



**BOIS FORTE BAND OF CHIPPEWA  
TRIBAL CODE**

**TITLE 12  
DOMESTIC VIOLENCE**

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## BOIS FORTE TRIBAL CODE

### PREAMBLE

The purpose of the Bois Forte Tribal Code (BFTC) is to, whenever possible, restore Minobimaadiziwin (the Good Path of Life) to all persons it serves by providing a progressive, non-judgmental path to health and forgiveness, in accordance with the community's traditional practices and values. First and foremost, the Bois Forte Tribal Court shall be guided by the seven defining Anishinabe teachings or core values:

1. *Nibwaakaawin* — Wisdom;
2. *Zaagi'idiwin* — Love;
3. *Minaadendamowin* — Respect;
4. *Zoongide'ewin* — Bravery;
5. *Gwayakwaadiziwin* — Honesty;
6. *Dabaadendiziwin* — Humility; and
7. *Debwewin* — Truth.

*Accordingly, the Bois Forte Tribal Court's focus in all decisions shall be on the impact it will have seven generations in the future.* If necessary, the presiding Judge may consult a community spiritual leader or elder for guidance when endeavoring to adhere to these principles and the Bois Forte Reservation Council may enact a resolution designating appropriate spiritual leaders or elders available for such consultation.

**TITLE 12  
DOMESTIC VIOLENCE**

**CHAPTER 1 – POLICY AND JURISDICTION**

**12.1.1. Purpose.**

The purpose of this Title is to recognize Domestic Violence as severe crimes against society, the Band, and the family, and to assure the victim of Domestic Violence the maximum protections from further abuse that the law, and those who enforce it, can provide. It is the intent of the Band’s Reservation Tribal Council that the official response to Domestic Violence is to enforce the law to protect the victim and to hold the defendant accountable, which communicates the Band’s policy that violent behavior against intimate partners is not excused or tolerated. Rather, the Band values and seeks to nurture nonviolence and respect within families. This Title shall be interpreted and applied to give it the broadest possible scope to give effect to its purpose.

**12.1.2. General Jurisdiction.**

The Band’s criminal jurisdiction shall be exercised pursuant to Titles 5 and 6 of the Bois Forte Tribal Code, Crimes and Offenses. The Band has full civil regulatory and adjudicatory jurisdiction, as recognized and affirmed in 18 U.S.C. § 2265<sup>1</sup> and 25 U.S.C. § 1304,<sup>2</sup> to issue and enforce civil protection orders involving any person, including the violation of such orders alleged to have occurred outside the boundaries of the Reservation where such orders are entitled to recognition outside the Reservation as a matter of full faith and credit.

**12.1.3. Definitions.**

- (a) **“Arrest data”** means the data created or collected by a law enforcement agency that document any actions taken by them to cite, arrest or incarcerate a defendant, including:
- (1) time, date and place of action;
  - (2) the charge, arrest or search warrants, or other legal basis for the action;
  - (3) the identities of the agencies and individual persons taking the action;
  - (4) whether and where the defendant is being held in custody or is being incarcerated;
  - (5) the date, time and legal basis for any transfer of custody and the identity of the

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<sup>1</sup> The Violence Against Women Reauthorization Act (VAWA) requires states, tribes and territories to give full faith and credit to protection orders issued by other jurisdictions. Full faith and credit means that jurisdictions must enforce criminal and civil protection orders issued in other states, tribes and territories.

<sup>2</sup> VAWA is codified at 25 U.S.C. § 1304, and “recogniz[es] and affirms” tribes’ “inherent power...to exercise special Tribal criminal jurisdiction over all persons”—including non-Indians.

agency that received custody; and

- (6) the date, time and legal basis for any release from custody or incarceration.
- (b) **“Bodily injury”** means any act, except one done in self-defense, which results in physical injury or sexual abuse.
- (c) **“Emergency”** means a condition or circumstance in which any individual is, or reasonably believes themselves to be, in imminent danger of Domestic Violence or in which property is or is reasonably believed by the individual to be, in imminent danger of damage or destruction.
- (d) **“Domestic violence”** means the commission of any one of the following crimes where the defendant is or was a family or household member or dating partner:
- (1) Any violation of the Band’s criminal law that constitutes an offense under Section 5.2.2(d), including, without limitation, the following offenses identified in Title 6: 6.2.12. (Abduction); 6.3.2 (Criminal Sexual Conduct); 6.3.3 (Sexual Assault); 6.3.9 (Prostitution and Sex Trafficking); 6.2.1 (Simple Assault); 6.2.2 (Aggravated Assault – Substantial Bodily Harm); 6.2.3 (Aggravated Assault – Dangerous Weapon); 6.2.4 (Aggravated Assault – Dangerous Weapon; Substantial Bodily Harm); 6.2.5 (Assault – Strangulation); 6.2.6 (Assault – Great Bodily Harm); 6.2.9 (Stalking); 6.2.15 (Harassment); 6.2.16 (Abuse of an Elder or Vulnerable Adult); 6.9.2 (Arson); or 6.2.11 (Robbery), or any other crimes of violence as defined by 18 U.S.C. § 16.
  - (2) Physically harming, attempting to physically harm, or placing the victim in reasonable fear of physical harm to himself or herself. Reasonable fear may be produced by behavior which induces fear in the victim, including harassment, stalking, destruction of property, controlling the victim’s conduct by threat of force, or physical harm or threat of harm or bodily injury to members of the victim’s family or household member or household pets; and/or
  - (3) Preventing a victim from accessing victim or social services or interfering with an emergency call (911, emergency medical or ambulance services, or any call for assistance from a police or fire department, or for other assistance needed in an emergency to avoid harm to person or property; and includes any method of communication).
- (e) **“Domestic violence protection order”** means a temporary or permanent court order related to Domestic Violence, harassment, and/or sexual abuse, issued for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with, or physical proximity to another person. Protection order includes any temporary or final order issued in the civil or criminal context, whether obtained by filing an independent action or as an order awaiting further litigation in another proceeding, provided the order was issued in response to an application,

complaint, petition, or motion filed by or on behalf of a person seeking protection.

(f) **“Bois Forte Victim Services”** means the agency established by the Bois Forte Band of Chippewa to provide services to victims of Domestic Violence, sexual assault, and stalking under the Band’s jurisdiction, including, but not limited to:

- (1) Counseling, crisis intervention, emergency shelter, advocacy, protection orders, court accompaniment, transportation, relocation and other similar services that incorporate traditional beliefs and cultural practices and utilize tribal elders to improve the health and safety of victims and their dependents; and
- (2) Referrals to other agencies that provide housing, counseling, advocacy, medical treatment, legal services or other similar services to victims and their dependents.

(g) **“Family or household member or dating partner”** means:

- (1) Current or former spouses or intimate partners;
- (2) Parents, guardian, step-parent and children;
- (3) Persons related to the victim by blood, marriage, or adoption: brother, sister, stepbrother, stepsister, first cousin, aunt, uncle, nephew, niece, grandparent, great-grandparent, great-uncle, great-aunt;
- (4) Persons who are presently residing together or who have resided together in the past;
- (5) Persons who have a child in common regardless of whether they have been married or have lived together at any time;
- (6) 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;
- (7) Persons involved in a significant romantic, dating, or sexual relationship; or
- (8) Persons who are or have been in a social relationship of a romantic nature, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

A person’s gender or sexual orientation shall not be relied upon to determine whether that person is a family or household member.

(h) **“Indian Country”** shall mean the definition given in 18 U.S.C. § 1151.<sup>3</sup>

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<sup>3</sup> “Except as otherwise provided in sections 1154 and 1156 of [Title 18], the term “Indian country” . . . means (a) all land within the limits of any Indian reservation under the jurisdiction of the United

- (i) **“Law enforcement officer”** means any person employed or commissioned as a police officer of law enforcement officer by a government entity or law enforcement agency with the authority to make arrests on the Reservation.
- (j) **“No contact order”** means an order issued by the Tribal Court against a defendant in a criminal proceeding for a Domestic Violence offense, violation of a Domestic Violence protection order or violation of a prior no contact order, or order issued in conjunction with, or included within, bond or bail conditions for an individual charged with an offense under this Title or Titles 5 and 6 of the Bois Forte Tribal Code, Crimes and Offenses, that either prohibits or restricts such an individual’s contact with the protected party named in the order. A no contact order may be imposed independently by the Tribal Court as a pretrial order before final disposition of the underlying criminal case or as a probationary order upon final disposition. A no contact order is independent of any condition of release or probation imposed on a defendant. A no contact order may be issued in addition to a similar restriction imposed as a condition of release or probation. In the context of a probationary order, a no contact order may be issued for a Domestic Violence offense or for a conviction or entry of a guilty plea or other disposition for any criminal offense arising out of the same set of circumstances as a Domestic Violence offense.
- (k) **“Non-member Indian”** means a member of a federally recognized tribe other than the Band, but residing within the Band’s Reservation.
- (l) **“Position of authority”** means includes but is not limited to any person who is a parent or acting in the place of a parent and charged with any of a parent's rights, duties or responsibilities to a child, or a person who is charged with any duty or responsibility for the health, welfare, or supervision of a child, either independently or through another, no matter how brief, at the time of the act.
- (m) **“Probable cause”** for arrest means that the law enforcement officer, acting as a person of reasonable caution, has reasonable grounds to believe that the person to be arrested has committed a crime as defined by this Title, 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.
- (n) **“Reservation”** means the Indian Country of the Bois Forte Band of Chippewa.
- (o) **“Sexual abuse”** means the subjection of a child by a person responsible for the child’s

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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, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.” 18 U.S.C. § 1151.

care by a person who has a significant relationship to the child, or by a person in a position of authority, to any act which constitutes a crime or offense as defined in Sections 6.3.2 through 6.3.9 of Title 6 of the Bois Forte Tribal Code, Crimes and Offenses.

- (p) “**Victim**” means any person who incurs physical harm, bodily injury, or assault, or an act of threatened violence that constitutes fear of imminent physical harm, bodily injury or assault, including, but not limited to, fear of physical harm by stalking, threatening or harassing acts, as a result of a crime of Domestic Violence.

## CHAPTER 2 – CRIMINAL ACTIONS AND PENALTIES

### 12.2.1. Domestic Violence.

- (a) **Prohibited Acts.** A person who does any act of Domestic Violence commits the crime of Domestic Violence.
- (b) **Penalties.** For purposes of this Title 12, punishment for the crime of Domestic Violence is divided into the following three (3) classes, and each class is subject to the following penalties:
- (1) Felony, for which a maximum penalty of incarceration for three (3) years, a fine of up to \$15,000, or both, may be imposed.
  - (2) Class 1 Misdemeanor, for which a maximum penalty of incarceration for one (1) year, a fine of up to \$5,000, or both, may be imposed.
  - (3) Class 2 Misdemeanor, for which a maximum penalty of incarceration for six (6) months, a fine of up to \$1,000, or both, may be imposed.
- (c) **Sentencing.** Upon conviction of or entry of a plea to a crime of Domestic Violence, the Tribal Court may sentence the defendant to the extent authorized by law as follows:
- (1) **First Conviction.** Except for a crime classified as a Felony or Class 1 Misdemeanor, a person who commits Domestic Violence for the first time and pleads guilty to or is convicted of the offense is guilty of a Class 2 Misdemeanor and shall be sentenced accordingly.
  - (2) **Second Conviction.** Except for a crime classified as a Felony, a person who commits a second act of Domestic Violence within five (5) years of the first act, and pleads guilty to or is convicted of the second offense, is guilty of a Class 1 Misdemeanor and shall be sentenced accordingly.
  - (3) **Third or Subsequent Conviction.** A person who commits a third or subsequent act of Domestic Violence within five (5) years of the second offense, and pleads guilty to or is convicted of the third or subsequent offense, is guilty of a Felony and

shall be sentenced accordingly.

- (4) **Sentencing Limitations and Enhancements.** Where the current offense of Domestic Violence is classified as a Felony or Class 1 Misdemeanor and the defendant has a prior conviction of or entry of guilty plea to Domestic Violence within five (5) years of the prior conviction of or entry of plea of guilty to a Domestic Violence offense, the Tribal Court shall impose the maximum penalty of incarceration authorized by law without probation.
- (5) **Habitual Offender.** In the event a defendant charged with a crime of Domestic Violence has plea bargained to a lesser offense, the underlying factual basis of which has been found by the court on the record to include an act of Domestic Violence, and that defendant has two (2) times been previously convicted or plead guilty within five (5) years of the current charge, upon charges separately brought and tried and arising out of separate and distinct criminal episodes, of a felony or misdemeanor offense, the underlying factual basis of which was found by the court on the record to include an act of Domestic Violence, the Tribal Court shall adjudge the defendant a habitual Domestic Violence offender, and such person shall be convicted of a Felony. If the defendant is adjudged a habitual Domestic Violence offender, the Tribal Court shall sentence the defendant to the maximum penalty of incarceration permitted by law without probation.
- (6) **Additional Penalties.** The court may require a person who pleads guilty to or is convicted of Domestic Violence, regardless of how many prior guilty pleas or convictions the person has under this Title, to pay for and complete a counseling assessment with a focus on violence, controlling behavior, chemical dependency, and any other subject the Court deems appropriate. Upon any conviction of or plea of guilty to Domestic Violence, the Court may also assess reasonable costs against the defendant in accordance with Section 5.1.9(f), of the Bois Forte Tribal Code, Crimes and Offenses.

(d) **Multiple Sentences.**

- (1) When separate sentences of incarceration are imposed upon a defendant upon entry of a plea of guilty or conviction of two or more crimes under any criminal provisions of the Bois Forte Tribal Code, whether charged in a single complaint or separately, or when a person who is under sentence of incarceration under the Band's jurisdiction is being sentenced to incarceration for another crime committed prior to or while subject to such former sentence, the Tribal Court in the later sentences shall specify whether the sentences shall run concurrently or consecutively. If the Tribal Court does not so specify, the sentences shall run concurrently.
- (2) If the Tribal Court specifies that the sentence shall run consecutively, the total of all sentences shall not exceed three (3) years.

### 12.2.2. Violation of a No Contact Order.

- (a) **Prohibited Acts.** A person who knowingly violates a no contact order commits violation of a no contact order.
- (b) **Penalties.**
  - (1) **First Offense.** A person who commits violation of a no contact order is guilty of a Class 2 Misdemeanor and, upon a first conviction or entry of a plea of guilty, shall be sentenced accordingly.
  - (2) **Second or Subsequent Offense.** A person who receives a second or subsequent conviction for committing violation of a no contact order is guilty of a Class 1 Misdemeanor and, upon conviction or entry of a plea of guilty, shall be sentenced accordingly.
- (c) **Consent is Not a Defense.** The victim's consent to contact with the defendant is not a defense to a charge of violating a no contact order.
- (d) **Charges May Not be Reduced.** The charge of violation of a no contact order shall not be reduced to a lesser charge or offense.
- (e) **No Contact Order as a Condition of Release from Detention.** If a no contact order is imposed independently by the Tribal Court as a condition of release from detention, it will remain in effect until a defendant is convicted or enters a guilty plea or is acquitted of the Domestic Violence crime or the charge is dismissed.
- (f) **No Contact Order Issued by Court Either as a Pre-trial Order or Probationary Order.** Once a no contact order has been issued by the Tribal Court as a pre-trial order or as a probationary order, the defendant must petition the Tribal Court in order for a no contact order to be lifted. In the Tribal Court's sole discretion, the no contact order may be lifted or modified after consideration of factors including, but not limited to: time since the alleged offense, prior criminal record, the wishes of the victim, and counseling or psychological evaluations the defendant has had since the offense.

### 12.2.3. Violation of a Domestic Violence Protection Order.

- (a) **Prohibited Acts.** A person who knowingly violates any Domestic Violence protection order commits violation of a Domestic Violence protection order.
- (b) **Penalties.**
  - (1) **First Offense.** A person who commits a violation of a Domestic Violence protection order is guilty of a Class 2 Misdemeanor and, upon a first conviction or entry of a plea of guilty, shall be sentenced accordingly.

- (2) **Second or Subsequent Offense.** A person who receives a second or subsequent conviction for committing violation of a Domestic Violence protection order is guilty of a Class 1 Misdemeanor and, upon conviction or entry of a plea of guilty, shall be sentenced accordingly.
- (c) **Consent is Not a Defense.** The victim's consent to contact with the defendant is not a defense to the charge of violating a Domestic Violence protection order.
- (d) **Charges May Not be Reduced.** The charge of violation of a Domestic Violence protection order shall not be reduced to a lesser charge or offense.

### **CHAPTER 3 – POWERS AND DUTIES OF LAW ENFORCEMENT**

#### **12.3.1. Duties to Victims.**

- (a) A law enforcement officer who responds to an allegation of Domestic Violence shall use all reasonable means to protect the victim and any family or household member, and prevent further violence, including, but not limited to:
  - (1) Taking necessary actions to provide for the safety of the victim and any family or household member or witness;
  - (2) Arresting the alleged defendant or primary aggressor, if the law enforcement officer finds probable cause to believe that an act of Domestic Violence was committed;
  - (3) Transporting or obtaining for transportation for the victim, and any child or other person present at the location at the time of the incident, to shelter;
  - (4) Assisting the victim in removing essential personal effects, at the victim's request;
  - (5) Assisting the victim and any child in obtaining medical treatment, including obtaining transportation to a medical facility; and
  - (6) Confiscating any weapon as provided within this Title.
- (b) When a law enforcement officer responds to a Domestic Violence call, the officer shall advise victims of all reasonable means to prevent further abuse, including advising victims of the services provided by Bois Forte Victim Services and giving each victim immediate written notice of the rights of victims described in Section 12.5.1.

#### **12.3.2. Protecting Evidence.**

- (a) All law enforcement officers who investigate an allegation of Domestic Violence, whether or not an arrest is made, shall make a detailed written police report of the alleged abuse and submit it to the prosecutor within 48 hours of the reported incident.

- (b) All law enforcement officers who respond to an allegation of a crime involving Domestic Violence shall take reasonable steps to collect and record sufficient evidence to enable the prosecutor to secure a conviction of the defendant without the testimony of any victim. Reasonable steps include:
- (1) photographing injuries to any victim, any damage to property and the location, and the location and surroundings of the alleged incident;
  - (2) taking follow-up photographs of victim within 48 hours after the physical abuse and note any changes to injuries;
  - (3) describing strangulation attempts, noting whether hands or a ligature device was used and the force of the attempt (including details regarding loss of consciousness, hoarse or raspy voice as a result of the injuries, or indication of petechiae);
  - (4) describing both the physical and emotional condition of the victim in detail;
  - (5) interviewing or re-interviewing the victim, witnesses and defendant, as necessary;
  - (6) noting the identity of the witnesses to the incident and determining what they observed;
  - (7) identifying all persons present at the location at the time of the incident, including children, whether or not they witnessed the incident;
  - (8) recording any oral comments;
  - (9) gathering a history of the relationship and duration, including past history of assault or stalking and verbal threats; and
  - (10) describing the scene of the alleged crime on first contact and other physical evidence.
- (c) In all Domestic Violence incidents, the law enforcement officer shall:
- (1) Obtain authorization for release of medical records from the victim, if possible.
  - (2) Document extent of injuries and treatment, if known.
  - (3) Obtain names, addresses and phone numbers emergency medical personnel treating the victim, if possible.
  - (4) Transport or call for transport of the victim and other family or household members to a medical facility for treatment, if necessary.
  - (5) Determine if a victim has been strangled and call for immediate medical care or

advise the victim to seek medical care even if there is no visible injury.

- (d) A law enforcement officer who responds to an allegation of Domestic Violence shall encourage any victim to make an oral and written statement concerning the incident.
- (e) A law enforcement officer who responds to an allegation of Domestic Violence shall ensure that the victim is made aware of the importance of preserving evidence of the incident, such as documentation of threatening communication (written, oral, electronic), photographs of injuries, medical records.

### **12.3.3. Mandatory Arrest.**

- (a) A law enforcement officer shall, without unnecessary delay, arrest and charge a person with the appropriate crime if the officer has probable cause to believe that the person has committed or is committing the offense of Domestic Violence, even if a warrant has not been issued and the offense was committed outside the presence of the officer.
- (b) The law enforcement officer shall make an arrest upon probable cause regardless of the express wishes of the victim.
- (c) If a law enforcement officer receives conflicting complaints of Domestic Violence from two or more family or household members involving an incident of Domestic Violence, the officer shall evaluate each complaint separately to determine who was the primary aggressor. In determining whether a person was the primary aggressor, the officer shall not rely on who hit who first, nor shall the officer rely on the relative intoxication of either person, but shall consider the following factors and any other factors the officer considers relevant:
  - (1) offensive and defensive injuries;
  - (2) seriousness of injuries received by each person;
  - (3) threats made by a party against the other party or a family or household member;
  - (4) whether a party acted in self-defense or in defense of another;
  - (5) which party has the potential to seriously injure the other party;
  - (6) any history of Domestic Violence between the parties;
  - (7) prior convictions of assault;
  - (8) orders for protection that have been filed by a party;
  - (9) whether a party has a fearful demeanor;

- (10) whether a party has a controlling demeanor; and
  - (11) witness statements.
- (d) If the law enforcement officer determines that one person was the primary aggressor, the officer need not arrest the other person accused of having committed Domestic Violence. The officer must arrest the person whom the officer determines to be the primary aggressor.
  - (e) Any determination of the primary aggressor, and the reasons for that determination, must be included in the police report. A law enforcement officer who does not make an arrest, or who arrests two or more persons after investigating conflicting complaints of Domestic Violence, must include in the police report a detailed explanation why the officer did not make an arrest or arrested two or more parties.
  - (f) Persons arrested shall be held in custody pending arraignment.
  - (g) A law enforcement officer shall not threaten, suggest, or otherwise indicate the possible arrest of all parties to discourage requests for intervention by law enforcement by any party.
  - (h) A law enforcement officer shall not consider the use or abuse of alcohol or controlled substances by either party in making a determination as to whether the crime of Domestic Violence has been committed.
  - (i) When two or more family or household members are charged with a crime involving Domestic Violence arising from the same incident and the Tribal Court finds that one party was the primary aggressor, the Tribal Court, if appropriate, may dismiss charges against the other party or parties.

#### **12.3.4. Mandatory Arrest for Violation of Domestic Violence Protection Order, No Contact Order or Ex Parte Order.**

If a law enforcement officer has probable cause to believe that a person has violated a valid Domestic Violence protection order, no contact order or ex parte order, whether deemed civil or criminal, or whether issued by the Tribal Court or another jurisdiction, the officer shall, without a warrant, arrest the defendant. The defendant shall be held without bail pending arraignment, at which time bail and conditions of release shall be established.

#### **12.3.5. Authority to Seize and Hold Weapons.**

Incident to arrest for a crime involving Domestic Violence, a law enforcement officer shall seize all weapons that are alleged to have been involved or were threatened to be used in the commission of the crime, and may seize any weapons that are in plain view that the officer reasonably believes would expose the victim to a risk of serious bodily injury, or weapons 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. Weapons seized under this Section shall be held until arraignment, at which time the weapon may be released or disposed of as ordered by the Tribal Court.

#### **12.3.6. Violations of Conditions of Release.**

If a law enforcement officer has probable cause to believe that a person has violated a condition of release from arrest or judgment in a Domestic Violence case, the officer shall, without a warrant, arrest the defendant. The defendant shall be held without bail pending arraignment, at which time bail and conditions of release shall be established.

#### **12.3.7. Duty to Expedite Service of Protection Orders.**

The Band's law enforcement agency shall serve orders of protection on an expedited basis, attempt to complete service within forty-eight (48) hours, and provide a declaration of such service to the Tribal Court by the next judicial day.

#### **12.3.8. Law Enforcement Records on Domestic Violence.**

The Band's law enforcement agency shall maintain written records of arrests, incident reports, and initial contacts related to Domestic Violence in such a manner as to allow efficient tracking and identification of the records. A copy of the written police report and arrest data must be provided upon request, at no cost, to the victim of Domestic Violence, the victim's attorney, or the Bois Forte Victim Services or other organization designated by the Bois Forte Victim Services to provide services to the victim. However, the Band's law enforcement agency shall not provide any records relating to alleged incidents of Domestic Violence or related offenses to the defendant. Such records may be obtained by the defendant by Tribal Court order after notice to the prosecutor and a hearing. In ordering disclosure, the Tribal Court may order that the victim's identity and location be redacted, and make other orders as necessary to protect the confidentiality and/or identity of a victim, victim's dependents, victim's family or household members, and/or any information regarding a witness.

#### **12.3.9. Liability of Law Enforcement Officers.**

A law enforcement officer or his or her legal adviser shall not be held liable in any civil action for an arrest based on probable cause, enforcement in good faith of any Tribal Court order, or any other action or omission made in good faith under this Title arising from an incident of alleged Domestic Violence or violations of one of the named criminal or civil protection orders identified within this Title.

#### **12.3.10. Pre-trial and Release Conditions.**

- (a) **48-Hour Mandatory Hold.** No person charged with a crime of Domestic Violence or violation of a Domestic Violence protection order shall be released from detention until after the expiration of 48 hours from arrest (excluding weekends and holidays), notwithstanding the ability to post a cash or surety bond.

- (b) **Arraignment.** Any person charged with a crime of Domestic Violence shall be arraigned within 48 hours (excluding weekends and holidays) of their arrest in open court or on the record by telephone or live audiovisual means, at which time the Tribal Court shall establish bail and conditions of release.
- (c) **Release Conditions.** The Tribal Court shall consider the following factors when setting bail:
- (1) The person has been charged with a crime of violence and the person has been recently convicted of another crime of violence, or 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 a strong likelihood of flight to escape trial. This requires a documented history of such flight, or evidence or circumstances indicating that such flight is potential; and/or
  - (4) The person represents a danger to the community. This requires a pattern of behavior evidenced by past and present conduct and no conditions for release are available which would reasonably assure the safety of the community.
- (d) **Notice When Conditions of Release are Imposed.** If conditions of release are imposed, the Tribal Court shall:
- (1) Issue a written order for conditional release;
  - (2) Immediately distribute a copy of the order to the prosecutor's office and appropriate law enforcement agency; and
  - (3) Provide the law enforcement agency with any available information about the location of the defendant as is required to protect the safety of the victim.
- (e) **Bail Modification.** Nothing in this Section precludes a defendant from moving the Tribal Court to modify bail and/or conditions of release, provided that the only authorized form of bail is cash bail.
- (f) **No Contact Order.** When any person is arrested for or charged with a crime of Domestic Violence, the Tribal Court may issue a no contact order prohibiting the defendant from having any contact with the victim, including a victim who is neither a family or household member and does not qualify for a Domestic Violence protection order, or the victim's dependents or other family and household members. Such an order shall be entered at the first opportunity with no additional hearing required,

subject to the following requirements:

- (1) The protected party that is the subject of a no contact order shall be provided with a certified and stamped copy of the order.
- (2) In issuing a no contact order, the Tribal Court shall consider whether the defendant should forfeit his or her firearms.
- (3) The Tribal Court shall not vacate a no contact order issued under this Section without notice to the prosecutor, the victim, and a hearing requested by either the prosecutor or the victim.

#### **12.3.11. Mediation and Alternative Justice Prohibited.**

The Tribal Court shall not order parties into mediation or any type of alternative justice or dispute resolution process or program that would put the victim in the position of dealing directly or negotiating with the defendant to resolve any issues related to a civil or criminal case that involves an act of Domestic Violence, even if the victim has the right to decline to participate.

### **CHAPTER 4 – DUTIES OF THE PROSECUTOR**

#### **12.4.1. Domestic Violence Identified in Charging Document.**

The Band's prosecutor shall denote in the charging document that the defendant is being accused of a crime of Domestic Violence, violation of a no contact order, violation of a Domestic Violence protection order and/or violation of an ex parte order. The designation of Domestic Violence may be removed as part of a plea bargain; however, the Tribal Court may require the defendant to pay for and complete a counseling assessment with a focus on violence, controlling behavior, chemical dependency, and any other subject the Tribal Court deems appropriate.

#### **12.4.2. Duties to the Band and Victim.**

- (a) The Band's prosecutor must adhere to the following guidelines when prosecuting cases of Domestic Violence, the violation of a no contact order, violation of a Domestic Violence protection order or violation of an ex parte order:
  - (1) In all cases, a good faith effort should be made by law enforcement, the prosecutor or persons operating under direction of the Tribal Court to contact the victim to obtain the victim's information regarding the harm, damage, expense, loss or injury suffered by such victim as a result of the crime of Domestic Violence;
  - (2) The prosecutor should seek to ensure that the employment, economic, educational, physical and/or mental health and political status of the defendant and victim will not factor into the determinations regarding Domestic Violence crimes;
  - (3) The prosecutor should seek to respectfully dissuade victims from withdrawing

charges;

- (4) The prosecutor should seek to utilize advocates and/or representative of Bois Forte Victim Services during every phase of criminal justice proceedings, provided that such advocates are available;
  - (5) The prosecutor shall not dismiss a Domestic Violence case without prior consultation and review with the law enforcement officer involved in the case, and the extent that either is involved in the case, the advocate and/or a representative of the Bois Forte Victim Services;
  - (6) The prosecutor shall make every reasonable effort to notify a victim of Domestic Violence, before the defendant is released from custody, that the prosecutor has decided to decline prosecution of the defendant or to dismiss the criminal charges filed against the defendant by:
    - (A) contacting the victim and Bois Forte Victim Services by telephone, and
    - (B) contacting the victim by mail;
  - (7) The prosecutor will expedite proceedings with a minimum of continuances and shall consider the present residency of the victim as it relates to continuances, especially if the victim has relocated off the Reservation for safety;
  - (8) The prosecutor shall obtain information from the victim regarding costs and losses sustained as a result of the defendant's act(s) of Domestic Violence and shall seek restitution for the victim under the petition for relief; and
  - (9) The prosecutor shall obtain the victim's relevant medical records through Tribal Court order, if the victim refuses to sign a release of medical records.
- (b) The prosecutor shall provide all victims a written notice of the rights of victims of Domestic Violence by mail or personal delivery, within a reasonable time after the defendant is arrested. This written notice must provide an explanation of the rights and procedures of victims of Domestic Violence under this Title.

## CHAPTER 5 – RIGHTS OF VICTIMS

### 12.5.1. Rights of Victims.

- (a) **Rights of Victims.** All victims shall have the following rights:
- (1) The right to have the law enforcement obtain transportation to an emergency medical treatment facility, if medical treatment is required;
  - (2) The right to have law enforcement remain at the scene until the victim, and any

minor child or other family or household member present at the location at the time of the incident, can be transported to shelter or until the safety of all family or household members is otherwise obtained;

- (3) The right to ask the prosecutor to file a criminal complaint;
- (4) The right to go the Tribal Court and file an application requesting a Domestic Violence protection order and obtain the relief described in Section 12.6.1(e);
- (5) If the Domestic Violence resulted in damage to or loss of property, the prosecutor shall seek restitution for those losses;
- (6) The right to be informed by the Tribal Court of all hearing dates and continuances;
- (7) The right to request a copy of the police report and arrest data from law enforcement at no cost;
- (8) The right to be informed by the prosecutor of the release of the defendant, if the prosecutor has decided to decline prosecution of the defendant or to dismiss the criminal charges filed against the defendant;
- (9) The right to be informed by law enforcement, with the assistance of the Bois Forte Victim Services, by telephone or in-person when bail and conditions of release have been established, before the defendant is released;
- (10) The right to be present at the sentencing hearing and at the hearing during which a plea is presented to the Tribal Court and to express orally or in writing, at the victim's option, any objection to the plea agreement or other proposed disposition (or if not present, to communicate objections to the prosecutor who shall make these objections known to the Tribal Court);
- (11) The right to submit a presentence victim-impact statement, as described in subsection (b) below, to the Tribal Court at the time of sentencing or disposition hearing, which may be presented to the Tribal Court orally or in writing, at the victim's option, or by the prosecutor if the victim requests; and
- (12) If the defendant is eligible for probation, the right to advise the Tribal Court of conditions of probation required to assure the safety of the victim.

**(b) Presentence Victim Impact Statement.**

- (1) A victim, or any family or household member of the victim, may present a written a presentence impact statement to the Tribal Court, or the victim may appear personally at the sentence proceeding and present the statements orally. Provided, however, if any family or household member designated by the victim or by another family or household member of a victim wishes to appear personally, the person

shall have the absolute right to do so.

- (2) In any case which is plea bargained, victim impact statements may be presented by the prosecutor or the victim at the time of sentencing.
- (3) The prosecutor's office and Bois Forte Victim Services will provide victims help with preparing a victim impact statement. The impact statement may include the following (without profanity or threats against the defendant):
  - (A) a clear and concise description of the nature and extent of any physical, psychological, or emotional injury suffered by the victim as a result of the offense committed by the defendant;
  - (B) an explanation of the economic loss or property loss suffered by the victim as a result of the offense committed by the defendant;
  - (C) a description of the medical or psychological treatments required by the victim or the victim's family or household member; and
  - (D) the victim's reaction to the Trial Court's proposed sentence or disposition.
- (4) No victim shall be required to offer evidence of the impact of the crime of Domestic Violence. No inference or conclusion shall be drawn from a victim's decision not to offer evidence of the impact of the crime of Domestic Violence. At the victim's request, and subject to cross-examination by the defendant or defendant's attorney, the prosecutor's office, law enforcement or the Bois Forte Victim Services may offer evidence of the impact of the crime of Domestic violence on the victim to the Tribal Court.
- (5) If the Tribal Court permits the defendant or anyone speaking on the defendant's behalf to present a statement to the Tribal Court, the court shall limit the response to factual issues that are relevant to sentencing. Any victim or family or household member of the victim who appears personally at the sentence proceeding shall not be cross-examined by the defendant or defendant's attorney. After a plea or disposition, if the Tribal Court has discretion as to the extent of sentencing, and if the defendant suggests that there are aggravating or mitigating circumstances which may be properly considered in imposing sentence, the Tribal Court may hear the issue summarily, at a specified time, and upon notice to the victim. The aggravating or mitigating circumstances must be presented by the testimony of witnesses examined in open court.

## **CHAPTER 6 – CIVIL DOMESTIC VIOLENCE ORDERS FOR PROTECTION**

### **12.6.1. Domestic Violence Protection Orders.**

- (a) **Commencement of the Action.** An action for a Domestic Violence protection order

commenced by a qualified application, as described in subsection (b) of this Section, alleging the existence of Domestic Violence may be brought in Tribal Court by any family or household member personally or by a family or household member, a guardian or conservator (who is qualified by testamentary or court appointment), or, if the Tribal Court finds that it is in the best interests of a minor or incapacitated person, by a reputable adult on behalf of the minor or incapacitated family or household members.

- (b) **Qualified application.** A qualified application may be on a form created and provided by the Tribal Court or in another form. At a minimum, to be qualified, the form must identify the defendant, allege that the applicant is in danger of abuse from the respondent and/or has been the victim of abuse committed by the respondent, and describe the nature of the abuse and the approximate dates of the abuse.
- (c) **Hearing Scheduled.** Upon receipt of the application, the Tribal Court shall order a hearing to be held within fourteen (14) days of the date the application was filed unless extended pursuant to subsection (d) of this Section.
- (d) **Service.** Service of the application and the order establishing the date of the hearing ordered pursuant to subsection (c) of this Section shall be made upon the respondent at least seven (7) days prior to the scheduled hearing. Service shall be made by a law enforcement officer. If service cannot be made, the Tribal Court may set a new date for the hearing. Proof of service shall be filed with the Court after service is made and prior to the scheduled hearing date.
- (e) **Relief.** Upon showing of actual or imminent Domestic Violence, the Tribal Court may enter a protection order after due notice and a hearing. The relief provided by the Tribal Court may include any or all of the following:
  - (1) Prohibiting any party from having any contact or communication, direct or indirect, including by phone, email, text message, written letter, in-person or through third-person, with a petitioner, the petitioner's dependents or the petitioner's family or household member;
  - (2) Prohibiting the respondent from being within a specified distance from the petitioner, the petitioner's dependents, or the petitioner's family or household member;
  - (3) Prohibiting any party from threatening, molesting, or injuring any other person;
  - (4) 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 or domestic abuse care facility, where this exclusion is necessary to the physical or mental well-being of the applicant or other persons;
  - (5) Prohibiting the individual from entering the petitioner's residence, school, business,

or place of employment, or the children's school or daycare;

- (6) Prohibiting the individual from being in possession of a firearm and/or dangerous weapon;
- (7) Recommending or requiring counseling services with a Domestic Violence or abuse program or other agency that provides services that the Tribal Court deems appropriate. The Tribal Court may request a report from the designated agency within a time period established by the Tribal Court's order;
- (8) Any other order the Tribal Court deems necessary or appropriate to ensure the safety of the petitioner's minor children or petitioner's family or household members;
- (9) Award temporary custody or establish temporary parenting time with regard to minor children of the parties on a basis which gives primary consideration to the safety of the victim and the children. In addition to the primary safety considerations, the Tribal Court may consider particular best interest factors that are found to be relevant to the temporary custody and parenting time award. If the Tribal Court finds that the safety of the victim or the children will be jeopardized by unsupervised or unrestricted parenting time, the Tribal Court shall condition or restrict parenting time as to time, place, duration, or supervision, or deny parenting time entirely, as needed to guard the safety of the victim and the children. The Tribal Court's decision on custody and parenting time shall in no way delay the issuance of a Domestic Violence protection order granting other relief provided for in this Title;
- (10) An order requiring the defendant to pay restitution to the victim, including, but not limited to, medical expenses, non-medical care and treatment, physical therapy, rehabilitation, lost wages, counseling expenses for victim or minor children, lost or damages property, funeral expenses, and other out-of-pocket expenses, and any other expenses the Tribal finds are the direct result of the defendant's act(s) of Domestic Violence. An order for restitution issued under this subdivision is enforceable as a civil judgment; and
- (11) Establish temporary support for minor children or a spouse, and order the withholding of support from the income of the person obligated to pay the support according to applicable provisions of the Bois Forte Tribal Code.

**(f) Duration of Permanent Protection Order and Modification.**

- (1) **Duration.** The provisions of the protection order shall remain in effect for the period of time stated in the order, not to exceed two years, unless Tribal Court determines that a longer period is appropriate at the request of the petitioner or at the request of Bois Forte Victim Services. A Domestic Violence protection order is not voided by the admittance of the defendant into the dwelling from which the defendant is excluded.

(2) **Subsequent Orders and Extensions.** Upon application, notice to all parties and the Bois Forte Victim Services, and hearing, the Tribal Court may extend the relief granted in an existing Domestic Violence protection order or, if a victim's protection order is no longer in effect when an application for subsequent relief is made, grant a new Domestic Violence protection order. If a victim seeks only the relief under Section 12.6.2 (ex parte order), a hearing is not required unless the Tribal Court declines to order the requested relief.

(A) The Tribal Court may extend the terms of an existing Domestic Violence protection order or, if an order is no longer in effect, grant a new order upon showing that:

(i) The defendant has violated a prior or existing Domestic Violence order for protection, no contact order or ex parte order;

(ii) The defendant is reasonably in fear of physical harm from the defendant;

(iii) The defendant has engaged in the act of stalking; or

(iv) The defendant is incarcerated and about to be released, or has recently been released from incarceration.

(B) A victim does not need to show that physical harm is imminent to obtain an extension or a subsequent order under this subsection (f).

(3) **Modifying Domestic Violence Protection Order.** Upon application, notice to all parties and the Bois Forte Victim Services, and hearing, the Tribal Court may modify the terms of an existing Domestic Violence protection order.

(A) If the defendant named in the Domestic Violence protection order is a habitual Domestic Violence offender, as defined in Section 12.2.1(c)(5), the defendant may request to have the order vacated or modified if the order has been in effect for at least five years and the respondent has not violated the order during that time. At the hearing, the defendant named in the Domestic Violence protection order has the burden of proving by a preponderance of the evidence that there has been a material change in circumstances and that the reasons upon which the Tribal Court relied in granting or extending the order no longer apply and are unlikely to occur. If the Tribal Court finds that the defendant has met the burden of proof, the Tribal Court may vacate or modify the order. If the Tribal Court finds that the defendant has not met the burden of proof, the Tribal Court shall deny the request and no request may be made to modify or vacate the order for protection until one year has elapsed from the date of denial.

(B) Before the Tribal Court may modify or vacate a Domestic Violence protection order at the request of the defendant, the defendant shall provide the Tribal

Court with all pertinent documents, affidavits, compliance forms or any other information required by the Tribal Court.

(C) Any Domestic Violence protection order modified under this paragraph subdivision must be personally served on the victim named in the order.

(g) **Filing Fee Waived.** No filing fee shall be required for any individual who seeks a Domestic Violence protection order under this Section.

#### **12.6.2. Ex Parte Temporary Domestic Violence Protection Orders.**

(a) **Ex Parte Temporary Order.** Where an application under Section 12.6.1(a) alleges an immediate and present danger of Domestic Violence to the applicant based upon an allegation of a recent incident of Domestic Violence or threat of Domestic Violence, the Tribal Court, upon finding by a preponderance of the evidence that the 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 Tribal Court deems proper.

(b) **Relief.** An ex parte temporary protection order may include any relief within the Tribal Court's authority to provide under Section 12.6.1(e).

(c) **Duration.** An ex parte temporary protection order shall remain in effect for not more than thirty (30) days, unless otherwise terminated or amended by the Tribal Court.

(d) **Hearing.** A full hearing, as provided under Section 12.6.1(c), shall be set for no later than thirty (30) days from the issuance of the temporary order.

(e) **Service.** Law enforcement shall promptly personally serve the respondent with a copy of the order along with a copy of the application and notice of the date set for the hearing. If the respondent cannot be personally served within seven (7) days of issuance of the temporary order, the Clerk of Court for the Tribal Court shall mail a copy of the order, return receipt requested, or deliver the temporary order, to the last known address of the respondent. Proof of service shall be filed with the Tribal Court.

(f) **Notice to Appropriate Law Enforcement Agency.** The Clerk of Court for the Tribal Court shall transmit a copy of each temporary protection order, or extension, modification, or termination thereof, by the close of the business day which the order was granted, to the law enforcement agency with jurisdiction over the residence of the applicant or over the residence at which the actual Domestic Violence, which is the subject of the temporary protection order, allegedly occurred or is likely to occur.

(g) **Filing Fee Waived.** No filing fee shall be required for any individual who seeks an ex parte temporary protection order under this Section.

(h) **Registration of Tribal Court Protection Orders.** The Tribal Court shall register each Domestic Violence protection order issued by the Tribal Court within 24 hours with the

### 12.6.3. Recognition and Enforcement of Foreign Protection Orders.

- (a) **Full Faith and Credit.** Pursuant to 18 U.S.C. § 2265, the Tribal Court shall accord full faith and credit to a Domestic Violence protection order issued by a court of competent jurisdiction, provided that:
- (1) The court had jurisdiction over the parties and the matter; and
  - (2) Reasonable notice and opportunity to be heard was given to the person subject to the order, sufficient to protect that person's right to due process, to the extent required under 18 U.S.C. § 2265.<sup>4</sup>
- (b) **Foreign Ex Parte Orders.** Ex parte foreign injunctions for protection are not eligible for enforcement under this Section unless notice and opportunity to be heard have been provided within the time required by the foreign state or tribal laws and, in any event, within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights.
- (c) **Domestication.** Persons protected by foreign protection order may domesticate the order according to the following:
- (1) A protected person who has a valid foreign protection order may file that order by presenting a certified or otherwise authenticated copy of the foreign protection order with a Clerk of Court. Any out-of-state department, agency, or court responsible for maintaining protection order records may by facsimile or electronic transmission send a reproduction of the foreign protection order to the Clerk of Court as long as it contains a facsimile or digital signature by any person authorized to make such transmission.
  - (2) There shall be a presumption in favor of validity where a protection order appears authentic on its face.
  - (3) Filing of a protection order with a court and entry of the foreign protection order into any computer-based criminal intelligence information system available in the United States used by law enforcement agencies to list outstanding warrants are not prerequisites for enforcement of the foreign protection order.
  - (4) The Tribal Court shall accept the filing of a foreign protection order without a fee or cost.
  - (5) The Clerk of Court shall provide information to a person entitled to protection of the availability of Domestic Violence or other abuse services to victims.

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<sup>4</sup> See note 4.

- (6) The Clerk of Court shall assist the person entitled to protection in providing and committing to writing the information necessary to enforce the foreign protection order, including:
  - (A) the name of the person entitled to protection and any other protected parties;
  - (B) the name and address of the person who is subject to the restraint provisions of the foreign protection order;
  - (C) the date the foreign protection order was entered;
  - (D) the date the foreign protection order expires;
  - (E) the source of law for the relief granted, including citations;
  - (F) the judicial district and contact information of the court administration for the court in which the foreign protection order was originally entered;
  - (G) the date of birth and description of the person subject to the restraint provisions of the foreign protection order;
  - (H) whether the person who is subject to the restraint provisions of the foreign protection order is believed to be armed and dangerous;
  - (I) whether the persons who is subject to the restraint provisions of the foreign protection order was served by that order, and if so, the method used to serve the order;
  - (J) the type and location of any other legal proceedings between the person who is subject to the restraint provisions and the person entitled to protection; and
  - (K) an inability to answer any of the above questions does not preclude the filing or enforcement of the foreign protection order.
- (7) The Clerk of Court shall provide the person entitled to protection with a copy bearing proof of filing with the Tribal Court.
- (8) The Tribal Court judge shall review all foreign protection orders filed with the Tribal Court and, upon review, may order a hearing for the sole purpose of ascertaining the validity of the foreign protection order.
- (9) Any assistance provided by the Clerk of Court under this Section does not constitute the practice of law. The Clerk of Court is not liable for any incomplete or incorrect information that he or she is provided.

(d) **Transmittal of Filed Foreign Protection Orders to Law Enforcement.** The Clerk of Court shall forward a copy of the foreign protection order that is filed under this Title on or before the next judicial day to the Band's law enforcement agency and surrounding local law enforcement agencies.

(e) **Enforcement.**

(1) Subject to subsection (b) of this Section and the limitations herein, law enforcement shall enforce a foreign order for protection against Domestic Violence as if they were entered by the Tribal Court, irrespective of the respondent's residence or the failure to domesticate the foreign order. Upon presentation of a foreign protection order by a protected person, the law enforcement officer shall assist in enforcing all of its terms, except matters related to child custody, visitation, and support. A foreign protection order that includes terms regarding child custody, visitation, and/or support must be domesticated before those terms can be enforced.

(2) Before enforcing a foreign order for protection, a law enforcement officer should, to the best of the officer's ability, confirm the identity of the parties present and review the order to determine that, on its face, it has not expired or is not otherwise inoperative. Enforcement shall not be a condition on the presentation of a certified or true copy of the protection order, provided that a conflicting certified copy is not presented by the respondent or the individual subject to the order.

(3) A law enforcement officer shall use reasonable efforts to verify service of process.

## CHAPTER 7 – FIREARMS

### 12.7.1. Domestic Violence Defendant in Possession of a Firearm.

(a) **Prohibited Acts.** A person who possesses a firearm commits Domestic Violence defendant in possession of a firearm if that person:

(1) Is subject to any court order from a court of competent jurisdiction that restrains such person from harassing, threatening, having contact or assaulting a family or household member or engaging in any other conduct that would place a family or household member in reasonable fear of physical harm, 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 that person was present;

(B) include a finding that such person represents a credible threat to the physical safety of such victim, or victim's family or household member; and

(C) by its terms explicitly prohibits the use, attempted use or threatened use of

physical force against such family or household 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, which involved the use or attempted use of physical force, or the threatened use of physical force, or the threatened use of a dangerous weapon against a family or household member.
- (b) **Penalties.** A person who commits the crime of Domestic Violence Defendant in Possession of a Firearm is guilty of a Class 1 Misdemeanor and, upon conviction, shall be sentenced accordingly.