date of issuance of the hearing order.

C. Service of copies of the application and hearing order shall be made upon the respondent no fewer than five (5) days prior to the date set for the hearing thereon. In the event that such service cannot be made within the time period prescribed herein, the Court shall be authorized to continue the hearing date.

D. Upon a showing, by a preponderance of the evidence presented at the hearing, of actual or imminent adult abuse, the Court shall issue a protection order, wherein may be ordered any one or a combination of the following forms of relief:

1. The restraint of either or both of the parties from threatening, intimidating, molesting, and injuring the other party and any and all minor children of the parties.
2. The exclusion of either party from the dwelling shared by the parties, from the dwelling of the other party, or from an adult abuse care facility, in those instances wherein such exclusion is, within the judgment of the Court, deemed advisable and necessary for the protection and maintenance of the physical and/or mental well-being of the other party and other persons.
3. The award of temporary physical custody to either party and the grant of temporary visitation rights to the other party with respect to any and all minor children of the parties.
4. The recommendation or mandate that either or both of the parties participate in counseling provided by an adult abuse facility or by any other agency which provides professional services which the Court should deem appropriate. The Court may request the receipt of any appropriate written report(s) from the designated agency within a period of time as prescribed thereby. The costs incurred in the Court-ordered initial counseling assessment and in the development of any subsequent report(s) shall be borne by the party or parties involved therein if financially capable to do so.

5. The mandate that a party pay such reasonable support as may be necessary for the maintenance of the support of the other party and of any and all minor children of the parties and reasonable attorneys fees and costs.

E. The Court may amend its initial order at any time upon subsequent motion filed by either party.

F. No order issued pursuant to this Subsection shall affect title to any real property of either of the parties.

24.3

Temporary protection order; copy to law enforcement agencies.

A. In those instances wherein an application brought pursuant to Subsection 24.2 alleges an immediate and present danger of adult abuse to the applicant and/or to the minor children of the applicant, based upon an allegation of a recent incident of actual adult abuse or threat thereof, the Court may, within its discretion, issue an ex parte temporary protection order, pending a full hearing on the application, wherein may be ordered any one or combination of the following forms of relief:

1. The restraint of either or both of the parties from threatening, intimidating, molesting, and injuring the other party and any and all minor children of the parties.

2. The exclusion of either party from the dwelling shared by the parties, from the dwelling of the other party, or from an adult abuse care facility, in those instances wherein such exclusion is, within the judgment of the Court, deemed advisable and necessary for the protection and maintenance of the physical and/or mental well-being of the other party and other persons.

3. The award of temporary physical custody to either party and the grant of temporary visitation rights to the other party with respect to any and all minor children of the parties.

B. An ex parte temporary protection order shall remain in effect for any period, as prescribed by the Court within its discretion, not to exceed thirty (30) days, unless such order should be vacated by the Court prior to the expiration of the period as initially prescribed thereby.

C. The full hearing prescribed in Subsection 24.2 B shall be set for a date no later than fourteen (14) days from the date of issuance of the temporary protection order. The respondent shall forthwith be served with copies of the application and the ex parte temporary protection order, together with a notice of hearing.

D. The Clerk of Court shall transmit a copy of each temporary protection order, and any subsequent order amending or vacating the initial order, by the close of the business day on which each such order has been issued, to the Bureau of Indian Affairs and Three Affiliated Tribes Law Enforcement Agencies, at the request of the applicant, with the concurrence of the Court. Each such Law Enforcement Agency, by means of an existing verification system, shall make available any and all information relative to the existence, substance, and current status of the applicable temporary protection order issued pursuant to this Subsection, to any law enforcement officer responding to the scene of reported adult abuse.

24.4 Assistance of law enforcement officer in service and execution.

Upon the issuance of a protection order pursuant to Subsection 24.2 or to Subsection 24.3, the Court shall order that a law enforcement officer accompany and assist the applicant in securing possession of the dwelling, if so mandated by the Court in its order, or otherwise assist in the service and execution of the protection order, which assistance may include aid in the referral to an adult abuse care facility.

24.5 Right to apply for relief.

The right of an individual to make application for relief pursuant to Subsection 24.2 or to Subsection 24.3 shall, in no manner nor to any extent, be adversely affected by his or her leaving the dwelling in an effort to avoid adult abuse. The Court shall not require the payment of any security or bond by either party, except in those exceptional instances wherein the Court should deem such payment appropriate and necessary.

24.6 Penalty for violation of protection order; arrest without warrant.

A. In the event that, subsequent to the issuance of a protection order pursuant to Subsection 24.2 or to Subsection 24.3 and the service of such order upon the respondent or other individual restrained thereby, any such individual against whom the order has been issued, who shall be proven to have subsequently violated any proscription or mandate set forth in the order, shall be guilty of (1) a misdemeanor punishable by a fine, the minimum and maximum amounts of which shall be Two Hundred and 00/100 Dollars (\$200.00) and Five Hundred and 00/100 Dollars (\$500.00) respectively and/or imprisonment, the minimum and maximum terms of which shall be thirty (30) days and six (6) months respectively, and (2) contempt of the protection order and subject to punishment as prescribed by the applicable provisions set forth in this Code of Laws.

B. A law enforcement officer shall have the authority and right to arrest an individual without a warrant under the following circumstances:

1. The individual has committed the offense of violating the protection order issued against him or her, irrespective of whether or not such offense was committed in the presence of the officer; or
2. The individual has assaulted his or her spouse, other family member, any other individual residing in the dwelling, or former spouse, although the assault was not committed in the presence of the officer, but provided, however, that the officer has probable cause to believe that the assault was committed within the four (4) hours next preceeding the time of his or her receipt of the report of the assault. A law enforcement officer may not, however, arrest an individual pursuant to the provision herein without first having observed that there has been recent physical injury to or impairment of the physical condition of the victim of the alleged assault.

No law enforcement officer shall be held criminally or civilly liable for making an arrest pursuant to this Subsection, if the officer acted in good faith on the basis of probable cause and without malice.

24.7 Nonexclusive remedy.

Any proceeding brought pursuant to this Section shall be independent of and in addition to any other civil or criminal remedies authorized by law.

24.8 Emergency relief.

In the event that, in an emergency situation, a judge of the Fort Berthold District Court is unavailable, an application brought pursuant to Subsection 24.3 may be filed with a magistrate within the Fort Berthold Tribal Court system, who shall have the authority to issue an order granting any relief provided for in such Subsection, upon the showing of good cause in an ex parte proceeding, provided that such magistrate deems such relief necessary for the protection of the applicant and/or other individuals from adult abuse. The immediate and present danger of adult abuse to the applicant and/or other individuals shall constitute good cause for the purposes of this Subsection.

Any order issued pursuant to this Subsection shall be in effect for and expire seventy-two (72) hours subsequent to the time of its issuance, unless continued by the magistrate due to the continuing unavailability of a judge of the Fort Berthold District Court. In addition, any order issued pursuant to this Subsection, together with any documentation submitted in support thereof, shall be forthwith certified to and filed with the District Court. Such certification and filing shall have the effect of commencing proceedings under Subsection 24.2 and invoking the other provisions of this Section.

24.9

Duty to assist applicant.

All magistrates within the Fort Berthold Tribal Court system and the District Court Administrator and Prosecutor shall have the duty to assist individuals requesting aid in making application for relief pursuant to this Section.

Dated this 14 day of February, 1985.

Jah Maying
Secretary, Tribal Business Council

ATTEST:

Alyce Scott Ben
Chairman, Tribal Business Council