

**TITLE 7
DOMESTIC VIOLENCE**

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TITLE 7
DOMESTIC VIOLENCE
CHAPTER 7-1
GENERAL PROVISIONS

§7-1-1 Purpose.

The purpose of this Title is to recognize domestic violence as a serious crime against the Nez Perce Tribe, the family, and society; and to provide the victim of domestic violence the maximum protection from further violence which the law and those who enforce the law can provide.

It is further the purpose of this Title to recognize that the strength of the Nez Perce Tribe is founded on healthy families, and that families damaged by domestic violence must be healed by immediate intervention of law enforcement, prosecution, education, counseling, and any other appropriate service.

It is the intent of the Nez Perce Tribe to expand the ability of the Courts to assist victims by providing a legal means for victims of domestic violence to seek protection orders to prevent further incidents of violence.

It is the intent of the Nez Perce Tribe that the official response to cases of domestic violence shall stress the enforcement of the laws to protect the victim and shall communicate the attitude that violent behavior in the home is criminal behavior and will not be excused or tolerated.

§7-1-2 Jurisdiction.

The Nez Perce Tribal Court shall have criminal and civil jurisdiction as defined in the Nez Perce Tribal Code.

§7-1-3 Definitions.

Unless the context otherwise requires, as used in the Nez Perce Tribal Code:

- (a) "Domestic violence" means the occurrence of one or more of the following:
- (1) An unlawful attempt, coupled with apparent ability, to commit a violent injury on another domestic household member;
 - (2) An intentional, unlawful threat by word or act to do violence to another domestic household member, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other domestic household member that such violence is imminent;
 - (3) Willful and unlawful use of force or violence upon the person of another domestic household member;
 - (4) Actual, intentional and unlawful touching or striking of another domestic household member against their will;
 - (5) Unlawfully and intentionally causing bodily harm to another domestic

household member; or

- (6) Causing a domestic household member to engage involuntarily in sexual activity by force, threat of force, or duress.
- (7) “Domestic violence” shall not include acts of self-defense.

(b) “Domestic household member” means spouses, former spouses, persons related by blood or marriage, persons who reside or who have resided together, and persons who have a child in common or are expecting a child together, regardless of whether they have been married or have lived together at any time. For the purpose of this Title, “reside” shall mean one’s personal presence at some place of abode with no present intention of leaving and with purpose to remain for an undetermined period of time, but not necessarily combined with the design to stay permanently.

(c) “Domestic protection order” means a court order granted for the protection of victims of domestic violence and may contain specific orders:

- (1) Enjoining the respondent from threatening or commit or committing acts of domestic violence against the petitioner and/or any other person named in the petition;
- (2) Prohibiting the respondent from harassing, annoying, telephoning, contacting or otherwise communicating with the petitioner, either directly or indirectly;
- (3) Removing and excluding the respondent from the residence of the petitioner;
- (4) Requiring the respondent to stay away from the residence, school, place of employment, or a specified place frequented regularly by the petitioner and/or any other person named in the petition; or
- (5) Prohibiting the respondent from using or possessing a firearm or other weapon specified by the Court.
- (6) Suspending or revoking the privilege to hunt with a firearm while the domestic protection order is in effect. The authority to revoke or suspend privileges extends to the rights of tribal members to hunt pursuant to the provisions of the Treaty of June 11, 1855, 12 Stat. 957 and subsequent treaties and agreements.

(d) “Program of Intervention for Perpetrators” means a specialized program that:

- (1) Accepts perpetrators of domestic violence into treatment or educational classes to satisfy court orders;
- (2) Offers assessment and treatment to perpetrators of domestic violence; or
- (3) Offers classes or instruction to perpetrators of domestic violence.

CHAPTER 7-2 CRIMINAL PENALTIES AND PROCEDURES**§7-2-1 Crime involving domestic violence**

Crimes involving domestic violence may be accompanied by other criminal acts. A crime of domestic violence occurs when a domestic household member commits one or more of the following crimes against another domestic household member:

- (a) Arson;
- (b) Assault Offenses (Simple Assault, Aggravated Assault);
- (c) Battery Offenses (Simple Battery, Aggravated Battery);
- (d) Burglary;
- (e) Destruction, Damage, Malicious Injury to or Vandalism of Property;
- (f) Disorderly Conduct;
- (g) Family Offenses, Non-Violent (Harassment, Child Custodial Interference);
- (h) Homicide Offenses (Murder, Manslaughter);
- (i) Kidnaping, False Imprisonment;
- (j) Sex Offenses, Forcible;
- (k) Weapon Law Violations;
- (l) Stalking Offenses (Stalking, Aggravated Stalking); and
- (m) Tampering with a Witness

§7-2-2 Domestic Violence.

(a) Any domestic household member who commits an assault as defined in § 4-1-37 of the Nez Perce Tribal Code, upon any other domestic household member is guilty of the crime of domestic assault.

(b) Any domestic household member who commits an aggravated assault as defined in § 4-1-39 of the Nez Perce Tribal Code, upon any other domestic household member is guilty of the crime of aggravated domestic assault.

(c) Any domestic household member who commits a battery as defined in § 4-1-38 of the Nez Perce Tribal Code, upon any other domestic household member is guilty of the crime of domestic battery.

(d) Any domestic household member who commits an aggravated battery as defined in § 4-1-40 of the Nez Perce Tribal Code, upon any other domestic household member is guilty of the crime of aggravated domestic battery.

(e) Any domestic household member who commits a rape as defined in § 4-1-48 of

the Nez Perce Tribal Code, upon any other domestic household member is guilty of the crime of domestic rape.

(f) A conviction for domestic violence is punishable by imprisonment for a term not to exceed One (1) year or by a fine not to exceed Five Thousand Dollars (\$5,000) or by both a fine and imprisonment or any other sentence the Court may deem appropriate.

- (1) Any person who pleads guilty or is found guilty of a violation of this section shall undergo, at the person's own expense, an evaluation by a person, organization, or agency approved by the Court to determine whether the defendant should be required to obtain batterers treatment or other appropriate treatment. If the evaluation recommends counseling or other treatment, the evaluation shall recommend the type of counseling and/or treatment considered appropriate for the defendant and shall recommend any other suitable alternative counseling or treatment programs.
- (2) If the evaluation recommends counseling or other treatment, the Court shall order the person to complete the counseling or other treatment, at the person's own expense, in addition to any other sentence which may be imposed. If the Court determines that counseling or treatment would be inappropriate or undesirable, the Court shall enter findings articulating the reasons for such determination on the record. The Court shall order the defendant to complete the preferred counseling or treatment program set forth in the evaluation within the time allowed by the Court, at the person's own expense.

§7-2-3 Child Abuse.

Anyone who commits a crime involving domestic violence in the presence of a child shall be guilty of the crime of child abuse as describe in § 4-1-90 of the Nez Perce Tribal Code. For the purpose of this section, "in the presence of a child" shall mean in the physical presence of a child or knowing that a child is present and may see or hear an act of domestic violence.

§7-2-4 Violation of domestic protection orders is a crime.

Violation of one of the following orders issued in accordance with § 7-3-4 or § 7-3-5 of the Nez Perce Tribal Code, respectively, is a crime and punishable by imprisonment for a term not to exceed One (1) year or by a fine not to exceed Five Thousand Dollars (\$5,000) or by both a fine and imprisonment or any other sentence the Court may deem appropriate:

- (a) An order enjoining the respondent from threatening to commit or committing acts of domestic violence against the petitioner or other domestic household member.
- (b) An order prohibiting the respondent from harassing, annoying, telephoning, contacting, or otherwise communicating with the petitioner or other domestic household member.
- (c) An order removing and excluding the respondent from the residence of the petitioner.

(d) An order requiring the respondent to stay away from the residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named domestic household member.

(e) An order prohibiting the respondent from using or possessing a firearm or other weapon specified by the Court.

(f) An order suspending or revoking the respondent's privilege to hunt with a firearm while the domestic protection order is in effect. The authority to revoke or suspend privileges extends to the rights of tribal members to hunt pursuant to the provisions of the Treaty of June 11, 1855, 12 Stat. 957 and subsequent treaties and agreements.

§7-2-5 Duties of law enforcement officer to victim of domestic violence; required notice to victim.

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

- (1) Taking the action necessary to provide for the safety of the victim and any family or household member.
- (2) Confiscating any weapon involved in the alleged domestic violence.
- (3) Transporting or obtaining transportation for the victim and any child to a shelter.
- (4) Assisting the victim in removing essential personal effects.
- (5) Assisting the victim and any child in obtaining medical treatment, including obtaining transportation to a medical facility.
- (6) Giving the victim immediate and adequate notice of the rights of victims and of the remedies and services available to victims of domestic violence.

(b) As part of the notice required by paragraph "6" of subsection "a", the law enforcement officer shall give a written notice to the victim as follows:

"If you are the victim of domestic violence and you believe that law enforcement protection is needed for your physical safety, you have the right to request that the officer assist in providing for your safety. You have the right to request that the officer assist you in obtaining your essential personal effects and locating and taking you to a safe place, including but not limited to a designated meeting place for a shelter, a family member's or friend's home, or a similar place of safety. If you are in need of medical treatment, you have the right to request that the officer assist you in obtaining medical treatment. You may request a copy of the report from the law enforcement department.

You may ask the prosecuting attorney to file a criminal complaint. You also have the right to file a petition in the Nez Perce Tribal Court requesting a domestic protection order which could include any of the following orders:

- (1) An order enjoining your abuser from committing or threatening to commit further acts of domestic violence;
- (2) An order prohibiting your abuser from harassing, annoying, telephoning, contacting or otherwise communicating with you, directly or indirectly;
- (3) An order removing your abuser from your residence;
- (4) An order directing your abuser to stay away from your residence, school, place of employment, or any other specified place frequented by you and another domestic household member;
- (5) An order prohibiting your abuser from using or possessing any firearm or other weapon specified by the Court.
- (6) An order suspending or revoking your abuser's privilege to hunt with a firearm. The authority to revoke or suspend privileges extends to the rights of tribal members to hunt pursuant to the provisions of the Treaty of June 11, 1855, 12 Stat. 957 and subsequent treaties and agreements.
- (7) An order granting you possession and use of the automobile and other essential personal effects;
- (8) An order granting you temporary custody of your children;
- (9) An order denying your abuser visitation temporarily; and
- (10) An order specifying arrangements for visitation, including requiring supervised visitation;

The forms you need to obtain a domestic protection order are available from the Tribal court clerk. The resources available in this community for information concerning domestic violence, treatment of injuries, and places of safety and shelters are:

Insert community resources here

You also have the right to seek reimbursement for losses suffered as a result of the abuse, including medical and moving expenses, loss of earnings or support, and other expenses for injuries sustained and damage to your property. This can be done through small claims court or through the Victim's Compensation Program."

- (c) Written notice:
- (1) must not include the addresses of shelters; and
 - (2) must be provided in the native language of the victim, if practicable, when the native language of the victim is not English.

§7-2-6 Mandatory Arrest for crimes involving domestic violence; determination of primary aggressor; required report.

(a) A law enforcement officer shall, without a warrant, arrest and charge a person with the appropriate crime if the officer has probable cause to believe that the person has committed a crime involving domestic violence, whether the offense is committed in or outside the presence of the officer.

(b) If a law enforcement officer receives complaints of domestic violence from two or more opposing persons, the officer shall evaluate each complaint separately to determine who was the primary aggressor. If the officer determines that one person was the primary physical aggressor, the officer need not arrest the other person believed to have committed domestic violence. In determining whether a person is the primary aggressor the officer shall consider the following:

- (1) Prior history of domestic violence between the parties;
- (2) The relative severity of the injuries inflicted on each person;
- (3) The likelihood of future injury to each person;
- (4) Threats creating fear of serious injury;
- (5) Whether one of the persons acted in self-defense; and
- (6) Other relevant factors.

(c) 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; nor shall the officer attempt to reconcile the parties or mediate.

(d) In addition to any other report required, a law enforcement officer who does not make an arrest after investigating a complaint of domestic violence or who arrests two or more persons for a crime involving domestic violence must submit a detailed, written report within one business day, setting forth the grounds for not arresting or for arresting both parties.

§7-2-7 Mandatory arrest for violations of domestic protection orders.

When a law enforcement officer has probable cause to believe that a respondent has violated one or more of the orders contained in an existing domestic protection order and verifies the existence of the order, the officer shall, without warrant, arrest the apparent violator whether or not the violation was committed in or outside the presence of the officer, if the orders are issued in accordance with §7-3-2; §7-3-4; and §7-3-5 of the Nez Perce Tribal Code.

§7-2-8 Pre-arraignment release.

Notwithstanding Nez Perce Tribal Code Rules of Criminal Procedure, Rule 21, any person arrested for a crime involving domestic violence or a violation of a domestic protection order shall not be released on bond or on his/her own recognizance prior to being arraigned. Such arraignment shall not occur less than 2 business days or more than 3 business days following arrest.

§7-2-9 Conditions of release.

(a) In making a decision concerning pretrial release of a person who is arrested for or charged with a crime involving domestic violence or a violation of a domestic protection order, the Court shall review the facts of the arrest and detention of the person and determine whether the person:

- (1) is a threat to the alleged victim;
- (2) is a threat to public safety; and
- (3) is reasonably likely to appear in court.

(b) Before releasing a person arrested for or charged with a crime involving domestic violence or a violation of a domestic protection order, the Court shall make findings on the record if possible concerning the determination made in accordance with subsection (a) and may impose conditions of release on bail on the person to protect the alleged victim of domestic violence and to ensure the appearance of the person at a subsequent court proceeding. The conditions may include:

- (1) An order enjoining the person from threatening to commit or committing acts of domestic violence against the alleged victim;
- (2) An order prohibiting the person from harassing, annoying, telephoning, contacting or otherwise communicating with the alleged victim, whether directly or indirectly;
- (3) An order directing the person to vacate or stay away from the home of the alleged victim and to stay away from any other location where the victim is likely to be;
- (4) An order prohibiting the person from using or possessing a firearm or other weapon as specified by the Court;
- (5) An order prohibiting the person from possession or consumption of alcohol or controlled substances.
- (6) Any other order required to protect the safety of the alleged victim and to assure the appearance of the person in court.

(c) The Court shall provide a copy of the conditions to the arrested or charged person upon his or her release. Failure to provide the person with a copy of the conditions of release does not invalidate the conditions if the arrested or charged person has notice of the conditions.

(d) If conditions of release are imposed without a hearing, the arrested or charged person may request a prompt hearing before the Court to review the conditions. Upon such a request, the Court shall hold a prompt hearing to review the conditions.

§7-2-10 Mandatory arrest for violation of conditions of release.

If a law enforcement officer has probable cause to believe that a person has violated a condition of release imposed in accordance with § 7-2-9 of the Nez Perce Tribal Code, and

verifies that the alleged violator has notice of the conditions, the officer shall, without warrant, arrest the alleged violator whether the violation was committed in or outside the presence of the officer.

§7-2-11 Written procedures for prosecution of domestic violence; purpose.

The Nez Perce Tribal prosecuting attorney shall develop or adopt and put into effect written procedures for attorneys who prosecute domestic violence concerning:

- (a) Effective prosecution of such crimes; and
- (b) The protection and safety of victims of domestic violence.

§7-2-12 Duty of prosecutor to notify victim.

(a) The prosecutor shall make reasonable efforts to notify a victim of an alleged crime involving domestic violence when the prosecutor has decided to:

- (1) decline the prosecution of the crime;
- (2) withdraw the criminal charges filed against the defendant; or
- (3) enter into a plea agreement.

(b) Release of a defendant from custody must not be delayed because of the requirements of subsection "(a)".

§7-2-13 Record of dismissal required in court file.

When a court dismisses criminal charges or a prosecutor moves to dismiss charges against a defendant accused of a crime involving domestic violence, the specific reasons for the dismissal must be recorded in the court file. The prosecutor shall indicate the specific reason why the case cannot or will not be prosecuted.

§7-2-14 Dismissal of criminal case prohibited because civil compromise reached.

A court shall not dismiss a criminal case involving domestic violence for the sole reason that a civil compromise or settlement is reached.

§7-2-15 Rights of victims of domestic violence; duty of prosecutor to inform victim of rights.

(a) A victim of domestic violence is entitled to all rights granted to victims of crime including but not limited to the right to:

- (1) Be informed of all hearing dates and continuances;
- (2) Provide the Court with a victim impact statement, victim opinion statement, and an assessment of the risk of further harm;
- (3) Be present at sentencing and address the Court;
- (4) Advise the Court of conditions of probation required to ensure the safety

of the victim;

- (5) Restitution for losses sustained as a direct consequence of any criminal conduct;
- (6) Apply for victims' compensation and to be informed of procedures for applying; and
- (7) Receive notice from the prosecutor in accordance with § 7-2-12 of the Nez Perce Tribal Code.

(b) The prosecuting attorney shall notify the victim of domestic violence of that victim's rights as set forth in this section.

§7-2-16 Advocate-victim privilege applicable in cases involving domestic violence.

(a) Except as otherwise provided in subsection "b", a victim of domestic violence may refuse to disclose, and may prevent an advocate from disclosing, confidential oral communication between the victim and the advocate and written records and reports concerning the victim if the privilege is claimed by:

- (1) The victim; or
- (2) The person who was the advocate at the time of the confidential communication, except that the advocate may not claim privilege if there is no victim in existence or if the privilege has been waived by the victim.

(b) The privilege does not relieve a person from any duty imposed pursuant to § 5-1-9 of the Nez Perce Tribal Code. Person may not claim the privilege when providing evidence in proceedings concerning child violence.

(c) As used in this subsection, "advocate" means an employee of or volunteer for a program for victims of domestic violence who:

- (1) Has a primary function of rendering advice, counseling, or assistance to victims of domestic violence; supervising the employees or volunteers of the program; or administering the program;
- (2) Has undergone 30 hours of training; and
- (3) Works under the direction of a supervisor of the program, supervises employees or volunteers, or administers the program.

§7-2-17 Diversion prohibited; deferred sentencing permitted.

- (a) A court shall not approve diversion for a perpetrator of domestic violence.
- (b) The Court may defer sentencing of a perpetrator of domestic violence if:
 - (1) The perpetrator meets the eligibility criteria which may include any of the following:

- (A) the perpetrator's history and pattern of violence,
 - (B) the severity of injuries to the victim,
 - (C) the criminal history of the perpetrator,
 - (D) the nature of the crime (simple or aggravated),
 - (E) prior participation in deferred sentencing; and
- (2) Consent of the prosecutor is obtained after consultation with the victim, when the victim is available; and
 - (3) A hearing is held in which the perpetrator enters a plea or judicial admission to the crime; and
 - (4) The Court orders conditions of the deferred sentence that are necessary to protect the victim, prevent future violence, and rehabilitate the perpetrator.
- (c) The Court shall establish:
- (1) Criteria for determination of a perpetrator's successful completion of the conditions imposed by the Court; and
 - (2) Penalties for violation of the conditions imposed by the Court.
- (d) The case against a perpetrator of domestic violence may be dismissed if the perpetrator successfully completes all conditions imposed by the Court.

§7-2-18 Conditions of probation for perpetrator convicted of a crime involving domestic violence; required reports by probation department.

- (a) Before placing a perpetrator, who is convicted of a crime involving domestic violence on probation, the Court shall consider the safety and protection of the victim of domestic violence and any member of the victim's family or household.
- (b) The Court may condition the suspension of sentence or granting of probation to a perpetrator on compliance with one or more orders of the Court, including but not limited to:
- (1) Enjoining the perpetrator from threatening to commit or committing acts of domestic violence against the victim and/or other domestic partner;
 - (2) Prohibiting the perpetrator from harassing, annoying, telephoning, contacting, or otherwise communicating with the victim, either directly or indirectly;
 - (3) Requiring the perpetrator to stay away from the residence, school, place of employment, or specified place frequented regularly by the victim and any designated family member;
 - (4) Prohibiting the perpetrator from possessing and/or consuming alcohol or

controlled substances;

- (5) Prohibiting the perpetrator from using or possessing a firearm or other specified weapon;
- (6) Suspending or revoking the perpetrator's privilege to hunt with a firearm for the term of the probation. The authority to revoke or suspend privileges extends to the rights of tribal members to hunt pursuant to the provisions of the Treaty of June 11, 1855, 12 Stat. 957 and subsequent treaties and agreements;
- (7) Directing the perpetrator to surrender any firearms and/or other specified weapons owned or possessed by the perpetrator;
- (8) Directing the perpetrator to participate in and complete, to the satisfaction of the Court, a program of intervention for perpetrators, treatment for alcohol or substance abuse, or psychiatric or psychological treatment;
- (9) Directing the perpetrator to pay restitution and or fines as ordered by the Court;
- (10) Directing the perpetrator to participate in any electronic or satellite monitoring; and/or
- (11) Imposing any other condition necessary to protect the victim of domestic violence and any other designated domestic partner or to rehabilitate the perpetrator.

(c) The perpetrator shall pay the costs of any condition of probation according to their ability.

(d) The Court shall establish policies and procedures for responding to reports of nonattendance or noncompliance by a perpetrator with the conditions of probation imposed pursuant to subsection "b".

(e) The probation department shall immediately report to the Court any assault by the perpetrator, the perpetrator's failure to comply with any condition imposed by the Court or probation department, and any threat of harm made by the perpetrator.

§7-2-19 Required written policies and procedures.

The Nez Perce Tribal Law Enforcement shall develop or adopt and put into effect written policies and procedures concerning:

- (a) The effective response of the agency to cases involving domestic violence;
- (b) Enforcement of the Nez Perce Tribal Code concerning domestic violence;
- (c) Protection and safety of the victim of domestic violence and other domestic household members; and
- (d) Coordination with hospitals and programs for victims of domestic violence.

CHAPTER 7-3 CIVIL DOMESTIC PROTECTION ORDERS**§7-3-1 Eligible petitioners for order.**

(a) A person who is or has been a victim of domestic violence may file a petition for a domestic protection order against a domestic partner who commits an act of domestic violence.

(b) A parent, guardian, or other legal representative may file a petition for a domestic protection order on behalf of a child against a domestic partner who commits an act of domestic violence.

§7-3-2 Action for protection.

(a) There shall exist an action known as a “petition for a domestic protection order” in cases of domestic violence.

(b) A person may seek relief from domestic violence by filing a petition based on a sworn affidavit with the Nez Perce Tribal Court, alleging that they are a victim of domestic violence. Any petition properly filed under this chapter may seek protection for any additional persons covered by this chapter.

(c) A person’s right to petition for relief under this chapter shall not be affected by that person’s having left the residence or household to avoid abuse.

(d) The petition shall disclose the existence of any custody or any marital annulment, dissolution, or separation proceedings pending between the parties, the existence of any other custody order affecting the children of the parties, and the existence of child protection, or adoption proceedings affecting the children of any of the parties.

(e) When the petitioner requests custody of any child, the petition shall disclose:

- (1) The county and state where the child has resided for six months immediately prior to filing of the petition;
- (2) The party or other responsible person with whom the child is presently residing; and
- (3) The party or other responsible person with whom the child has resided for six (6) months immediately prior to the filing of the petition.

(f) A petition shall be filed:

- (1) Where the petitioner currently or temporarily resides;
- (2) Where the respondent resides; or
- (3) Where the act of domestic violence occurred.

(g) There is no minimum requirement of residency to petition for a domestic protection order.

(h) The petition shall not be a matter of public record.

§7-3-3 Fees waived.

No filing fee, hearing fee, or bond shall be charged for proceedings seeking only the relief under this chapter.

§7-3-4 Ex parte temporary domestic protection order.

(a) The Court may grant an ex parte temporary protection order pending a full hearing, granting such relief as the Court deems proper, where a petition under this section alleges that irreparable injury could result from domestic violence if an order is not issued immediately without prior notice to the respondent. The temporary order may include an order:

- (1) Restraining the respondent from contacting the petitioner, either directly or indirectly;
- (2) Restraining the respondent from committing or threatening to commit acts of domestic violence upon the petitioner;
- (3) Excluding the respondent from the dwelling which the parties shared or from the residence of the petitioner until further ordered by the Court;
- (4) Awarding temporary custody and/or establishing temporary visitation rights with regard to the minor children;
- (5) Restraining any party from interfering with the other's custody of the children or from removing the children from the jurisdiction of the Court;
- (6) Ordering other relief as the Court deems necessary for the protection of a domestic partner, including orders or directives to peace officers as allowed under this code;
- (7) Restraining the respondent from contacting, molesting, interfering with or menacing the minor children whose custody is awarded to the petitioner;
- (8) Restraining the respondent from entering any premises when it appears to the Court that such restraint is necessary to prevent the respondent from contacting, molesting, interfering with or menacing the minor children whose custody is awarded to the petitioner.

(b) An ex parte temporary domestic protection order shall remain in effect for 10 days from the date of issuance.

(c) A full hearing shall be held no more than 10 days from the date of issuance of an ex parte temporary domestic protection order. The respondent shall be personally served with a copy of the temporary order and notice of hearing, in accordance with the Rules of Civil Procedure of the Nez Perce Tribal Code.

(d) If the respondent is not personally served with a copy of the temporary order and notice of hearing, the existing temporary order may be extended for 10 days from the date originally set for hearing, and a new hearing date set. The respondent must be personally served with the new notice of hearing.

§7-3-5 Domestic protection order.

(a) A Court may grant the following relief, if requested, in a domestic protection order after notice and hearing, whether or not the respondent appears:

- (1) Temporary custody of the minor children of the petitioner or of the parties be awarded to the petitioner or respondent if the exercise of such jurisdiction is consistent with the provisions of this code, or consistent with prior custody orders entered by a Court of competent jurisdiction.
- (2) Restraining the respondent from committing or threatening to commit acts of domestic violence upon the petitioner;
- (3) Restraining the respondent from contacting, harassing, telephoning, or otherwise communicating with the petitioner, either directly or indirectly;
- (4) Excluding the respondent from the dwelling which the parties shared or from the residence of the petitioner;
- (5) Other relief as the Court deems necessary for the protection of the petitioner, including orders or directives to peace officers as allowed under this code;
- (6) Restraining the respondent from contacting, molesting, interfering with or menacing the minor children whose custody is awarded to the petitioner;
- (7) Restraining the respondent from entering any premises when it appears to the Court that such restraint is necessary to prevent the respondent from contacting, molesting, interfering with or menacing the minor children whose custody is awarded to the petitioner;
- (8) Prohibiting the respondent from having in their possession any firearm and/or ammunition whether working or not.
- (9) Suspending or revoking the respondent's privilege to hunt with a firearm for as long as the domestic protection order is in effect. The authority to revoke or suspend privileges extends to the rights of tribal members to hunt pursuant to the provisions of the Treaty of June 11, 1855, 12 Stat. 957 and subsequent treaties and agreements

(b) No protection order under this section shall in any manner affect title to real property.

(c) Relief shall not be denied because the petitioner used reasonable force in self-defense against the respondent, or because the petitioner or respondent was a minor at the time of the incident of domestic violence.

(d) Any relief granted by the domestic protection order shall be for a fixed period not to exceed 90 days; provided that an order obtained pursuant to this chapter may, upon written motion and upon good cause shown, be renewed for additional terms not to exceed one (1) year each if the requirements of this chapter are met. The motion to renew an order may be granted without a hearing, if not timely objected to by the party against whom the order is entered.

(e) In providing relief under this chapter, the Court may realign the designation of the parties as "petitioner" and "respondent" where the Court finds that the original petitioner is the abuser

and the original respondent is the victim of domestic violence.

§7-3-6 Full Faith and Credit Given to Domestic Protection Orders.

(a) Any domestic protection order issued that is consistent with subsection (b) of this section by one State or Indian tribe (the issuing State or Indian tribe) shall be accorded full faith and credit by the Nez Perce Tribe and enforced as if it were the order of the Nez Perce Tribe.

(b) A domestic protection order issued by a State or Tribal Court is consistent with this subsection if:

- (1) such Court has jurisdiction over the parties and matter under the law of such State or Indian tribe; and
- (2) reasonable notice and opportunity to be heard is given to the person against whom the order is sought sufficient to protect that person's right to due process. In the case of ex parte orders, notice and opportunity to be heard must be provided within the time required by State or Tribal law, and in any event within a reasonable time after the order is issued.

(c) A domestic protection order issued by a State or Tribal Court against one who has petitioned, filed a complaint, or otherwise filed a written pleading for protection against abuse by a domestic household member is not entitled to full faith and credit if:

- (1) no cross or counter petition, complaint or other written pleading was filed seeking such a protection order; or
- (2) a cross or counter petition has been filed and the Court did not make specific findings that each party was entitled to such an order.

§7-3-7 Continuing duty to inform the Court of other proceedings; effect of other proceedings; delay of relief; omission of petitioner's address.

(a) At any hearing in a proceeding to obtain a domestic protection order, each party has a continuing duty to inform the Court of each proceeding for a domestic protection order, any civil litigation, and each proceeding concerning family or juvenile matters.

(b) A domestic protection order is in addition to and not in lieu of any other available civil or criminal proceeding. A petitioner is not barred from seeking an order because of other pending proceedings. The Court shall not delay granting relief because of the existence of a pending action between the parties.

(c) A petitioner may omit his or her address from all documents filed with the Court. If a petitioner omits his or her address, the petitioner must provide the Court with a mailing address. If disclosure of the petitioner's address is necessary to determine jurisdiction or consider venue, the Court may order the disclosure to be made:

- (1) After the petitioner's consent;
- (2) Orally and in chambers, out of the presence of the respondent and a sealed record to be made; or

- (3) After a hearing, if the Court takes into consideration the safety of the petitioner and finds that such disclosure is in the best interest of justice.

§7-3-8 Effect of action by petitioner or respondent on order.

If a respondent is excluded from the residence of a petitioner or ordered to stay away from the petitioner, an invitation by the petitioner to do so does not waive or nullify a domestic protection order.

§7-3-9 Mutual orders prohibited.

The Court shall not grant a mutual domestic protection order to opposing parties.

CHAPTER 7-4 FAMILY AND CHILDREN

§7-4-1 Presumption concerning custody.

In every proceeding where there is at issue a dispute as to the custody of a child, a determination by the Court that domestic violence has occurred raises a rebuttable presumption that it is detrimental to the child and not in the best interest of the child to be placed in the sole custody, joint custody, or joint physical custody with the perpetrator of domestic violence.

§7-4-2 Factors in determining custody and visitation.

(a) In addition to other factors that a court must consider in a proceeding in which the custody of a child or visitation by a parent is at issue and in which the Court has made a finding of domestic violence:

- (1) The Court shall consider as primary the safety and well-being of the child and of the parent who is the victim of domestic violence.
- (2) The Court shall consider the perpetrator's history of causing physical harm, bodily injury, assault, or causing the fear of physical harm, bodily injury, or assault to another person.

(b) If a parent is absent or relocates because of an act of domestic violence by the other parent, the absence or relocation is not a factor that weighs against the parent in determining custody or visitation.

§7-4-3 Presumption concerning residence of child.

In every proceeding where there is at issue a dispute as to the custody of a child, a determination by a court that domestic violence has occurred raises a rebuttable presumption by a court that it is in the best interest of the child to reside with the parent who is not a perpetrator of domestic violence in the location of that parent's choice, within or outside the boundaries of the Nez Perce Reservation.

§7-4-4 Conditions of visitation in cases involving domestic violence.

(a) A court may award visitation by a parent who committed domestic violence only if the Court finds that adequate provision for the safety of the child and the parent who is a victim of domestic violence can be made.

- (b) In a visitation order, a court may:
- (1) Order an exchange of a child to occur in a protected setting;
 - (2) Order visitation supervised by another person or agency;
 - (3) Order the perpetrator of domestic violence to attend and complete, to the satisfaction of the Court, a program of intervention for perpetrators of domestic violence or other designated counseling as a condition of the visitation;
 - (4) Order the perpetrator of domestic violence to abstain from the possession or consumption of alcohol or controlled substances during the visitation and for 24 hours preceding the visitation;
 - (5) Prohibit overnight visitation; and/or
 - (6) Impose any other condition that is deemed necessary to provide for the safety of the child, the victim of domestic violence, or other domestic household member.
- (c) Whether or not visitation is allowed, the Court may order the address of the child and the victim to be kept confidential.
- (d) If the Court allows a family member to supervise visitation, the Court shall establish conditions to be followed during visitation.

§7-4-5 Duties of children's protective services.

- (a) The Nez Perce Tribal Social Service Department shall develop written procedures for screening each referral for abuse or neglect of a child to assess whether domestic violence is also occurring. The assessment must include but is not limited to:
- (1) Inquiry concerning the criminal record of the parents, and the alleged abusive or neglectful person and the alleged perpetrator of domestic violence, of not a parent of the child; and
 - (2) Inquiry concerning the existence of domestic protection orders issued to either parent.
- (b) If it is determined in an investigation of abuse or neglect of a child:
- (1) That the child or other domestic household member is in danger of domestic violence and that removal of one of the parties is necessary to prevent the abuse or neglect of the child, the Nez Perce Tribal Prosecutor shall seek the removal of the alleged perpetrator of domestic violence whenever possible.
 - (2) That a parent of the child is a victim of domestic violence, services must be offered to the victimized parent and the provisions of such services must not be contingent upon a finding that either parent is at fault or has failed to protect the child.

**TITLE 7
DOMESTIC VIOLENCE**

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CHAPTER 7-5
NEZ PERCE TRIBE
ELDER AND ADULT PROTECTION ACT (adopted by NPTEC 4/24/12)

§7-5-1 Title

This act shall be known and may be cited as the "Nez Perce Tribe Elder and Adult Protection Act".

§7-5-2 Purpose

The purpose of this Act is to protect the elders and vulnerable adults within the jurisdiction of the Nez Perce Tribe from abuse or neglect as defined by this Act.

§7-5-3 Definitions

In this Act, unless the context otherwise requires:

- (a) "Abuse" means:
- (1) Infliction of physical injury, emotional harm or mental injury, or
 - (2) Injury or harm caused by negligent acts or omissions, or
 - (3) Unreasonable confinement, or
 - (4) Sexual abuse or sexual assault;
- (b) "Caretaker" shall mean any individual, group of individuals, or institution that is permanently or temporarily responsible by relationship, contract (actual or implied), assumption of duties, or court order to provide food, shelter, clothing, medical or other life-sustaining necessities to an elder or vulnerable adult;
- (c) "Elder" shall mean any person who has reached the age of fifty-five (55) years or older;
- (d) "Emergency" shall mean an exigent circumstance in which an elder or vulnerable adult's health and safety is placed in imminent danger. Imminent danger is when death or severe bodily injury could reasonably be expected to occur without intervention;
- (e) "Exploitation" means an action which may include, but is not limited to, the misuse of the funds, property, or resources of a vulnerable adult or elder by another person for profit or advantage;
- (f) "Neglect" means a willful or unwillful pattern of conduct resulting in deprivation of services necessary to maintain minimum physical or mental health, including, but not limited to, the deprivation of food, shelter, clothing or services necessary to maintain physical or mental health;
- (g) "Officer" shall mean any Nez Perce Tribal Police Officer;
- (h) "Protective Services" means a program of identifiable and specialized social services that offers services appropriate to attempt to resolve problems which have produced

visible signs of self-neglect, abuse, exploitation or neglect;

(i) "Relative" shall mean any biological, legal or traditional relationship to the second degree (i.e. grandparent, grandchild, great nephew, etc.), including step, half and in-law relationships;

(j) "Self-neglect" shall mean a willful or unwillful pattern of depriving oneself of services necessary to maintain minimum physical or mental health, including, but not limited to, the deprivation of food, shelter, clothing or services necessary to maintain physical or mental health;

(k) "Sexual Abuse" or "Sexual Assault" shall mean any physical contact for sexual gratification of the person making such contact, or any other illegal sex act, which is not consented to by the elder or vulnerable adult or for which the consent was obtained by intimidation, fraud or other forms of duress or force;

(l) "Tribe" shall mean the Nez Perce Tribe; and

(m) "Vulnerable" means a permanent or temporary impairment by reason of mental illness, mental deficiency, mental disorder, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication or other cause to the extent that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his/her person and/or is unable to protect himself/herself from abuse, neglect, or exploitation. A presumptive finding of vulnerability may be at the scene of the investigation or by court order, but any determination of mental illness, mental deficiency or mental disorder shall be made by a mental health professional.

§7-5-4 Scope

(a) In the process of carrying out the responsibilities and duties in this Act, the Nez Perce Tribe Social Services Program may inquire into the availability and subsequently request the assistance of the staffs and resources of all appropriate tribal departments, agencies, commissions, or health directors, and may utilize any other appropriate and available tribal, state, public or private agencies, groups or individuals. Interagency cooperation shall include the involvement, when appropriate, of law enforcement personnel, department personnel, medical personnel, state personnel and any other person or entity deemed necessary due to their specialized training in providing services to elders or vulnerable adults. Interagency cooperation may also include access to client information necessary for the provision of services to elders or vulnerable adults. Interagency staffing and sharing of client and facility information shall be used, upon completion of the proper paperwork regarding privacy of information or issuance of court order or subpoena when necessary, to provide services to elders and vulnerable adults.

(b) Nothing in this Act shall be construed to mean that a vulnerable adult or elder is abused, neglected or in need of protective services for the sole reason that he/she relies on treatment from a recognized religious method of healing in lieu of medical treatment, nor shall the provisions of this Act be construed to require any medical care or treatment in contravention of the stated or implied objection of an elder or vulnerable adult, except as noted.

§7-5-5 Powers and Duties

(a) The duties of the Nez Perce Tribe Social Services Program shall include, but not

be limited to, the following:

- (1) Receiving reports of abused, exploited, self-neglected or neglected vulnerable adults and elders;
- (2) Receiving from any source oral or written information regarding a vulnerable adult or elder who may be in need of protective services;
- (3) Upon receipt of such information, make an evaluation to determine if the vulnerable adult or elder is in need of protective services and what services, if any, are needed;
- (4) If the allegations in a report indicate that an emergency exists, an investigation shall be immediately initiated as well as contact with the affected elder or vulnerable adult within twenty-four (24) hours. All other investigations must be initiated within seventy-two (72) hours;
- (5) In an emergency, or if the elder or vulnerable adult is in imminent danger or a life threatening situation (See §7-5-6), the assistance of an Officer and/or Emergency Medical Services to ensure the safety of the elder or vulnerable adult may be enlisted. In an emergency a Nez Perce Tribe Social Services Program worker, Officer or Emergency Medical Services personnel may enter on private or public property where an elder or vulnerable adult is allegedly subject to abuse, neglect, self-neglect or exploitation, and may remove and/or transport the elder or vulnerable adult to a medical facility, care-providing facility, or other appropriate, safe environment;
- (6) Offer a vulnerable adult or elder in need of protective services, or his/her guardian, whatever services appear appropriate in view of the evaluation; and
- (7) Work with the Tribal prosecutor or other appropriate authority for the appointment of a guardian or conservator or the appointment of a temporary guardian or temporary conservator, as provided for in the Nez Perce Tribal Code or other duly enacted Tribal law or ordinance. The caseworker may not be appointed as guardian, conservator, temporary guardian or temporary conservator. The caseworker shall be immune from liability for applying for or filing a petition for guardianship or conservatorship, unless the application or filing is done in bad faith.

(b) The investigation that is conducted shall include a determination of the nature, extent, and cause of the abuse, neglect, self-neglect, or exploitation, an examination of evidence and consultations with persons thought to have knowledge of the circumstances and identification, if possible, of the persons alleged to be responsible for any abuse, neglect, or exploitation of the elder or vulnerable adult.

(c) The investigation may include:

- (1) Personal interviews of the abused, the immediate family and caretaker, suspected abuser, employees of any involved agencies, and any other

person who may have pertinent information;

- (2) Medical records and other evidence of abuse if applicable;
- (3) Assessments of the elder or vulnerable adult's living conditions using Tribal standards for housing; and
- (4) Any other observations, assessments, documents or information including photos, audio tapes or video tapes that may aid in completing an accurate report.

(d) Upon completion of the investigation, a written report of the investigation shall be prepared. The name of the person making the original report or any person mentioned in the report shall not be disclosed unless those persons specifically request such disclosure or unless the disclosure is made pursuant to a request to law enforcement for emergency access, a court order or hearing.

(e) If, as a result of any investigation initiated under this Act, it appears that the abuse, neglect or exploitation has caused injury or a serious imposition on the rights of the elder or vulnerable adult, an officer and/or a tribal prosecutor shall be immediately contacted, which shall initiate an investigation and determine whether criminal proceedings shall be initiated against a Caretaker or other persons liable under this Act.

§7-5-6 Imminent Danger

(a) If the vulnerable adult is believed to be in imminent danger and the social worker cannot gain access, then the social worker will enlist the assistance of a law enforcement officer to ensure the safety of the vulnerable adult.

(b) The law enforcement officer can also assist in the following ways:

- (1) Help with the judicial process necessary to ensure the safety of the vulnerable adult;
- (2) Help ensure the safety of the adult protection worker by accompanying the worker when there is a potentially dangerous situation;
- (3) Help establish probable cause for a search and assist in obtaining a search warrant;
- (4) Identify any other criminal activity that may be occurring; or
- (5) Conduct "welfare checks" on individuals at the request of the social worker.

§7-5-7 Access to Investigate

A Nez Perce Tribe Social Service Program worker may gain emergency access to the residence of the client for the purpose of conducting a protective investigation if:

- (1) The client is unable to consent to entry because he/she is medically unable; or

- (2) The client is unwilling to consent to entry; or
- (3) The care giver is unwilling to consent to entry; and
- (4) The social worker has reason to believe that a client is in an abusive and/or neglectful situation in which death or severe bodily harm could reasonably be expected to occur without intervention; and
- (5) The social worker has requested and has received the assistance of law enforcement.

§7-5-8 Law Enforcement Responsibilities

- (a) Law enforcement officers have a duty to report immediately to Nez Perce Tribe Social Service Program, based on reasonable cause, the abuse or neglect of a vulnerable adult or elder.
- (b) If known, the report shall contain the name and address of the vulnerable adult or elder; the caretaker; the alleged perpetrator; the nature and extent of suspected abuse or neglect; and any other information that will be of assistance.
- (c) The cooperation of officers may be requested by Nez Perce Tribe Social Service Program to assist in an investigation where a vulnerable adult or elder is alleged to be abused, neglected, or exploited.
- (d) Officers shall serve search warrants on any private or public property where authorized tribal employees or their representatives were unable to obtain a consent, and where a vulnerable adult or elder allegedly is subject to abuse or neglect.
- (e) The law enforcement authority in the appropriate jurisdiction will be notified by the Nez Perce Tribe Social Service Program immediately upon a finding that the abuse or neglect appears to have caused injury or a serious imposition to the rights of the vulnerable adult or elder. Law Enforcement shall immediately initiate an investigation and will determine whether criminal proceedings should be initiated.

§7-5-9 Nez Perce Tribe Prosecutor Responsibilities

- (a) Upon request by a law enforcement officer and a showing of probable cause to believe that abuse or neglect has occurred, the tribal prosecutor shall assist in securing a search warrant that would allow the inspection and search of the premises where the alleged abuse or neglect has occurred. The search warrant shall indicate that it has been issued pursuant to Section 7-5-9 of the Elder and Adult Protection Act.
- (b) If, based upon the investigation of the Nez Perce Tribe Social Service Program, Officers determine that criminal action is warranted, then the case shall be referred to the tribal prosecutor for further action. The tribal prosecutor shall ultimately determine what action should be filed in tribal court pursuant to the Nez Perce Tribal Code and shall inform the Nez Perce Tribe Social Service Program of the action taken. The prosecutor's office is to respond within two (2) to fourteen (14) days as to whether or not the case will be prosecuted.
- (c) The Nez Perce Tribal Prosecutor will consider the Nez Perce Tribal Code §

4-1-89 and any other relevant criminal or civil provisions in determining whether criminal charges for abuse or neglect can or should be filed.

§7-5-10 Special Powers and Duties in Cases of Self -Neglect

(a) If a report issued pursuant to Subsection (d) of § 7-5-5 contains a finding of self-neglect involving an elder or vulnerable adult, the Nez Perce Tribe Social Services Program shall work with the Tribal prosecutor or other appropriate authority to petition the court for the appointment of a temporary or permanent guardian or conservator as provided for in the Nez Perce Tribal Code or other duly-enacted Tribal law or ordinance.

(b) In an emergency, an elder or vulnerable adult suffering from self-neglect shall be transported to an appropriate medical facility. A presumptive finding of self-neglect may be made at the scene.

§7-5-11 Immunity of Participants: Non-Privileged Communication

(a) Any person making a complaint, furnishing a report, information or records required or authorized by this Act, or participating in a judicial or administrative proceeding or investigation resulting from reports, information or records submitted or obtained pursuant to this Act is immune from any civil, criminal, or licensing sanction liability by reason of such action, unless the person acted with malice, bad faith, gross negligence, conducted perjury or unless such person has been charged with or is suspected of incapacitating, abusing, exploiting or neglecting the vulnerable adult or elder in question.

(b) The physician-patient privilege, therapist-patient, husband-wife privilege or any other privilege, except the attorney-client privilege, provided for by the Nez Perce Tribal Code shall not pertain in any civil or criminal litigation in which a vulnerable adult's or elder's exploitation, abuse or neglect is an issue, nor shall they pertain in any investigation of a vulnerable adult's or elder's exploitation, abuse or neglect.

§7-5-12 Duty to Report Abuse, Neglect, Self-Neglect or Exploitation of Vulnerable Adults or Elder; Confidentiality; Violation

(a) Any professional, including but not limited to physicians, dentists, psychologists, social workers, emergency response personnel, or other person who has responsibility for the care of a vulnerable adult or elder and whose examination or observation of the vulnerable adult or elder yields a reasonable basis to believe that abuse, neglect, self-neglect, or exploitation of the vulnerable adult, elder, or the property of the vulnerable adult or elder has occurred, shall immediately report or cause reports to be made of such to an Officer or the Nez Perce Tribal Social Services Program.

(b) Any guardian or conservator of a vulnerable adult or elder who becomes aware or suspects abuse, neglect, self-neglect, or exploitation of the vulnerable adult, elder, or the property of the vulnerable adult or elder to which they act as guardian or conservator has occurred, shall immediately report or cause reports to be made of such reasonable basis to an Officer or the Nez Perce Tribal Social Services Program.

(c) Any attorney, accountant, trustee, guardian, conservator or other person who has responsibility for preparing the tax or other financial records of a vulnerable adult or elder, or a person who has responsibility for any other action concerning the use or preservation of a

vulnerable adult's or elder's property and who, in the course of fulfilling that responsibility, discovers cause to believe that abuse, neglect, self-neglect or exploitation of the vulnerable adult, elder, or vulnerable adult's or elder's property has occurred, shall immediately report or cause reports to be made of such to an Officer or the Nez Perce Tribal Social Services Program.

(d) Any member of the Nez Perce Tribal Executive Committee who becomes aware or suspects abuse, neglect, self-neglect, or exploitation of a vulnerable adult, elder, or the property of the vulnerable adult or elder shall immediately report or cause reports to be made of such reasonable basis to an Officer or the Nez Perce Tribal Social Services Program.

(e) All of the reports required in subsections (a), (b) or (c) of this section, shall be made immediately in person or by telephone to an Officer or the Nez Perce Tribal Social Services Program.

(f) Reports pursuant to this section should contain:

- (1) The names and addresses of the vulnerable adult or elder and any persons having responsibility, control or custody of the vulnerable adult or elder, if known;
- (2) The vulnerable adult's or elder's age and the nature and extent, if any, of his/her vulnerability;
- (3) The nature and extent of the suspected abuse, neglect, self-neglect or exploitation of the vulnerable adult, elder, or the vulnerable adult's or elder's property;
- (4) The name and contact information, if available, of the person or, persons who is/are alleged to have abused, neglected; or exploited the vulnerable adult or elder;
- (5) The name and contact information of the person reporting the alleged abuse, neglect, self-neglect or exploitation;
- (6) Any other information that the person reporting believes might be helpful in establishing the cause of the suspected abuse, neglect, self-neglect or exploitation of the vulnerable adult, elder, or the vulnerable adult's or elder's property.

(g) Any person, including any caretaker, other than one required to report or cause reports to be made in accordance with this section, who has a reasonable basis to believe that abuse, neglect, self-neglect, or exploitation of a vulnerable adult, elder or the property of a vulnerable adult or elder has occurred, has a duty to report the information to an Officer or the Nez Perce Tribal Social Services Program as soon as possible.

(h) The name of the reporting party who reports any abuse, neglect, self-neglect or exploitation as required by this Act shall remain confidential and shall not be released to any person unless the reporting party consents to such release or such release is ordered by the Nez Perce Tribal Court.

§7-5-13 Mandatory Arrest

(a) Any officer shall arrest and take into custody persons whom the officer has probable cause to believe abused or neglected an elder or vulnerable adult. No warrant is required to make such arrest. This mandatory arrest provision means that the victim need not sign a complaint for an arrest to occur. Further, under this provision an Officer shall arrest under probable cause even though it may be against the express wishes of the victim. An officer shall arrest and take into custody, a person whom the officer has probable cause to believe has violated a court order for protection, restraining the person from contact with the victim or excluding the person from the residence, if the existence of the court order can be verified. Regardless of whether the person violating the court order was invited back into the home, an arrest shall be made.

(b) Arrest of a person exploiting an elder, vulnerable adult or the property of an elder or vulnerable adult is not mandatory but is discretionary. If no arrest is made, the investigating Officer shall file a written report in accordance with subsections (e) of § 7-5-12.

(c) Any person arrested under this Act shall be held without bail in the custody of the Nez Perce Tribal Police Department for a period of at least twelve (12) hours, as a mandatory "cooling-off" period.

(d) Any Officer taking action to arrest a suspect under authority of this section shall be immune from any civil, criminal, or other liability by reason of such action, unless the Officer acted with malice, bad faith, gross negligence, conducted perjury or unless such Officer has been charged with or is suspected of abusing, exploiting or neglecting the vulnerable adult or elder in question.

§7-5-14 Duty to Make Medical Records Available; Violation

(a) A person having custody or control of medical or financial records of a vulnerable adult or elder, from whom a report is required or authorized under this section, shall make such records, or a copy of such records, available to an Officer or the Nez Perce Tribal Social Services Program investigating the abuse, neglect, self-neglect or exploitation of the vulnerable adult, elder or the property of the vulnerable adult or elder, upon written request for the records signed by the Officer or Nez Perce Tribal Social Services Program. Records disclosed pursuant to this subsection are confidential and may be used only in a judicial or administrative proceeding or investigation required or authorized under this Act.

(b) If records, required or authorized by this section, are received by an Officer, he/she shall notify the designated Nez Perce Tribal Social Services Program as soon as possible and make such information available.

(c) A person required to prepare reports pursuant to this Act may take or cause to be taken photographs of the vulnerable adult or elder and the vicinity involved. Medical examinations, including radiological examinations of the vulnerable adult or elder may also be performed. Accounts, inventories or audits of the exploited vulnerable adult's or elder's property may be performed. The department, agency, or court that initiates such photographs, examinations, accounts, inventories or audits shall pay the associated costs in accordance with existing statutes and rules. If any person is found to be responsible for the abuse, neglect or exploitation of a vulnerable adult or elder in a criminal or civil action, the Nez Perce Tribal Court may order the person to make restitution as the court deems appropriate.

(d) If psychiatric, substance abuse or other mental health records are requested pursuant to this section, the custodian of the records shall notify the attending clinician, who may, before the records are made available, excise the following:

- (1) Personal information about individuals other than the patient; and
- (2) Information regarding specific diagnosis or treatment of a psychiatric condition, if the attending clinician certifies in writing that release of the information would be detrimental to the patient's health or treatment.

(e) If any portion of a psychiatric record is excised pursuant to subsection (d) of this section, the Nez Perce Tribal Court may, upon application of an Officer or Nez Perce Tribal Social Services Program, order that the entire record or any portion of such record containing information relevant to the reported abuse, neglect, self-neglect or exploitation be made available to the Officer or Nez Perce Tribal Social Services Program investigating the abuse, neglect, self-neglect or exploitation.

§7-5-15 Permitting Life or Health of a Vulnerable Adult or Elder to be Imperiled by Abuse Neglect or Exploitation: Legal Remedies: Registry

(a) Any Caretaker, Relative, or other person or institution who has been employed to provide care, or who has assumed a legal duty to provide care, or who has been appointed by a court to provide care to a vulnerable adult or elder and who causes or permits the life of the vulnerable adult or elder to be endangered, his/her health to be injured or to be imperiled by abuse, neglect or exploitation is guilty of a criminal offense, punishable by imprisonment for a period not to exceed 365 days or a fine not to exceed \$5,000.00, or both.

(b) Any Caretaker, Relative, or other person or institution who aids, abets or otherwise assists or condones the acts or omissions of another person who abuses, neglects or exploits a vulnerable adult or elder shall be treated as if such person committed the offenses himself or herself.

(c) A vulnerable adult or elder whose life or health is being or has been endangered, injured or imperiled by neglect, abuse or exploitation may cause to be filed a civil action in tribal court, either by themselves, their guardian, conservator, or any other interested party, against any Caretaker, Relative, or other person or institution that has been employed to provide care, that has assumed a legal duty to provide care or that has been appointed by a court to provide care to such vulnerable adult or elder for having caused or permitted such conduct.

(d) The Tribe, through the Tribal Prosecutors' Office, may file an action pursuant to this Act on behalf of those vulnerable adults or elders who have been abused, neglected or exploited and in such action may seek to prevent, restrain, or remedy the conduct prohibited in this Act.

(e) The Nez Perce Tribal Court has jurisdiction to prevent, restrain and remedy the conduct prohibited in this Act.

(f) Prior to a determination of liability in any civil action authorized by this Act, the Nez Perce Tribal Court may issue orders that include, but are not limited to, the following relief.

- (1) Restraining or protection orders;

- (2) Temporary injunctions;
- (3) Setting satisfactory performance bonds;
- (4) Creating receiverships;
- (5) Appointing qualified receivers; or
- (6) Enforcement of constructive trusts.

(g) After a determination of liability in any civil action authorized by this Act, such court orders may include, but are not limited to:

- (1) Ordering the payment of actual and consequential damages, as well as punitive damages, costs of suit and reasonable attorney fees, to those vulnerable adults or elders injured by the conduct prohibited in this Act; and
- (2) Ordering the payment of all costs and expenses of the prosecution and investigation of the conduct prohibited in this Act incurred by the Tribe, as appropriate; such payment shall be made to the general fund of the Tribe.

(h) A defendant convicted in any criminal proceeding is precluded from subsequently denying the essential allegations of the criminal offense of which he/she was convicted in any civil proceeding. For the purposes of this subsection, a conviction may result from a verdict or plea, including a plea of no contest.

(i) The initiation of civil proceedings pursuant to this Act shall be commenced within three years after actual discovery of the cause of action.

(j) The standard of proof in actions brought pursuant to this Act is the preponderance of the evidence.

(k) The tribal prosecutor may, upon timely application, intervene in any civil action or proceeding brought under this Act if the tribal prosecutor certifies that, in his/her opinion, the action is of special public importance. Upon intervention, the tribal prosecutor may assert any available claim and is entitled to the same relief as if the tribal prosecutor had instituted a separate action.

(l) In addition to the Tribes' right to intervene as a party in any action under this Act, the tribal prosecutor may appear as a friend of the court in any proceeding in which a claim under this Act has been asserted or in which the court is interpreting this Act.

(m) A civil action authorized by this Act is remedial and not punitive and does not limit and is not limited by any other civil remedy or criminal action or any other provision of law; civil remedies provided under this title are supplemental and not mutually exclusive.

(n) The cause of action or the right to bring a cause of action pursuant to this Act shall not be limited or affected by death of the neglected, abused or exploited elder or vulnerable person.

§7-5-16 Severability

If any of the provisions of this Act are ruled, by a court of competent jurisdiction, to be unconstitutional, illegal, or otherwise unenforceable, the remaining provisions of this Act shall remain in full force and effect to the extent that the purpose of this Act shall remain.