

of children and domestic violence victims as provided in Chapter 24 of this title. Enforcement of sex offenses not qualifying under Chapter 24 of this tile may be subject to federal law prosecution.

- 3-22-20.3 A person is guilty of a Class 1 Misdemeanor if he knowingly:
- a. Harbors or attempts to harbor, or assist another person in harboring or attempting to harbor a sex offender who is in violation of this chapter;
  - b. Assists a sex offender in eluding a law enforcement agency that is seeking to find the sex offender to question the sex offender about, or to arrest the sex offender for, noncompliance with the requirements of this chapter; or
  - c. Provides information to law enforcement agency regarding a sex offender which the person knows to be false.

3-22-21 **Immunity**

- 3-22-21.1 Nothing under this chapter should be construed as a waiver of sovereign immunity for the Three Affiliated Tribes, their departments, agencies, employees, or agents.
- a. Any person acting under good faith of this chapter shall be immune from any civil liability arising out of such actions.

### Chapter 23 - Pow Wow Control Ordinance

3-23-1 **Definitions**

- 3-23-1.1 In this Chapter, unless a different meaning plainly is required:
- a. "Tribe" means The Three Affiliated Tribes or Mandan Hidatsa Arikara Nation.
  - b. "Person" includes an individual or his executor, administrator or other personal representative or a corporation, partnership, association, or other legal commercial entity, whether or not a citizen or domiciliary of this reservation and whether or not organized under the laws of this reservation.
  - c. "Pow-Wow" means any duly authorized pow-wow so recognized by the Three Affiliated Tribes.
  - d. "Pow-Wow areas" means that area so described in the pow-wow permit duly issued by the Tribal Council of the Three Affiliated Tribes.
  - e. "Pow-Wow permit" shall include location, date, and time of the pow-wow. The permit must also include addresses with names and titles of the committee members.
  - f. "Firearms" means any explosive device capable of releasing a projectile propelled by either gas, air, explosive force, spring action, or commonly accepted as a firearm.

3-23-2 **Legislative Intent**

- 3-23-2.1 It is the purpose of this ordinance to maintain a peaceful and healthy atmosphere in order to perpetuate the heritage and culture of our people. It is a further purpose of this ordinance to make the persons and property on our pow-wow grounds safe, healthy, and secure.

3-23-3 **Prohibitions**

- 3-23-3.1 Alcoholic Beverage – It shall be unlawful for any person to enter upon the designated pow-wow area with any alcoholic beverages. It shall be unlawful for any person to consume, own, possess, furnish, or deliver alcoholic beverages to any other person in the duly designated pow-wow area.

- 3-23-3.2 Firearms – It shall be unlawful for any person to enter upon the designated pow-wow area with any firearms except those specifically permitted by the pow-wow committee for ceremonial purposes or those carried by law enforcement personnel. It shall be unlawful for any person to own, possess, or furnish to any other person firearm in the duly designated pow-wow area, except those permitted by the pow-wow committee for ceremonial purposes or law enforcement.

- a. It shall be unlawful for any person to discharge any firearms upon the pow-wow area, except for recognized ceremonial purposes so designated by the specific pow-wow committee.

3-23-4 **Penalties**

- 3-23-4.1 a. Alcohol – Confiscation of the alcohol, up to thirty (30) days imprisonment, and one hundred (100) dollars fine;
- b. Firearms – Confiscation of the firearm, up to ninety (90) days imprisonment, and two hundred fifty (250) dollars fine; and
- c. Fireworks – Confiscation of the fireworks, up to fifteen (15) days imprisonment and fifty (50) dollars fine.

3-23-5 **Confiscation** – After trial, the trial judge may order any confiscated goods destroyed or sold at a public sale to the highest bidder, the proceeds of which shall be applied to the benefit of the tribe.

3-23-6 **Notice** – The contents of this Ordinance shall be duly posted at all entrances to the pow-wow area and in such other conspicuous areas so that the general public shall read.

3-23-7 **Enforcement** – This Ordinance shall be enforced by the duly designated law enforcement officials in a safe and prudent manner, and it is not a license on their part to enter a tent or other structures on the pow-wow area unless illegal conduct is so noticed, in plain view by the designated law enforcement officials.

**Chapter 24 - Domestic Violence and Covered Crimes**

3-24-1 **Special Tribal Criminal Jurisdiction**

3-24-1.1 The Three Affiliated Tribes does hereby enact and exercise “Special Tribal Criminal Jurisdiction” as a participating tribe, as defined in 25 U.S.C. §1304 (VAWA 2022), subject to applicable exceptions defined therein and as may be subsequently amended.

3-24-1.2 In all proceedings in which the tribal court is exercising Special Tribal Criminal Jurisdiction as a participating tribe, all rights established by the Three Affiliated Tribes Title III, Criminal Code shall apply and those enumerated in the Indian Civil Rights Act, 25 U.S.C. §1302 to all defendants. Should there be any inconsistency between the Three Affiliated Tribes Criminal Code Title III, and 25 U.S.C §1302, those of 25 U.S.C §1302 shall apply.

3-24-2 **Purpose**

3-24-2.1 The purpose of this chapter is to recognize domestic violence is a serious crime against the society, the Tribe, and the family, and to provide the victim of domestic abuse or family violence and other covered crimes the maximum protection from further violence that the law, and those who enforce the law, can provide. Furthermore, the purpose of this chapter is to recognize that the strength of the tribe is founded on healthy families, and that the safety of victims of domestic violence and other covered crimes, especially children, must be ensured by immediate intervention of law enforcement, prosecution, education, treatment, and other appropriate services.

3-24-3 **Definitions**

3-24-3.1 The following definitions shall apply to this chapter:

- a. “Assault of Tribal Justice Personnel” means any violation of the criminal law of the Three Affiliated Tribes where the violation involves the use, attempted use, or threatened use of physical force against an individual authorized to act for, or on behalf of, the Three Affiliated

- Tribes or serving the Three Affiliated Tribes during, or because of, the performance or duties of that individual in:
- i. Preventing, detecting, investigating, making arrests relating to, making apprehensions for, or prosecuting a covered crime;
  - ii. Adjudicating, participating in the adjudication of, or supporting the adjudication of a covered crime;
  - iii. Detaining, providing supervision for, or providing services for persons charged with a covered crime; or
  - iv. Incarcerating, supervising, providing treatment for, providing rehabilitation services for, or providing reentry services for persons convicted of a covered crime.
- b. “Child” means a person who has not attained the lesser of:
- i. The age of eighteen (18) years; and
  - ii. Except in the case of sexual abuse, the age specified by the criminal laws of the Three Affiliated Tribes.
- c. “Child Violence” means the use, threatened use, or attempted use of violence against a child proscribed by the criminal laws of the Three Affiliated Tribes.
- d. “Coercion” means:
- i. Threats of serious harm to or physical restraint against any person;
  - ii. Any scheme, plan, or pattern intended to cause a person to believe failure to perform an act would result in serious harm to or physical restraint against any person; or
  - iii. The abuse or threatened abuse of law or legal process.
- e. “Commercial Sex Act” means any sex act as defined in subsection 3-11-1.1(g), for which anything of value is given or received by a person.
- f. “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. Course of conduct includes, in addition, all forms of communication, contact, conduct, or the sending of electronic communications. Constitutionally protected activity is not included within the meaning of course of conduct.
- g. “Covered Crimes” means:
- i. assault of tribal justice personnel
  - ii. child violence
  - iii. dating violence
  - iv. domestic violence
  - v. obstruction of justice
  - vi. sexual violence
  - vii. sex trafficking
  - viii. stalking
  - ix. violation of a protection order
- h. “Dating Violence” means any violation of the criminal law within the jurisdiction of the Three Affiliated Tribes that is committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
- i. “Domestic Violence” means any violation of the criminal law provided at section 3-24-8 of this chapter which is committed within the jurisdiction of the Three Affiliated Tribes by:
- i. a current or former spouse or intimate partner of the victim;
  - ii. a person with whom the victim shares a child in common;
  - iii. a person who is cohabitating with or who has cohabited with the victim as a spouse or intimate partner;
  - iv. a person similarly situated to a spouse, parent, child, or guardian of the victim; or

- v. a person who is cohabitating with or who has cohabitated with the victim as a parent, child, or guardian.
- j. “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 a 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.
- k. “Harass” means a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, harasses, or is detrimental to such person, and which 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 cause substantial emotional distress to the petitioner, or, when the course of conduct would cause a reasonable parent to fear for the well-being of his or her child.
- l. “Immediate family member” means a spouse, child (including by adoption), parent, sibling, domestic or service animals or any other person who regularly resides in the household with the victim and is related by blood or marriage.
- m. “Obstruction of Justice” means any violation of the criminal laws in the jurisdiction of the Three Affiliated Tribes which involves interfering with the administration or due process of the laws of the Three Affiliated Tribes, including any tribal criminal proceeding. For purposes of the Special Tribal Criminal Jurisdiction enforcement, the following non-exhaustive list of crimes shall constitute obstruction of justice:
  - i. Perjury - section 3-17-2
  - ii. False Swearing - section 3-17-3
  - iii. Unsworn Falsification to Authorities - section 3-17-4
  - iv. False Reports to Law Enforcement Authorities - section 3-17-6
  - v. Tampering with Witnesses and Informants - section 3-17-7
  - vi. Tampering with Jurors and Court Officers - section 3-17-8
  - vii. Tampering with or Fabricating Physical Evidence - section 3-17-9
  - viii. Obstructing Administration of Law-Contempt of Court - section 3-18-2 and
  - ix. Hindering Apprehension or Prosecution - section 3-18-4
- n. “Participating tribe” means an Indian tribe that elects to exercise Special Tribal Criminal Jurisdiction over the jurisdiction of that Indian tribe.
- o. “Protection Order” means:
  - i. Any injunction, restraining order, or other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person; and
  - ii. Includes any temporary or final order issued by a civil or criminal court, whether obtained by filing an independent action or as a pendente lite order in another 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.
- p. “Repeatedly” means a pattern of conduct consisting of two or more acts evidencing continuity of purpose. The term does not include constitutionally protected activity.
- q. “Sex Trafficking” means conduct within the meaning of U.S.C. Title 18, § 1591(a), and includes any amendments which may be added therein.
- r. “Sexual Violence” means any nonconsensual act or contact proscribed by the criminal law of the Three Affiliated Tribes including any case in which the victim lacks the capacity to consent to the act.
- s. “Special Tribal Criminal Jurisdiction” means the criminal jurisdiction that the Three Affiliated Tribes as a participating tribe may exercise under this chapter.

- t. “Spouse or Intimate Partner” means:
  - i. A spouse or former spouse of the abuser, a person who shares a child in common with the abuser, and a person who cohabits or has cohabited as a spouse with the abuser; or
  - ii. A person who is or has been in a social relationship of a romantic or intimate nature with the abuser, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the person involved in the relationship; or
  - iii. A spouse or former spouse of the target of the stalking, a person who shares a child in common with the target of the stalking, and a person who cohabits or has cohabited as a spouse with the target of the stalking; or
  - iv. A person who is or has been in a social relationship of a romantic or intimate nature with the target of the stalking, as determined by the length of the relationship, and the frequency of interaction between the person involved in the relationship; and
  - v. Any other person similarly situated to a spouse who is protected by the domestic or family violence laws of the State or tribal jurisdiction in which the injury occurred or where the victim resides.
- u. “Stalking” means engaging in a course of conduct directed at a specific person proscribed by the criminal law of the Three Affiliated Tribes where the violation which occurs would cause a reasonable person:
  - i. to fear for that person’s safety or the safety of others; or
  - ii. to suffer substantial emotional distress.
- v. “Violation of a Protection Order” means an act that:
  - i. Occurs within the jurisdiction of the Three Affiliated Tribes; and
  - ii. Violates a provision of the protection order that:
    - 1. Prohibits or provides protection against violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, the named protected person;
    - 2. Was issued against the defendant;
    - 3. Is enforceable by the Three Affiliated Tribes Court; and
    - 4. It affords full faith and credit to protection orders issued by another Tribe, State, or Territory and conforms to the due process rights consistent with Federal Criminal Code, Title 18 § 2265(b).

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3-24-4.1

**General Jurisdiction**

Notwithstanding any other provision of law, in addition to all powers of self-government recognized and affirmed by 25 U.S.C. § 1301 and § 1303, the powers of self-government, include the inherent power of the Three Affiliated Tribes, which is hereby recognized and affirmed, to exercise Special Tribal Criminal Jurisdiction over all persons.

- a. The exercise of Special Tribal Criminal Jurisdiction by Three Affiliated Tribes shall be concurrent with the jurisdiction of the United States, a State, or both when applicable.
- b. Nothing within this section:
  - i. Creates or eliminates any federal or state jurisdiction over Indian Country as provided by applicable law; or
  - ii. Affects the authority of the United States or any state government that has been delegated authority by the United States to investigate and prosecute a criminal violation in Indian Country.
- c. The Three Affiliated Tribes may exercise Special Tribal Criminal Jurisdiction over a non-Indian defendant for domestic violence, stalking, and any covered crime which occurs within the jurisdiction of the Three Affiliated Tribes.
- d. Exception if victim and defendant are both non-Indians:

- i. The Three Affiliated Tribes may not exercise Special Tribal Criminal Jurisdiction over an alleged offense, other than Obstruction of Justice or Assault of Tribal Justice Personnel, if neither the defendant nor the alleged victim is an Indian.
- ii. In this section and with respect to a criminal proceeding in which Three Affiliated Tribes exercises Special Tribal Criminal Jurisdiction based on a violation of a protection order, the term “victim” means a person specifically protected by a protection order that the defendant allegedly violated.

3-24-5 **Rights of Defendants**

3-24-5.1 In all criminal proceedings in which the Three Affiliated Tribes exercises Special Tribal Criminal Jurisdiction over a defendant, the Three Affiliated Tribes shall provide the defendant:

- a. The right to a trial by an impartial jury that is drawn from sources that:
  - i. Reflect a fair cross section of the community; and
  - ii. Does not systematically exclude any distinctive group in the community, including non-Indians;
- b. The right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution;
- c. At the expense of the Three Affiliated Tribes, provide an indigent defendant the assistance of a defense attorney licensed to practice law by any jurisdiction of the United States that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys;
- d. Require that the judge presiding over the criminal proceedings:
  - i. Has sufficient legal training to preside over criminal proceedings; and
  - ii. Is licensed to practice law by any jurisdiction in the United States;
- e. Prior to charging the defendant, make publicly available the criminal laws (including regulations and interpretative documents), rules of evidence, and rules of criminal procedure (including rules governing the recusal of judges in appropriate circumstances) of the Three Affiliated Tribes; and
- f. Maintain a record of the criminal proceedings, including an audio or other recording of the trial proceedings.

3-24-6 **Petitions to Stay Detention**

3-24-6.1 A person who has filed a petition for a writ of habeas corpus in a court of the United States under 25 U.S.C. § 1303 may petition that court to test the legality of his or her detention by order of the Three Affiliated Tribes and may petition the federal court to stay further detention pending the habeas proceeding.

3-24-6.2 A court shall grant a stay described in section 3-24-6 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.

3-24-7 **Petitions for Writs of Habeas Corpus**

3-24-7.1 After a defendant has been sentenced by the Three Affiliated Tribes, the defendant may file for a writ of habeas corpus in a court of the United States under 25 U.S.C. § 1303.

3-24-7.2 An application for a writ of habeas corpus on behalf of a person in custody pursuant to an order of the Three Affiliated Tribes Tribal Court shall not be granted unless:

- a. The applicant has exhausted all the remedies available in the Three Affiliated Tribes Tribal Court system;
- b. There is an absence of an available Three Affiliated Tribes Tribal Court corrective process; or
- c. Circumstances exist that render the Three Affiliated Tribes Tribal Court corrective process ineffective to protect the rights of the applicant.

3-24-7.3 When a person is ordered to detention by the Three Affiliated Tribes Tribal Court, the court has a duty to immediately notify in writing such person of their rights and privileges under this section and under 25 U.S.C. § 1303.

3-24-8 **Crime of Domestic Violence**

3-24-8.1 Any person is guilty of the offense of domestic violence if that person purposely or knowingly causes physical harm, bodily injury, sexual activity compelled by physical force or mental duress, assault, the infliction of fear of imminent physical harm or bodily injury, or assault, not committed in self-defense, if the actor is an individual identified in subsection 3-24-3.1(i).

3-24-8.2 Any person convicted of domestic violence shall be sentenced as follows:

- a. A first conviction shall be a Class 3 Misdemeanor;
- b. A second conviction shall be a Class 1 Misdemeanor; and
- c. A third or subsequent conviction shall be a Felony;
- d. An offender convicted of domestic violence, regardless of how many prior convictions the offender has, under this chapter, is required to undertake a counseling assessment with a focus on violence, controlling behavior, dangerousness, and chemical dependency. The offender must complete any treatment as determined by the outcome of the assessment. A copy of the incident report may be sent to the domestic violence counseling provider to assist in accurately assessing the offender's need for counseling and treatment. Counseling providers shall take all required precautions to safeguard confidentiality of the report. If the report contains information on victim's location and contact information (telephone, email, etc.), this information must be redacted prior to the report being sent to the domestic violence counseling provider.

3-24-9 **Crime of Dating Violence**

3-24-9.1 Any person is guilty of the offense of dating violence if that person purposely or knowingly causes physical harm, bodily injury, sexual activity compelled by physical force or mental duress, assault, the infliction of fear of imminent physical harm or bodily injury, or assault, not committed in self-defense, if the actor is an individual identified in subsection 3-24-3.1(t)(ii).

3-25-9.2 Any person convicted of Dating Violence shall be sentenced as follows:

- a. A first conviction shall be a Class 3 Misdemeanor;
- b. A second conviction shall be a Class 1 Misdemeanor; and
- c. A third or subsequent conviction shall be a Felony;
- d. An offender convicted of Dating Violence, regardless of how many prior convictions the offender has under this chapter, is required to undertake a counseling assessment with a focus on violence, controlling behavior, dangerousness, and chemical dependency. The offender must complete any treatment as determined by the outcome of the assessment. A copy of the incident report may be sent to the domestic violence counseling provider to assist in accurately assessing the offender's need for counseling and treatment. Counseling providers shall take all required precautions to safeguard confidentiality of the report. If the report contains information on victim's location and contact information (telephone, email, etc.), this information must be redacted prior to the report being sent to the domestic violence counseling provider.

3-24-10 **Stalking**

- 3-24-10.1 A person commits the crime of stalking if, without lawful authority:
- a. The actor engages in an intentional course of conduct directed at a specific person which frightens, intimidates, or harasses that person and which serves no legitimate purpose. The course of conduct may be directed toward that individual person or a member of that person's immediate family and must cause a reasonable person to experience fear, intimidation, or harassment; or
  - b. The unauthorized tracking of the person's movements or location through the use of global positioning system or other electronic means that would cause a reasonable person to be frightened, intimidated, or harassed and serves no legitimate purpose; and
  - c. The person being harassed or followed is placed in fear that the stalker intends to injure the person or an immediate family member. The feeling of fear must be one that a reasonable person in the same situation would experience under all circumstances.
- 3-24-10.2 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 frighten, intimidate, or harass the person. Contact includes, in addition to any other form of contact or communication, the sending of an electronic communication to the person.
- 3-24-10.3 For purposes of this section, "immediate family member" has the meaning provided in subsection 3-24-3.1(1).

3-24-11 **Defenses**

- 3-24-11.1 In any prosecution under section 3-24-10, it is not a defense to the crime of stalking:
- a. That the stalker was not given actual notice that the person did not want the stalker to contact or follow the person; or
  - b. That the stalker did not intend to frighten, intimidate, or harass the person.
- 3-24-11.2 It shall be a defense to the crime of stalking that the defendant is a licensed investigator or a law enforcement officer acting within his or her official capacity.
- 3-24-11.3 If a person claims to have been engaged in a constitutionally protected activity, the court shall determine the validity of the claim as a matter of law and, if found valid, shall exclude evidence of the protected activity.

3-24-12 **Classification for Penalty for Stalking**

- 3-24-12.1 Except as provided in subsection 3-24-12.2 below, a person who has been convicted of the crime of stalking another person is guilty of a Class 3 Misdemeanor.
- 3-24-12.2 A person who stalks another is guilty of a Class 1 Misdemeanor if any of the following apply:
- a. The stalker has previously been convicted by the Three Affiliated Tribes, any other tribe, or a state of any crime involving domestic violence as defined in section 3-24-8 or a crime having similar elements against the same victim or members of the victim's family or household;
  - b. The stalker violates any protective order protecting the person being stalked;
  - c. The stalker has previously been convicted of stalking another person;
  - d. The stalker was armed with a dangerous weapon as defined in subsection 3-20-1.1(a) while stalking the victim; or
  - e. The stalker's victim is a current, former, or prospective witness in an adjudicative proceeding, and the stalker the victim to retaliate against the victim as a result of the victim's testimony or potential testimony.

- 3-24-12.3 If the court determines that a person convicted of the offense of stalking under this section owns or possesses a firearm which was used in the commission of the stalking offense, the court may order the firearm be summarily forfeited and disposed of in accordance with the policy of the Three Affiliated Tribes police department.
- 3-24-13 **Violation of a Domestic Violence Protection Order**
- 3-24-13.1 A person commits the offense of violation of a domestic violence protection order, if the actor knowingly violates any provision of a domestic violence protection order issued pursuant to sections 3-24-14, 3-24-15, or recognized under section 3-24-16, of this chapter, and shall be sentenced as follows:
- a. A first or second conviction for violation of a domestic violence protection order, whether, ex parte, temporary, or permanent in nature, is a Class 1 Misdemeanor; and
  - b. A conviction for a third or subsequent offense of violation of a domestic violence protection order is punishable as a Felony offense.
- 3-24-14 **Domestic Violence Protection Order**
- 3-24-14.1 An action for a protection order is commenced by a verified application alleging the existence of domestic violence which may be brought in Three Affiliated Tribal Court by any person if the court determines that the relationship between that person and the alleged offender (respondent) is sufficient to warrant the issuance of a domestic violence protection order. An action may be brought under this section, regardless of whether a divorce action has been filed.
- 3-24-14.2 An application may be on a form provided by the court or in other form, but must at a minimum identify the respondent, allege that the applicant (petitioner) is in danger of abuse from the respondent and has been the victim of abuse committed by the respondent, and particularly describing the nature of the abuse and the dates of occurrence.
- 3-24-14.3 Upon receipt of the application, the court shall order a hearing to be held no later than fourteen (14) days from the date the application was filed unless extended pursuant to subsection 3-24-14.4, below.
- 3-24-14.4 Service shall be made upon the respondent not less than seven (7) days prior to the hearing. If service cannot be made, the court may set a new date. Proof of service shall be filed with the court after service is made and prior to the scheduled date of the hearing.
- 3-24-14.5 At any hearing regarding the issuance of a domestic violence protection order, every respondent has the right to be represented by an attorney at their own expense.
- 3-24-14.6 Upon the showing of actual or imminent domestic violence, the court may issue a domestic violence protection order after due notice and full hearing. The relief provided by the court may include any or all of the following:
- a. Restraining any party from having contact or communication, directly or indirectly (including by phone, mail, email, text messages, in person or through a third party) with the petitioner, the petitioner's children, or the petitioner's spouse or intimate partner;
  - b. Prohibiting the respondent from being within a specified distance from the petitioner, the petitioner's children, or the petitioner's spouse or intimate partner;
  - c. Restraining any party from threatening, molesting, injuring, or harassing any other person;
  - d. Excluding and/or prohibiting the respondent from a specified household, from the residence of another person against whom the domestic violence is occurring or from a domestic violence

- care facility, where the exclusion is necessary to the physical or mental well-being of the petitioner or others;
- e. Prohibiting the respondent from entering the petitioner's residence, school, business, or place of employment, or the children's school or daycare;
  - f. Awarding temporary custody and/or establishing temporary visitation rights and/or temporary child support with regard to children. The court may order that any such visitation may be supervised or otherwise restricted. In the event the court orders temporary child support, the court shall notify the Three Affiliated Tribes Child Support Enforcement Agency to assist in determining the amount of child support owed pursuant to the relevant guidelines of the Three Affiliated Tribes;
  - g. Recommending or requiring counseling with a domestic violence program or other agency that provides such counseling services which the court deems appropriate. The court may request a report from the relevant designated agency within a time period established by the court;
  - h. Awarding temporary use of personal property, including motor vehicles, to either party;
  - i. Requiring the respondent to surrender for safekeeping any firearm or other specified dangerous weapon, as defined in subsection 3-20-1.1(a), in the respondent's immediate possession or control or subject to the respondent's immediate control for the duration of the Domestic Violence Protection Order. The respondent shall surrender the firearm or other dangerous weapon to the Three Affiliated Tribes Chief of Police. If the firearm or other dangerous weapon is not surrendered, the law enforcement may arrest the respondent pursuant to section 3-24-13 of this chapter and take possession of the firearm or other dangerous weapon. Respondent must be informed that a violation of this firearms possession may subject Respondent to federal prosecution under Title 18, U.S.C. § 922(g)(8); and
  - j. Any other order the court deems necessary or appropriate to ensure the safety of the petitioner, petitioner's children, or petitioner's spouse or intimate partner.

3-24-15 **Temporary Ex Parte Protection Order**

- 3-24-15.1 Where an application under section 3-24-14, alleges an immediate and present danger of domestic violence to the applicant (petitioner) based upon an allegation of a recent incident of domestic violence or threat of domestic violence, the court, upon finding by a preponderance of the evidence that a petitioner is in immediate danger of domestic violence, may grant an ex parte temporary protection order, pending a full hearing, granting such relief as the court deems proper.
- 3-24-15.2 An ex parte temporary protection order may include any relief within the court's authority to provide under subsection 3-24-14.6.
- 3-24-15.3 An ex parte temporary protection order shall remain in effect, at the court's discretion, for not more than thirty (30) days. Unless otherwise terminated or amended by the court.
- 3-24-15.4 A full hearing as provided by section 3-24-14 shall be arranged not later than fourteen (14) days from the issuance of the temporary order. The respondent shall be served forthwith with a copy of the ex parte order along with a copy of the application and notice of the date set for hearing. If service cannot personally be made on the respondent within seven (7) days of issuance of an ex parte order, law enforcement shall mail a copy of the order, return receipt requested, to the last known address of the respondent. Proof of service shall be filed with the court.
- 3-24-15.5 The clerk of court shall transmit a copy of each temporary protection order, or extension, modification, or termination thereof, by the close of the business day in which the order was granted, to the law enforcement agency with jurisdiction over the residence of the petitioner or over the residence at which the actual domestic violence, which is the subject of the temporary protection order, has occurred, or is likely to occur if requested by the petitioner and approved by the court.

- 3-24-15.6 No filing fee shall be required for any individual petitioning for a temporary ex parte restraining order under this section.
- 3-24-16 **Domestication, Recognition and Enforcement of Foreign Protection Orders**
- 3-24-16.1 Pursuant to U.S.C., Title 18, § 2265, a domestic violence protection order issued by a court of competent jurisdiction shall be accorded full faith and credit by the Three Affiliated Tribes Tribal Court and enforced by the Three Affiliated Tribes law enforcement, provided that the foreign court which issued the protection order:
- a. Had jurisdiction over the parties and the matter; and
  - b. Reasonable notice and opportunity to be heard was given to the person against whom the protection order is sought, sufficient to protect that person's due process rights to the extent required under U.S.C., Title 18, § 2265.
- 3-24-16.2 Ex parte foreign protection orders are not eligible for enforcement under this section unless notice and opportunity to be heard had been provided within the time required by the foreign jurisdiction's law, and in any event within a reasonable time after the protection order was issued, sufficient to protect that person's due process rights.
- 3-24-16.3 A foreign protection order issued by a state or tribal court against one who has petitioned, filed a complaint, (cross or counter petitioned) or otherwise filed a written pleading for protection against abuse by a spouse or intimate partner is not entitled to full faith and credit recognition if:
- a. No cross or counter petition, complaint, or other written pleading was filed seeking such protection order; or
  - b. A cross or counter petition has been filed and the foreign court did not make specific findings that each party was entitled to such an order.
- 3-24-16.4 Neither residence on the Fort Berthold Indian Reservation nor registration of the foreign protection order shall be required for enforcement of the protection order by local law enforcement, and the failure to register shall not be an impediment to its enforcement.
- 3-24-16.5 The following domestication procedure shall be available to protected persons who hold protection orders from a court of a foreign jurisdiction:
- a. A protected person shall file a certified copy of the foreign protection order with the court. However, nothing in this section shall operate to preclude the enforcement of any foreign protection order determined by the law enforcement officer to be valid even if the protected person does not have a certified copy of the foreign protection order filed with the court.
  - b. At the hearing to recognize the foreign protection order, the protected person must swear by affidavit, that to the best of the protected person's knowledge and belief, that attached certified copy of the foreign protection order is currently in effect as written and has not been superseded by any other order and the respondent has been provided a copy of the protection order.
  - c. After the court issues an order of recognition of the foreign protection order, the court shall provide the local law enforcement a copy of the certified copy of the foreign protection order and law enforcement shall register the foreign protection order in its internal database, noting that it is a valid foreign protection order subject to enforcement in the Three Affiliated Tribes jurisdiction.
  - d. The court shall not notify or require notification to the party against whom the foreign protection order has been issued that the foreign protection order has been registered or filed in the Three Affiliated Tribe jurisdiction unless requested to do so by the protected party.
  - e. Neither the court nor the law enforcement shall make available publicly on the internet any information regarding the registration, filing of a petition for, or issuance of protection order,

restraining order, or injunction in either the issuing jurisdiction or the enforcing jurisdiction, if such publication would be to publicly reveal the identity or location of the party protected under such order. The Three Affiliated Tribes Tribal Court and Law Enforcement agency may share court-generated, and law enforcement-generated information contained in secure, governmental registries for protection order enforcement purposes.

- f. For purposes of this section, the court shall have full civil jurisdiction to issue and enforce protection orders involving any person, including the authority to enforce any orders through civil contempt proceedings, to exclude violators from Indian land within the exterior boundaries of the Fort Berthold reservation, and to use other appropriate mechanisms, in matters arising anywhere within the jurisdiction of the Three Affiliated Tribes or otherwise within the full authority of the Three Affiliated Tribes.

3-24-16.6 Law enforcement officers shall enforce foreign protection orders as if they were entered by the court. Upon presentation of a foreign protection order by a protected person, a law enforcement officer shall assist in enforcement of all its terms, as written in the foreign protection order.

3-24-17 **Mandatory Arrest**

3-24-17.1 If a law enforcement officer has probable cause to believe a person has either committed an offense of domestic violence or violated a domestic violence protection order pursuant to this chapter, whether the offense or violation was committed within or outside the presence of the officer, the law enforcement officer shall arrest and take into custody the alleged offender. An arrest under this section should be made as soon as possible after probable cause has been formed in order to ensure the safety of the victim.

3-24-17.2 When a law enforcement officer receives a complaint of domestic violence from two (2) opposing persons that have assaulted each other, the officer shall at a minimum arrest the person believed to have been the primary aggressor. In making this determination, and in determining whether the non-primary aggressor should also be arrested, the officer shall make every reasonable effort to consider:

- a. The comparative extent of the injuries inflicted;
- b. If threats or intimidation tactics were used, including consideration of who made the threats creating fear of bodily injury;
- c. The history of domestic abuse between the persons involved or prior complaints from the same residence, considering who made them and what was alleged;
- d. The likelihood of future injury to each person; and
- e. Whether one person was acting in self-defense.

3-24-17.3 A law enforcement officer shall always use professional methods. An officer shall not base an arrest decision solely on the request of a victim to do so or on the officer's perception of the willingness of a victim or witness to testify or otherwise participate in a judicial proceeding. When an officer has probable cause to make an arrest under this chapter, the officer shall make such an arrest regardless of the victim's contrary declarations, however, those declarations should be noted in the officer's report.

3-24-17.4 Whenever a law enforcement officer is called to the scene of a reported incident of domestic violence, or otherwise receives information that an incident of domestic violence has occurred, and either does not make an arrest or arrests more than one (1) person for domestic violence in connection with the same incident, the officer shall file a written report with his supervisor, setting forth the reason or reasons for the decision to arrest or not arrest.

- 3-24-17.5 Incident to arrest under this chapter, a law enforcement officer shall seize any and all weapons alleged to have been involved in the crime, or which are in plain view of the officer or discovered pursuant to a legal search, including a search conducted pursuant to a warrant, a safety pat-down search, or consensual search, or a search incident to arrest.
- 3-24-18 **Mandatory Hold**
- 3-24-18.1 Any person arrested under this chapter shall be held without bail, in the custody of the police department, for a period not to exceed seventy-two (72) hours as a mandatory “cooling off” period.
- 3-24-19 **Bail**
- 3-24-19.1 When a person arrested for domestic violence is subsequently released, in any bail conditions set by the court, regardless of whether a domestic violence protection order has been petitioned for by the victim, and unless extraordinary circumstances require otherwise, the court shall issue a no-contact order between the parties. The protected party, law enforcement, and the defendant shall be provided a certified copy of any no-contact order issued under this section. A no-contact order may not be vacated without notice to the protected party and the tribal prosecutor with a hearing on the need to vacate the no-contact order.
- 3-24-19.2 Any person released on bail under this chapter, whose release is revoked for violation of a bond condition prohibiting or restricting contact with the victim, shall thereafter not be entitled to pre-trial release under any conditions. A violation of any such condition may be treated separately and independently from any other potential charge for violation of an order issued under this chapter.
- 3-24-20 **Filing of Complaint**
- 3-24-20.1 The law enforcement officer making an arrest under this chapter shall sign a complaint against the alleged offender on behalf of the Three Affiliated Tribes.
- 3-24-20.2 The complaint along with the arrest report inclusive of any statements of the victim and names of witnesses shall be provided to the tribal prosecutor who shall determine if sufficient evidence is available to pursue prosecution.
- 3-24-20.3 The tribal prosecutor may file a complaint for violation of any offense listed under this chapter upon receipt of an affidavit or statement from the victim of the offense.
- 3-24-21 **Victim’s Rights**
- 3-24-21.1 To the greatest extent possible, pursuant to the Three Affiliated Tribes Law and Order Code and the tribal court procedures, a victim of an offense charged under this chapter has the following rights:
- a. To be treated with fairness, respect, and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal justice process;
  - b. To be informed when the accused or convicted person is released from custody or has escaped;
  - c. To be present at and to be informed of all criminal proceedings where the defendant has the right to be present;
  - d. To be heard at any proceeding involving a post-arrest release decision, negotiated plea bargaining agreement or sentencing;
  - e. To refuse a pretrial interview or deposition request by the defendant, the defendant’s attorney, or any other person acting on behalf of the defendant;
  - f. To confer with the prosecution, upon request, before or after the charge against the defendant is filed, before trial or before any disposition of the case and to be informed of the disposition;
  - g. To read police reports related to the crime involving the victim when they are available;

- h. To receive prompt restitution from the person or persons convicted of the criminal conduct that caused the victim's loss or injury;
- i. To be heard, upon request, at any proceeding when any post-conviction release from confinement is being considered;
- j. To a speedy trial or disposition and prompt and final conclusion of the case after the conviction and sentence;
- k. To have rules of criminal procedure and rules of evidence that protect victims' rights and that are subject to Tribal Council amendment; and
- l. To be informed of victims' rights.
- m. The rights that are established by and enumerated in this chapter arise on the arrest or formal charging of the person or persons who is alleged to be responsible for a criminal offense against a victim. The rights and duties continue to be enforceable pursuant to these charges, all post-conviction release and relief proceedings and the discharge of all criminal proceedings relating to restitution. If a defendant is ordered to pay restitution to a victim, the rights and duties continue to be enforceable until restitution is paid or a criminal restitution is ordered or entered in favor of the victim.
- n. If a defendant's conviction is reversed and the case is returned to the trial court for further proceedings, the victim has the same rights that were applicable to the criminal proceedings that led to the appeal or other post-conviction relief proceedings.
- o. After the final termination of a criminal prosecution by dismissal with prejudice or acquittal, a person who has received notice and the right to be present and heard pursuant to the victims' rights stated in this chapter is no longer entitled to such rights.
- p. It is at the victim's discretion to exercise his/her rights to be present and heard at the court proceedings, and the absence of the victim does not preclude the court from proceeding with the hearing or trial.
- q. A victim's right to be heard may be exercised, at the victim's discretion, through an oral statement or submission of a written statement.
- r. Upon the request of the victim and after consultation with the prosecutor, law enforcement shall return to the victim any property belonging to the victim that was taken during the course of the investigation or shall inform the victim of the reasons why the property will not be returned. Law enforcement shall make reasonable efforts to return the property to the victim as soon as possible. If the victim's property has been admitted as evidence during a trial or hearing, the court may order its release to the victim if a photograph can be substituted. If evidence is released pursuant to this subsection, the defendant or the defendant's attorney or investigator may inspect and independently photograph the evidence before it is released.
- s. A victim advocate shall not disclose as a witness or otherwise disclose any communication, except compensation or restitution information, between himself and the victim, unless the victim consents in writing to the disclosure.
- t. Communication between a victim and victim advocate is not privileged if the victim advocate knows that the victim will give or has given perjured testimony or if the communication contains exculpatory material. The victim advocate must disclose such information to the prosecutor.
- u. Before, during and immediately after any court proceedings, the court shall provide appropriate safeguards to ensure the safety and comfort of the victim and all parties involved.
- v. Unless the victim consents, the victim shall not be compelled to submit to a pre-trial interview that is conducted by the defendant, the defendant's attorney, or an agent of the defendant.
  - i. The defendant, the defendant's attorney or an agent of the defendant shall only initiate contact with the victim through the prosecutor's office. The prosecutor's office shall promptly inform the victim of the defendant's request for an interview and shall advise the victim of the victim's right to refuse the interview.

- ii. The victim has the right to terminate the interview at any time and to refuse to answer questions during the interview. The prosecutor has standing, at the request of the victim, to protect the victim from harassment, intimidation or abuse and may seek any appropriate protective court order.
- iii. If the defendant or the defendant's attorney comments at trial on the victim's refusal to be interviewed, the court shall instruct the jury that the victim has the right to refuse an interview.
- w. The victim has the right at any court proceeding to not testify regarding the victim's addresses, telephone numbers, place of employment or other locating information unless the victim consents or the court orders disclosure after a finding that a compelling need for the information exists. Any court proceeding where such information might be disclosed shall be in chambers.

3-24-22 **Persons Required to Report**

3-24-22.1 The following individuals, having knowledge or reasonable cause to believe that a person coming before him in his professional or official capacity is a victim of domestic violence, or is in imminent danger of being victim of domestic violence, shall report the circumstances to the local law enforcement:

- a. Any physician, physician's assistant, psychologist, psychiatrist, mental health counselor, nurse, nurse's aide, nurse practitioner, midwife, dentist, dental assistance, hygienist, optometrist, any medical or mental health professional, school principal, school teacher, other school official, social worker, child day care center worker or other child care staff, foster parents, residential care or institutional personnel, peace officer or other law enforcement official, judge or attorney (if not prevented by the attorney client privilege), probation staff, clerk of court, other judicial system official, personnel of a domestic violence program or personnel of a domestic violence shelter care facility.

3-24-22.2 All persons required to report cases of known or suspected domestic abuse shall immediately provide a written statement to the local law enforcement agency.

3-24-22.3 Any person subject to mandatory reporting under this section who fails, neglects, or refuses to report acts of domestic violence may, after notice and hearing, shall be assessed a civil penalty in an amount not to exceed five hundred (500) dollars.

3-24-23 **Protection of Domestic Violence Advocate**

3-24-23.1 It shall be a Class 3 Misdemeanor for any person to commit any of the following acts against an employee or volunteer of a domestic violence program:

- a. To harass, annoy, intimidate, or make any written or verbal threats to a domestic violence advocate for the purpose of interfering with the right of any victim of domestic violence to obtain a civil order for protection or pursue criminal charges against a perpetrator of domestic violence; or
- b. To harass, annoy, intimidate, or make any written or verbal threats to a domestic violence advocate which places the advocate in apprehension of bodily injury, in retaliation for the advocate's representation of a domestic violence victim.

3-24-24 **Immunity from Liability**

3-24-24.1 Any person, other than the alleged offender, who participates in good faith in making a report, assists in an investigation or provides preventive or remedial services with respect to domestic violence, is immune from any civil or criminal liability that might otherwise result from those actions.

3-24-24.2 All law enforcement officer shall not be held liable in civil action for an arrest based on probable cause or enforcement in good faith of a court order or any other action or omission in good faith under this chapter arising from an alleged incident of domestic violence brought by any party to an incident.

3-24-25 **Rights and Required Procedures.**

3-24-25.1 Notwithstanding any other provision of tribal law, the requirements and rights set forth in this section shall be ensured in addition to, or shall supersede, any inconsistent provisions set forth in Titles I and III to ensure compliance with the Special Tribal Criminal Jurisdiction (25 U.S.C. § 1304):

- a. Any individual charged with an offense under this chapter shall:
  - i. Be entitled to those rights enumerated in the Indian Civil Rights Act, 25 U.S.C. § 1302.
  - ii. Be entitled to a trial by an impartial jury as provided in Title 1, Chapter 2, § 1-2-1.2 of the Three Affiliated Tribes Tribal Code.
  - iii. Be entitled to the effective assistance of counsel, at least equal to that guaranteed by the United States Constitution, and, for any indigent defendant, through the appointment of a free, public defender qualified and retained by the tribe; and
  - iv. Be instructed by the judge presiding over their case, at the defendant's initial appearance before the court, of their rights, including any rights provided under 25 U.S.C. § 1304(e) and the right to habeas corpus petitions.
- b. Any case brought against a defendant under this chapter shall conform to the following standards and requirements:
  - i. Any case brought under this chapter shall be presided over by a law-trained judge licensed to practice law in any jurisdiction in the United States, including a tribe, and who possesses sufficient legal training to preside over criminal proceedings. To the extent a law-trained judge, qualified to preside over such case under this subsection, who is regularly employed by the tribe is unable to preside over the case, a law-trained and qualified special judge shall be appointed; and
  - ii. All proceedings occurring on the record in any case brought under this chapter shall be recorded in a manner that preserves the words spoken in the proceedings, with a copy of any and all such recordings available upon request and payment of any reasonable fee for production of the copy, provided that such fee may be waived for an indigent defendant at the discretion of the court.

3-24-26 **Savings and Severability**

3-24-26.1 Enactment of this chapter shall not affect the prosecution for any offense, the sentencing for that offense or the recovery of any penalty or forfeiture pending at the time this chapter was enacted. To the extent any provision or section of this chapter is repealed, no prosecution for any offense, or the recovery of any penalty or forfeiture, pending at the time the section or provision is repealed, or any judgment imposed by the court, whether such repeal be express or implied, shall be affected by such repeal, unless a contrary intention is expressly declared in the repealing act.

3-24-26.2 To the extent any section or provision of this chapter is held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining parts of this chapter, and the Tribal Council hereby declares it would have enacted the remaining parts of this chapter even if it had known such part or parts would be declared invalid.