

NEZ PERCE TRIBAL CODE

\*\*\*Discussion Draft ONLY\*\* CODE REVISION\*\* Discussion Draft ONLY <<Last updated by OLC/nya 2021-11-01>>Discussion Draft ONLY\*\* CODE REVISION \*\* Discussion Draft ONLY\*\*\*

DOMESTIC VIOLENCE
TABLE OF CONTENTS

PART I. GENERAL PROVISIONS [CH.7-1]..... 1
Section 7.05.01 Purpose [7-1-1]..... 1
Section 7.05.02 General Jurisdiction [7-1-2] ..... 1
Section 7.05.03 Special Domestic Violence Criminal Jurisdiction Over Non-Indians..... 1
Section 7.05.04 Special Jurisdiction over Non-Indians – Criminal Conduct Applicable ..... 2
Section 7.05.05 Definitions related to Domestic Violence and Family Violence [7-1-3] ..... 2
Section 7.05.06 Reporting Domestic Violence ..... 5
Section 7.05.07 Immunity from Liability ..... 6
PART II. POWERS AND DUTIES OF LAW ENFORCEMENT ..... 6
Section 7.05.08 Law Enforcement Duties to Victims [7-2-5]..... 6
Section 7.05.09 Duty to Preserve Evidence ..... 7
Section 7.05.10 Mandatory Arrest for Crimes of Domestic Violence [7-2-6]..... 8
Section 7.05.11 Emergency Criminal No Contact Order..... 9
Section 7.05.12 Violations of Conditions of Release..... 9
Section 7.05.13 Authority to Seize and Hold Weapons..... 9
Section 7.05.14 Mandatory Arrest for Violations of Civil Protection Orders and Criminal No Contact Orders [7-2-7]..... 10
Section 7.05.15 Law Enforcement Records on Domestic Violence or Family Violence To Be Identifiable..... 10
Section 7.05.16 Required Police Written Policies and Procedures [7-2-19]..... 10
Section 7.05.17 Liability of Law Enforcement Officers ..... 11
Section 7.05.18 Officials Who Batter ..... 11
PART III. COURT REQUIREMENTS ..... 11
Section 7.05.19 Pre-Trial and Release Conditions [7-2-8 & 7-2-9]..... 11
Section 7.05.20 Judgments and Convictions..... 12
Section 7.05.21 Factors to Consider in Sentencing..... 12
PART IV. CRIMINAL ACTIONS AND REMEDIES ..... 13
Section 7.05.22 Criminal Complaint involving Domestic Violence [7-2-2; 4-1-88]..... 13
Section 7.05.23 Criminal Complaint involving Family Violence ..... 13
Section 7.05.24 Powers and Duties of Tribal Prosecutor..... 13
Section 7.05.25 Communication With Victim [7-2-12]..... 13
Section 7.05.26 Records of Dismissal Required in Court File [7-2-13] ..... 14
Section 7.05.27 Dismissal of Criminal Case Prohibited Because Civil Compromise Reached [7-2-14] ..... 14
Section 7.05.28 Violation of No Contact Order – Penalties ..... 14
Section 7.05.29 Violation of Domestic Violence Protection Order – Penalties..... 14
Section 7.05.30 Victim Rights [7-2-15] ..... 15
Section 7.05.31 Advocate-Victim Privilege [7-2-16] ..... 15
Section 7.05.32 Diversion Prohibited; Deferred Sentencing Permitted on a First Offense [7-2-17]..... 16
Section 7.05.33 Conditions of Probation for Perpetrator Convicted of a Crime Involving Domestic Violence; Required Reports by Probation Department [7-2-18]..... 16
Section 7.05.34 Written Statement of Conditions ..... 17
PART V. CIVIL ACTIONS AND REMEDIES [CH. 7-3]..... 18
Section 7.05.35 Purpose – Civil Protection Order ..... 18

# NEZ PERCE TRIBAL CODE

\*\*\*Discussion Draft ONLY\*\* CODE REVISION\*\* Discussion Draft ONLY <<Last updated by OLC/nya 2021-11-01>>Discussion Draft ONLY\*\* CODE REVISION \*\* Discussion Draft ONLY\*\*

Section 7.05.36	Persons authorized to file [7-3-1]	18
Section 7.05.37	Petition for Civil Protection Order or Modification [7-3-2]	18
Section 7.05.38	Procedure for Issuance of a Protection Order [7-3-4 & 7-3-5]	19
Section 7.05.39	Contents of a Protection Order [7-3-4 & 7-3-5; 7-4-1, 7-4-2]	20
Section 7.05.40	Firearms Disqualification	21
Section 7.05.41	Duties of Children’s Protective Services [7-4-5]	22
<b>PART VI.</b>	<b>OTHER ORDERS</b>	<b>23</b>
Section 7.05.42	Full Faith and Credit Clause [7-3-6]	23
Section 7.05.43	Filing a Foreign Protection Order	23

# NEZ PERCE TRIBAL CODE

\*\*\*Discussion Draft ONLY\*\* CODE REVISION\*\* Discussion Draft ONLY <<Last updated by OLC/nya 2021-11-01>>Discussion Draft ONLY\*\* CODE REVISION \*\* Discussion Draft ONLY\*\*\*

\*Note numbering/outline is not set; placement in title will determine title-chapter number\*

## DOMESTIC VIOLENCE CHAPTER

### PART I. GENERAL PROVISIONS [CH.7-1]

#### Section 7.05.01 Purpose [7-1-1]

- A. The purpose of this Chapter is to recognize domestic violence and family violence as serious crimes against the Nez Perce Tribe, the family, and society; and to provide the victim the maximum protection from further violence which the law and those who enforce the law can provide.
- B. It is further the purpose of this Chapter 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.
- C. 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.
- D. It is the intent of the Nez Perce Tribe that the official response to cases of domestic violence and family violence shall stress the enforcement of the laws to protect the victim and to hold the perpetrator accountable, and shall communicate the Nez Perce Tribe's policy that violent behavior in the home against intimate partners or family members is criminal behavior and will not be excused or tolerated. This chapter shall be interpreted and applied to give it the broadest possible scope to carry out these purposes.

#### Section 7.05.02 General Jurisdiction [7-1-2]

~~The Nez Perce Tribal Court shall have criminal and civil jurisdiction as defined in the Nez Perce Tribal Code.~~ Jurisdiction over domestic and family violence matters shall be in accordance with [ ]. In addition, the Nez Perce Tribal Court shall retain jurisdiction over members of federally recognized Indian tribes and any violations of orders of protection entered pursuant to this chapter which are alleged to have occurred outside of the boundaries of the Nez Perce Reservation where such orders are entitled to recognition outside Reservation boundaries as a matter of full faith and credit.

Title 1; also refer to Title 4 jurisdiction

Exercising SDVCJ requires certain protections for defendants

#### Section 7.05.03 Special Domestic Violence Criminal Jurisdiction Over Non-Indians

- A. The Nez Perce Tribe hereby exercises "special domestic violence criminal jurisdiction" as a "participating tribe," as defined within 25 U.S.C. §1304 (2013), subject to applicable exceptions defined therein, in the Nez Perce Tribal Court.
- B. In all proceedings in which the court is exercising special domestic violence criminal jurisdiction as a participating tribe, all rights afforded by the Nez Perce Civil Rights Act shall apply and those enumerated in the Indian Civil Rights Act, 25 U.S.C. § 1302 to all defendants. Should there be any inconsistency between the Nez Perce Civil Rights Act and 25 U.S.C. § 1302, those of 25 U.S.C. § 1302 shall apply.
- C. The Nez Perce Tribe hereby declares special domestic violence criminal jurisdiction over any person only if that person:

The jury pool must reflect a "fair cross section of the community" and does not "systematically exclude" anyone --> i.e., permit anyone living within Reservation boundaries, working for Tribe--whether Indian or non-Indian to be included in jury pool and eligible to be called to serve on a jury panel.

## NEZ PERCE TRIBAL CODE

\*\*\*Discussion Draft ONLY\*\* CODE REVISION\*\* Discussion Draft ONLY <<Last updated by OLC/nya 2021-11-01>>Discussion Draft ONLY\*\* CODE REVISION \*\* Discussion Draft ONLY\*\*

1. Resides within the jurisdiction of the Nez Perce Tribe; or
  2. Is employed within the jurisdiction of the Nez Perce Tribe; or
  3. Is a spouse, intimate partner, or dating partner of:
    - a. A member of the Nez Perce Tribe; or
    - b. A member of another Indian tribe who resides within the jurisdiction of the Nez Perce Tribe.
- D. Every defendant has the privilege of the writ of habeas corpus to test the legality of their detention by order of the Nez Perce Tribe and may petition the court to stay further detention pending the habeas proceeding.
1. The court shall grant a stay if the court:
    - a. Finds that there is a substantial likelihood that the federal habeas corpus petition will be granted; and
    - b. After giving each alleged victim in the matter an opportunity to be heard, finds by clear and convincing evidence that under conditions imposed by the court, the petitioner is not likely to flee or pose a danger to any person or the community if released.

### **Section 7.05.04 Special Jurisdiction over Non-Indians – Criminal Conduct Applicable**

The Nez Perce Tribe exercises special domestic violence criminal jurisdiction if the criminal conduct that falls into one or more of the following categories:

- A. Domestic Violence and Dating Violence. An act of domestic violence or dating violence that occurs within the jurisdiction of the Nez Perce Tribe.
- B. Violations of Protection Orders. An act that occurs within the jurisdiction of the Nez Perce Tribe, and:
  1. Violates the portion of a protection order that:
    - a. Prohibits or provides protection against violent or threatening acts of harassment against, sexual violence against, contact or communication with, or physical proximity to the person protected by the order;
    - b. Was issued against the defendant;
    - c. Is enforceable by the Nez Perce Tribe; and
    - d. Is consistent with 18 U.S.C. 2265(b).

### **Section 7.05.05 Definitions related to Domestic Violence and Family Violence [7-1-3]**

As used in this Chapter, the following terms shall have the meanings given below:

- A. Abuse means the intentional infliction of physical harm, bodily injury or sexual assault or the infliction of the fear of imminent physical harm, and—includes but is not limited to—assault and battery as defined in the Nez Perce Tribal Code.
- B. Advocate means a person who is employed to provide services to victims of domestic violence and/or sexual assault or who volunteers to do so after receiving training in the area, and is bound by confidentiality policies.

# NEZ PERCE TRIBAL CODE

\*\*\*Discussion Draft ONLY\*\* CODE REVISION\*\* Discussion Draft ONLY <<<Last updated by OLC/mya 2021-11-01>>>Discussion Draft ONLY\*\* CODE REVISION \*\* Discussion Draft ONLY\*\*\*

C. Contact includes but is not limited to:

1. Repeatedly coming into and/or remaining in the visual or physical presence of the other person;
2. Following the other person;
3. Waiting outside the home, property, place of work or school of the other person;
4. Sending or making written communications in any form, including text messaging, instant messaging, and social media, to the other person;
5. Speaking with the other person by any means, including leaving a voicemail message;
6. Communicating with the other person through a third person;
7. Committing a crime against the other person;
8. Communicating with a third person who has some relationship to the other person with the intent of impacting the third person's relationship with that other person;
9. Communicating with business entities with the intent of affecting some right or interest of the other person;
10. Damaging the other person's home, property, place of work or school; or
11. Delivering directly or through a third person any object to the home, property, place of work or school of the other person

Definition stems from Violence Against Women Act

D. Dating relationship means a social relationship of a romantic nature. In determining whether parties have a "dating relationship," the trier of fact shall consider:

1. The length of time the relationship has existed;
2. The nature of the relationship; and
3. The frequency of the interaction between the parties.

It is recommended to delete "domestic household member" because it is an overly-broad definition for DV >>> for example, two young adults who do not live together nor have a child in common would not fall within this definition

E. ~~Domestic household member means spouses, former spouses, persons related by blood or marriage, persons who reside or have resided together, and persons who have 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.~~

F. Domestic violence means a crime violence committed by: an intimate partner of the victim, a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, or by a person similarly situated to a spouse of the victim under the laws of the Nez Perce Tribe.

Domestic violence can take many forms such as but not limited to: use of intimidation, contact as defined within this chapter, manipulation, isolation, coercion, fear and/or violence, as well as other tactics of power and control to establish and maintain a relationship of dominance over an intimate partner, but does not include acts of self-defense.

## NEZ PERCE TRIBAL CODE

\*\*\*Discussion Draft ONLY\*\* CODE REVISION\*\* Discussion Draft ONLY <<<Last updated by OLC/nya 2021-11-01>>>Discussion Draft ONLY\*\* CODE REVISION \*\* Discussion Draft ONLY\*\*\*

The following are examples of what form actions of ~~the~~ domestic violence action may take, but are not an exhaustive list, merely illustrative:

1. Attempting to commit or committing any criminal offense as defined by N.P.T.C. Title 4, Chapter 4.20 Offenses Against The Person [current 4-1-37 through 4-1-46], and Chapter 4.23 Sex-Related Crimes [current 4-1-48 through 4-1-53] against an intimate partner;
  2. Physically harming, attempting to physically harm, or placing an intimate partner in reasonable fear of physical harm to himself or herself.
    - a. Reasonable fear may be produced by behavior which induces fear in the victim, including, but not limited to, harassment, stalking, destruction of property, or physical harm or threat of harm to household pets;
  3. Emotional or mental abuse of the intimate partner, including physical or mental intimidation, controlling activities, or using demeaning language;
  4. Economic abuse of an intimate partner;
  5. Causing an intimate partner to engage involuntarily in sexual activity; or
  6. Preventing the victim from accessing services.
- G. Electronic communications means any form of expression or exchange of information by speech, photographs or written form using electronic means. Electronic communication includes, but is not limited to, communication via telephone, facsimile, electronic mail, social media and other electronic forms.
- H. Electronic surveillance means monitoring the behavior, activities, or whereabouts by electronic means.
- I. Ex parte means that only the requesting party (petitioner) is heard by the court, and that notice and an opportunity to contest the facts are not available to the party adversely affected (respondent) by the court's action. An ex parte protection order is temporary pending a full hearing.
- J. Family or household member means persons who are not Intimate Partners (defined further below); and:
1. Who are related by blood, marriage, or adoption;
  2. Who are minor children, by blood, marriage, or adoption;
  3. Who are minor children who are part of the household; or
  4. Who reside or have resided together in the past who are not or have not been intimate partners.
- K. Family violence means the same or similar acts committed in domestic violence, but directed towards a family or household member instead of an intimate partner. The dynamics of power and control may not be present.
- L. Foreign protection order means an injunction or other order related to domestic violence or family violence, harassment, sexual abuse, or stalking, for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with, or physical proximity to another person, issued by a court of another state, territory, or possession of the United States, the Commonwealth of Puerto Rico, or the District of

## NEZ PERCE TRIBAL CODE

\*\*\*Discussion Draft ONLY\*\* CODE REVISION\*\* Discussion Draft ONLY <<<Last updated by OLC/mya 2021-11-01>>>Discussion Draft ONLY\*\* CODE REVISION \*\* Discussion Draft ONLY\*\*\*

Columbia, or any United States military tribunal, or a tribal court, in a civil or criminal action.

- M. Indian country means the definition given in 18 U.S.C. 1151.
- N. ~~Immediate family means a spouse, parent, child, sibling, live-in partner, or any other person who regularly resides in the household or who in the past regularly resided in the household.~~
- O. Intimate partner means:
1. Spouses;
  2. Former spouses;
  3. Persons who are or have been in a dating relationship;
  4. Persons who are or have been in a marital-like relationship; or
  5. Persons who have a child in common, regardless of whether they have been married or have lived together at any time in a romantic relationship.
- P. Mandatory arrest means that a police officer shall arrest if there is probable cause to believe the person to be arrested has committed an offense as defined by this chapter even though the arrest may be against the expressed wishes of the victim.
- Q. No Contact Order means a court order issued pursuant to a *criminal* case that prohibits a criminal defendant from having contact with the victim.
- R. Protection Order means a temporary or permanent court order, injunction or other order related to domestic violence or family violence, harassment, sexual abuse, or stalking, granted for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with, or physical proximity to another person, who is a victim or alleged victim of domestic violence or family violence, dating violence, sexual assault or stalking; and
- Includes any temporary or final order issued by a civil or criminal court, whether obtained by filing an independent action or as a pendente lite order in another proceeding, if the civil or criminal order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection
- S. Perpetrator means the person who is alleged to have committed an act of domestic violence or family violence. The perpetrator may also be referred to as a “defendant” in a criminal case or “respondent” in a civil case.
- T. 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.

### Section 7.05.06 **Reporting Domestic Violence**

- A. Mandatory reporting. The following persons are obligated to report suspected domestic violence if they believe it is occurring, or is about to occur and they believe the victim is in imminent risk of harm: any physician, physician’s assistant, psychologist, psychiatrist,

## NEZ PERCE TRIBAL CODE

\*\*\*Discussion Draft ONLY\*\* CODE REVISION\*\* Discussion Draft ONLY <<<Last updated by OLC/nya 2021-11-01>>>Discussion Draft ONLY\*\* CODE REVISION \*\* Discussion Draft ONLY\*\*\*

mental health counselor, nurse, nurse's aide, nurse practitioner, midwife, dentist, dental assistant, hygienist, optometrist, or any medical or mental health professional; school principal, school teacher, or other school official; social worker; child day care center worker, other child care staff including foster parents, residential care or institutional personnel or child support program staff; peace officer or other law enforcement official; and judge, attorney if not prevented by the attorney client privilege, probation staff, clerk of the court, or other judicial system official. The suspected domestic violence shall be reported immediately by telephone or otherwise to the Nez Perce Tribal Police Department. The reporter may initially be logged in as anonymous.

- B. Any person subject to mandatory reporting who fails, neglects, or refuses to report acts of domestic violence known to him/her, after notice and hearing, may be assessed a **civil penalty** in an amount not to exceed \$500.00.

### Section 7.05.07 Immunity from Liability

- A. The following persons have immunity from liability in a civil action brought by a party for any action or omission in good faith under this chapter arising from alleged domestic violence or family violence or a crime involving domestic violence or family violence:
1. Law enforcement officers;
  2. Victim advocates;
  3. NMPH Behavioral Health staff;
  4. Child Support Enforcement Program staff; or
  5. Mandatory reporters.

## PART II. POWERS AND DUTIES OF LAW ENFORCEMENT

### Section 7.05.08 Law Enforcement Duties to Victims [7-2-5]

- 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 the action necessary to provide for the safety of the victim and any family 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.
  7. **Written Notice to Victim.** 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 each person of the availability of a shelter or other services in the Tribe's service area, and giving each person immediate notice of the legal rights and



## NEZ PERCE TRIBAL CODE

\*\*\*Discussion Draft ONLY\*\* CODE REVISION\*\* Discussion Draft ONLY <<<Last updated by OLC/mya 2021-11-01>>>Discussion Draft ONLY\*\* CODE REVISION \*\* Discussion Draft ONLY\*\*\*

remedies available. The notice shall include handing each person a copy of the following statement:

IF YOU ARE THE VICTIM OF DOMESTIC VIOLENCE, you can ask the tribal, city, or county prosecuting attorney to file a criminal complaint. You also have the right to file a petition in tribal, superior, district, or municipal court requesting an order for protection from domestic abuse which could include any of the following: (a) An order restraining your abuser from further acts of abuse; (b) an order directing your abuser to leave your household-residence; (c) an order preventing your abuser from entering your residence, school, business, or place of employment; (d) an order awarding you or the other parent custody of or visitation with your minor child or children; and (e) an order restraining your abuser from molesting or interfering with minor children in your custody. The forms you need to obtain a protection order are available in any tribal, municipal, district, or superior court. 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.

8. Confiscating any weapon as provided within this chapter; and/or
9. Providing assistance in obtaining a temporary protection order or emergency no contact order.

### Section 7.05.09 Duty to Preserve Evidence

- A. The purpose of this section is to assist in the prosecution of perpetrators of crimes involving domestic violence and to recognize that victims of crimes involving domestic violence are often reluctant to cooperate or testify at subsequent hearings for many reasons, including but not limited to economic, emotional and psychological factors.
- B. All law enforcement officers who respond to an allegation of a crime involving domestic violence shall take reasonable steps to collect sufficient evidence to enable the Prosecutor to secure a conviction of the perpetrator without the testimony of any victim. Reasonable steps include:
  1. Photographing injuries to any victim, any damage to property and the location and surroundings of the alleged incident;
  2. Describing both the physical and emotional condition of the victim in detail;
  3. Noting the identity of any witnesses to the incident and determining what they observed;
  4. Identifying all persons present at the location at the time of the incident, including children, whether or not they witnessed the incident
  5. Recording any oral comments;
  6. Gathering history of the relationship and its duration;
  7. Describing the scene of the alleged crime on first contact and other physical evidence; and
  8. Gathering statements and interviewing responding medical personnel or following up with medical personnel if the victim is transported to a facility for medical treatment

## NEZ PERCE TRIBAL CODE

\*\*\*Discussion Draft ONLY\*\* CODE REVISION\*\* Discussion Draft ONLY <<<Last updated by OLC/mya 2021-11-01>>>Discussion Draft ONLY\*\* CODE REVISION \*\* Discussion Draft ONLY\*\*\*

- C. A law enforcement officer who responds to allegation of domestic violence shall encourage any victim to make an oral and written statement concerning the incident and shall take one from any perpetrator, if possible.
- D. A law enforcement officer who responds to allegation of domestic violence shall ensure that the victim is made aware of the importance of preserving evidence of the incident. In addition, the law enforcement officer shall preserve a chronology of events in written form.
- E. If a child is present in the household, the officer shall note their presence. In order to preserve evidence and not taint testimony or induce additional trauma, an interview of a child shall be conducted by someone trained and qualified to interview children. However, if the child makes spontaneous statements, the officer shall note these within their report. If a child is present in the household, the officer shall make any reports, as required under the Tribal Code, to the appropriate Tribal or other governmental agency responsible for investigating allegations of abuse or neglect.

### Section 7.05.10 Mandatory Arrest for Crimes of Domestic Violence [7-2-6]

- A. The purpose of mandating arrest of perpetrators is to provide victims with immediate protection from the current violence, to afford them an opportunity to consider legal options, to provide victims with time to safely relocate or obtain a protection order, and to ensure an adequate and prompt law enforcement response to domestic violence. The person shall be held in custody ~~on maximum bail~~ pending further action by the court.
- B. 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 within four hours of the time when the victim first has the ability to report the incident. The officer must make an arrest upon probable cause regardless of the express wishes of the victim, but those wishes should be noted in the report.

Nothing in this subsection prohibits an officer from arresting and booking a person upon probable cause to believe that a person committed a crime involving domestic violence when more than four hours have passed.

- C. If a law enforcement officer receives a complaint alleging a crime involving domestic violence from two or more opposing persons, the officer shall evaluate each person's account separately to determine who was the primary aggressor. In determining whether a person is the primary aggressor the officer must consider the following as well as any other relevant factors:
  - 1. Prior complaints of domestic violence;
  - 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; and
  - 5. Whether one of the persons acted in self-defense.
- D. If a law enforcement officer determines that one person was the predominant physical aggressor, the officer need not arrest the other person, even if the officer has probable

## NEZ PERCE TRIBAL CODE

\*\*\*Discussion Draft ONLY\*\* CODE REVISION\*\* Discussion Draft ONLY <<<Last updated by OLC/nya 2021-11-01>>>Discussion Draft ONLY\*\* CODE REVISION \*\* Discussion Draft ONLY\*\*\*

- cause to believe that the other person has committed a crime involving domestic violence or family violence against the predominant physical aggressor.
- E. A law enforcement officer who does not make an arrest, or who arrests two or more persons after investigating an alleged crime involving domestic violence or family 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 pending first appearance on the maximum bail allowable.
  - G. Whenever a police officer investigates an allegation of domestic violence, whether or not an arrest is made, the officer shall make a detailed written report of the alleged abuse and submit that report to the Nez Perce Tribal Prosecutor's Office within 48 hours.
  - H. 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.

### Section 7.05.11 Emergency Criminal No Contact Order

- A. A law enforcement officer shall have the authority to request from the on-call judge an emergency criminal no contact order prohibiting contact with the victim, including third party contact, on a form approved by the court, if the officer has probable cause to believe that a crime involving domestic violence or family violence has occurred. One of the following methods shall be used:
  - 1. The officer shall contact the on-call judge from jail at time of booking and provide the on-call judge with enough information for a finding of probable cause. The officer shall then sign the order on the Judge's behalf and serve it on the defendant.
  - 2. The officer shall call the on-call judge from the scene once arrest has been made and follow the same procedure as above, providing the victim with copy of the order at the scene if possible.
- B. The order shall be effective until the first court appearance or as vacated or amended by court order.
- C. Upon issuance of such an order, the officer shall serve a copy on the perpetrator and file the order with the court by noon on the next business day. The officer shall provide a copy of the order to the victim and assist the victim in securing any essential personal effects.

### Section 7.05.12 Violations of Conditions of Release

When 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 alleged violator.

### Section 7.05.13 Authority to Seize and Hold Weapons

- A. Incident to arrest for a crime involving domestic violence, the Nez Perce Tribal Police shall seize all weapons that are alleged to have been involved or were threatened to be used in the commission of the crime.

## NEZ PERCE TRIBAL CODE

*\*\*\*Discussion Draft ONLY\*\* CODE REVISION\*\* Discussion Draft ONLY <<<Last updated by OLC/nya 2021-11-01>>>Discussion Draft ONLY\*\* CODE REVISION \*\* Discussion Draft ONLY\*\*\**

- B. The Nez Perce Tribal Police may also seize weapons that are in plain view of the officer or 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.
- C. The Nez Perce Tribal Police are authorized to confiscate weapons from a person who is prohibited from possessing or using them.

### **Section 7.05.14 Mandatory Arrest for Violations of Civil Protection Orders and Criminal No Contact Orders [7-2-7]**

- A. When a law enforcement officer has probable cause to believe that a person has violated one or more of the following court orders ~~contained in an existing domestic protection order and verifies the existence of the order,~~ the officer shall, without warrant, arrest the ~~apparent violator~~ alleged violator. This section applies to all violations of any protection order or no contact order whether civil or criminal. Arrest shall be mandatory were the violation is of one of the following, regardless of whether the issuing authority is the Nez Perce Tribal Court or another court: ~~whether or not the violation was committed in or outside of 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~~
  - 1. A criminal no contact order;
  - 2. A civil domestic violence protection order;
  - 3. A sexual assault protection order;
  - 4. A civil protection order issued in the context of a family law action;
  - 5. A vulnerable adult protection order;
  - 6. A minor in need of care protection order; or
  - 7. A foreign protection order.
- B. The defendant shall be held without bail pending the first hearing at which time bail and conditions of release shall be established.

### **Section 7.05.15 Law Enforcement Records on Domestic Violence or Family Violence To Be Identifiable**

- A. The Nez Perce Tribal Police Department shall maintain written records of arrests, incident reports, and initial contacts in such a manner as to allow tracking and identification of them as related to domestic violence or family violence.
- B. The Nez Perce Tribal Police Department is not required to provide records of police contacts alleging incidents of domestic violence, sexual assault, or stalking to the alleged perpetrator. Records may be obtained by court order after notice to the Prosecutor and a hearing. In ordering disclosure, the court may order that the victim identification and location be redacted, and may make other orders as necessary to protect the confidentiality of victim and/or witness information.

### **Section 7.05.16 Required Police Written Policies and Procedures [7-2-19]**

- A. The Nez Perce Tribal Police Department shall develop or adopt and put into effect written policies and procedures concerning:
  - 1. The effective response of the agency to cases involving domestic violence;

## NEZ PERCE TRIBAL CODE

\*\*\*Discussion Draft ONLY\*\* CODE REVISION\*\* Discussion Draft ONLY <<Last updated by OLC/mya 2021-11-01>> Discussion Draft ONLY\*\* CODE REVISION \*\* Discussion Draft ONLY\*\*\*

2. Enforcement of the Nez Perce Tribal Code concerning domestic violence;
3. Protection and safety of the victim of domestic violence and family members; and
4. Coordination with hospitals and programs for victims of domestic violence.

### **Section 7.05.17 Liability of Law Enforcement Officers**

This may be duplicative of 7.05.07 above

A law enforcement officer or their legal counsel shall not be held liable in any civil action for an arrest based on probable cause, enforcement in good faith of any court order, or any other action or omission made in good faith under this chapter arising from an incident of alleged domestic violence or violations of one of the named criminal or civil protection orders identified within this chapter.

### **Section 7.05.18 Officials Who Batter**

No special treatment by policy makers or law enforcement officials shall be given to any person because of their official capacity as a law enforcement officer, public official, or because of their connections to or influence over policy makers, public officials, law enforcement officers or the community. All procedures and duties set out in this chapter and internal policies of the Nez Perce Tribal Police Department in its current form, or as subsequently modified, shall be strictly adhered to, regardless of any administrative, interagency, or departmental investigation and/or sanctions.

## PART III. COURT REQUIREMENTS

### **Section 7.05.19 Pre-Trial and Release Conditions [7-2-8 & 7-2-9]**

- A. Any person arrested for a crime involving domestic violence or a violation of a protection order or no contact order shall not be released on bond or on their own recognizance prior to being arraigned, at which time bail and conditions of release shall be established. Such arraignment shall not occur less than two business days or more than three business days following arrest. Thereafter, the court shall consider the following factors when setting bail:
1. The person has been charged with a crime of violence and:
    - a. The person has been recently convicted of another crime of violence; or
    - b. 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;
  4. The person represents a danger to the community. This requires a pattern of behavior evidence by past and present conduct and no conditions of release are available which would reasonably assure the safety of the community
- B. No Contact Order. Because of the likelihood of repeated violence directed at those who have been victims of domestic violence, when any person is arrested for or charged with a crime of domestic violence, the court shall issue a no contact order prohibiting the

## NEZ PERCE TRIBAL CODE

\*\*\*Discussion Draft ONLY\*\* CODE REVISION\*\* Discussion Draft ONLY <<<Last updated by OLC/nya 2021-11-01>>>Discussion Draft ONLY\*\* CODE REVISION \*\* Discussion Draft ONLY\*\*\*

defendant from having any contact with the victim. Such an order shall be entered at the first opportunity with no additional hearing required.

1. The protected party in a no contact order shall be provided with a certified copy of the order.
2. In issuing a no contact order, the court shall consider whether the firearms prohibition provisions of this Chapter apply.
3. A no contact order shall not be vacated without notice to the Prosecuting Attorney and a hearing.

### C. Other Considerations.

1. No Ex Parte Bench Warrant Quash. A warrant issued in a domestic violence crime cannot be quashed without notice to the Prosecutor and a hearing.
2. Bail. Bail set in a domestic violence case requires cash only. A bond is not available unless approved by the court and after input from the Prosecuting Attorney.
3. Electronic Monitoring. The use of GPS may be required pre- or post-trial at the recommendation of the Prosecutor or Probation Officer and at the defendant's expense.
4. Other Conditions. The court may order any other lawful relief as it deems necessary for the protection of any claimed or potential victim of domestic violence, including orders or directives to the Nez Perce Police Department.

### Section 7.05.20 **Judgments and Convictions**

- A. Upon conviction for a crime of domestic violence, the perpetrator shall be required to, 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.
- B. Upon conviction of a crime involving family violence, the perpetrator shall be required to complete an intake assessment to determine whether treatment is appropriate and follow all recommendations.

### Section 7.05.21 **Factors to Consider in Sentencing**

- A. In sentencing for a crime of domestic violence, or stalking as defined in this Chapter, the court shall consider, among other factors, whether:
  1. The firearms prohibition provisions of this chapter apply;
  2. The defendant suffered a continuing pattern of coercion, control, or abuse by the victim of the offense and the offense is a response to that coercion, control, or abuse;
  3. The offense was part of an ongoing pattern of psychological, physical, or sexual abuse of a victim or multiple victims manifested by multiple incidents over a prolonged period of time; and whether
  4. The offense occurred within sight or sound of minor children.

## NEZ PERCE TRIBAL CODE

\*\*\*Discussion Draft ONLY\*\* CODE REVISION\*\* Discussion Draft ONLY <<<Last updated by OLC/nya 2021-11-01>>>Discussion Draft ONLY\*\* CODE REVISION \*\* Discussion Draft ONLY\*\*\*

- B. In sentencing for the crime of domestic violence as defined in this Chapter, the Prosecutor shall provide for the court's review:
  - 1. The defendant's criminal history, if any, that occurred under the law of the Nez Perce Tribe, any state, Federal, territory, possession, tribe or United States military tribunal
  - 2. For the purposes of subsection B(1) of this section, criminal history includes all previous convictions and orders of deferred prosecution as otherwise available to the court or prosecutor before the date of sentencing.

### PART IV. CRIMINAL ACTIONS AND REMEDIES

#### **Section 7.05.22 Criminal Complaint involving Domestic Violence [7-2-2; 4-1-88]**

- A. Crimes involving domestic violence may be accompanied by other criminal acts. Domestic violence can take many forms such as but not limited to: use of intimidation, contact as defined within this chapter, manipulation, isolation, coercion, fear and/or violence, as well as other tactics of power and control to establish and maintain a relationship of dominance over an intimate partner, but does not include acts of self-defense.
- B. When filing a complaint alleging an offense involving domestic violence, the prosecutor shall include name, class, and code citation of the alleged offense(s) committed in addition to a citation to this section which designates the case as one involving domestic violence.

#### **Section 7.05.23 Criminal Complaint involving Family Violence**

When filing a complaint alleging an offense involving family violence, the prosecutor shall include name, class, and code citation of the alleged offense(s) committed in addition to a citation to this section which designates the case as one involving family violence.

#### **Section 7.05.24 Powers and Duties of Tribal Prosecutor**

The Tribal Prosecutor shall indicate in the charging document that the defendant is being accused of a crime of domestic violence or family violence.

#### **Section 7.05.25 Communication With Victim [7-2-12]**

- A. In every case in which a person is arrested for or charged with a crime under this chapter, the Prosecutor shall endeavor to maintain contact with the victim throughout the criminal proceedings, with particular attention to the following:
  - 1. Hearing Dates, Continuances, Sentencing. The Prosecutor shall assure that the victim is informed of all hearing dates and continuances and of the right to address the court at any hearing, in person or in writing, regarding the various impacts of the criminal offense on the victim, the risk of further acts of domestic violence or family violence, and the conditions of sentence necessary to ensure the safety of the victim and the victim's family and household members.
  - 2. Prosecutorial Decisions. The prosecutor shall make reasonable efforts to notify the victim of an alleged crime involving domestic violence of every major prosecutorial

## NEZ PERCE TRIBAL CODE

\*\*\*Discussion Draft ONLY\*\* CODE REVISION\*\* Discussion Draft ONLY <<<Last updated by OLC/nya 2021-11-01>>>Discussion Draft ONLY\*\* CODE REVISION \*\* Discussion Draft ONLY\*\*\*

decision, including a decision to decline the prosecution of the crime, to dismiss the criminal charges filed against the defendant or to enter into a plea agreement.

- a. Release of a defendant from custody must not be delayed because of the requirements of subsections A and B.
3. Restitution. 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.

### **Section 7.05.26 Records of Dismissal Required in Court File [7-2-13]**

The Nez Perce Tribe does not favor dismissal of domestic violence charges, thus when the Prosecutor moves to dismiss a domestic violence charge against a defendant, the Prosecutor shall provide specific reasons for the dismissal to the court. If the dismissal is based on the unavailability of the alleged victim or any witness, the Prosecutor shall indicate why such person(s) are unavailable and why the case cannot be prosecuted without the individuals. ~~When a court dismisses criminal charges or a prosecutor moves to dismiss charges against a defendant accused of a crime involving domestic violence or family 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.~~

### **Section 7.05.27 Dismissal of Criminal Case Prohibited Because Civil Compromise Reached [7-2-14]**

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

### **Section 7.05.28 Violation of No Contact Order – Penalties**

- A. A Police Officer shall arrest without a warrant and take into custody any person who the Police Officer has probable cause to believe has willfully violated a no contact order issued Section 1.19(B) of this Chapter, Pre-Trial Release and Conditions.
- B. All provisions of an order issued under Section 1.19(B) of this Chapter, Pre-Trial Release and Conditions shall remain in full force and effect until the order terminates or is modified by the court.
- C. Willful violation of a no contact order subjects the defendant to criminal penalties under this chapter. Any defendant who is found guilty of violating the terms of a no contact order may also, subject to the court's discretion, be held in contempt of court, and the court may impose such sanctions as it deems appropriate.
  1. Violation of a no contact order is a Class E offense.
  2. A third or subsequent violation of a no contact order is a Class F offense.
  3. Consent is not a defense to a violation of a domestic violence no contact order.

### **Section 7.05.29 Violation of Domestic Violence Protection Order – Penalties**

- A. A Police Officer shall arrest without a warrant and take into custody any person who the Police Officer has probable cause to believe has willfully violated a no contact order issued under Section 1.34 of this Chapter, Civil Protection Order.



## NEZ PERCE TRIBAL CODE

*\*\*\*Discussion Draft ONLY\*\* CODE REVISION\*\* Discussion Draft ONLY <<<Last updated by OLC/nya 2021-11-01>>>Discussion Draft ONLY\*\* CODE REVISION \*\* Discussion Draft ONLY\*\*\**

- B. All provisions of an order issued under Section 1.34 of this Chapter, Civil Protection Order shall remain in full force and effect until the order terminates or is modified by the court.
- C. Willful violation of a no contact order subjects the defendant to criminal penalties under this chapter. Any defendant who is found guilty of violating the terms of a no contact order may also, subject to the court's discretion, be held in contempt of court, and the court may impose such sanctions as it deems appropriate.
  - 1. Violation of a no contact order is a Class E offense.
  - 2. A third or subsequent violation of a no contact order is a Class F offense.
  - 3. Consent is not a defense to a violation of a domestic violence no contact order.

### **Section 7.05.30 Victim Rights [7-2-15]**

- A. A victim of domestic violence or family 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. Request 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 victim's compensation and to be informed of procedures for applying; and
  - 7. Receive notice from the prosecutor in reference to case proceedings, prosecutorial decisions, changes in protection or no-contact orders and restitution. .
- B. The prosecuting attorney shall notify the victim of their rights as set forth in this section.

### **Section 7.05.31 Advocate-Victim Privilege [7-2-16]**

- A. Except as otherwise provided in subsection A, 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 Minors in Need of Care Chapter of the Nez Perce Tribal Code. A person may not claim the privilege when providing evidence in proceedings concerning child violence abuse.
- C. As used in this subsection, an advocate means an employee of or volunteer for a program for victims of domestic violence who:

## NEZ PERCE TRIBAL CODE

\*\*\*Discussion Draft ONLY\*\* CODE REVISION\*\* Discussion Draft ONLY <<<Last updated by OLC/nya 2021-11-01>>>Discussion Draft ONLY\*\* CODE REVISION \*\* Discussion Draft ONLY\*\*\*

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.

### **Section 7.05.32 Diversion Prohibited; Deferred Sentencing Permitted on a First Offense [7-2-17]**

- 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 has not received deferred sentencing in a prior case involving domestic violence; and
  2. 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; and
    - d. The nature of the crime (simple or aggravated).
    - e. ~~prior participation in deferred sentencing; and~~
  3. Consent of the prosecutor is obtained after consultation with the victim, when the victim is available; and
  4. A hearing is held in which the perpetrator enters a plea or judicial admission to the crime; and
  5. 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.

### **Section 7.05.33 Conditions of Probation for Perpetrator Convicted of a Crime Involving Domestic Violence; Required Reports by Probation Department [7-2-18]**

- 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.

## NEZ PERCE TRIBAL CODE

*\*\*\*Discussion Draft ONLY\*\* CODE REVISION\*\* Discussion Draft ONLY <<<Last updated by OLC/nya 2021-11-01>>>Discussion Draft ONLY\*\* CODE REVISION \*\* Discussion Draft ONLY\*\*\**

- 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 **intimate** 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 non-prescribed 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 [ ].
- E. The probation department shall immediately report to the court any assault by the perpetrator, the perpetrators failure to comply with any condition imposed by the court or probation department, and any threat of harm made by the perpetrator.

### **Section 7.05.34 Written Statement of Conditions**

- A. **The court shall direct that the probation officer provide the defendant with a written statement that sets forth all the conditions of sentencing of which the sentence is subject, and that is sufficiently clear and specific to serve as a guide for the defendant's conduct and for such supervision as is required.**

## NEZ PERCE TRIBAL CODE

\*\*\*Discussion Draft ONLY\*\* CODE REVISION\*\* Discussion Draft ONLY <<Last updated by OLC/nya 2021-11-01>>Discussion Draft ONLY\*\* CODE REVISION \*\* Discussion Draft ONLY\*\*\*

- B. This statement shall be signed and dated by defendant when received.

### PART V. CIVIL ACTIONS AND REMEDIES [CH. 7-3]

#### Section 7.05.35 Purpose – Civil Protection Order

- A. Purpose. A person may seek a protection order whether or not the person has contacted law enforcement officers to report a crime, but such persons should be referred to law enforcement officers in the event that crime has been committed.
- B. It is the policy of the Tribe that ex parte temporary protection orders may be issued without prior notice to the respondent to ensure the immediate protection of the victim and any family or household member, and to prevent further violence.
- C. Orders may be modified or extended, with or without prior notice to the respondent or a hearing, consistent with this purpose.
- D. Relief under this chapter may not be denied or delayed on the grounds that the relief is available in another action.

#### Section 7.05.36 Persons authorized to file [7-3-1]

- A. A petition to obtain a protection order under this Chapter may be filed by:
1. Any person claiming to be the victim of domestic violence, family violence, dating violence, or stalking; or
  2. Any family member or household member of a minor or vulnerable adult alleged to be the victim of domestic violence, family violence, dating violence, or stalking on behalf of the minor or vulnerable adult.

#### Section 7.05.37 Petition for Civil Protection Order or Modification [7-3-2]

- A. A petition shall allege the existence of domestic violence, sexual assault, or stalking, and shall be supported by an affidavit made under oath stating the specific facts and circumstances justifying the requested order.
- B. A petition may be filed regardless of the pendency of any other civil or criminal proceeding related to the allegations in the petition.
- C. No filing fee shall be required for the filing of a petition under this section. [7-3-3] If an alleged perpetrator has been arrested for the offense of domestic violence, sexual assault, or stalking, the court or the arresting Police Officer shall advise the alleged victim of the right to file a petition under this section without cost.
- D. A person's right to petition for relief under this chapter shall not be affected by that persons having left the residence or household to avoid abuse.
- E. 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

## NEZ PERCE TRIBAL CODE

\*\*\*Discussion Draft ONLY\*\* CODE REVISION\*\* Discussion Draft ONLY <<<Last updated by OLC/nya 2021-11-01>>>Discussion Draft ONLY\*\* CODE REVISION \*\* Discussion Draft ONLY\*\*\*

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.

- F. 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.
- G. 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
- H. There is no minimum requirement of residency to petition for a protection order.
- I. The petition shall not be a matter of public record.

### Section 7.05.38 Procedure for Issuance of a Protection Order [7-3-4 & 7-3-5]

- A. Upon the filing of a petition for a protection order, the court shall evaluate the petition for protection; and
- B. When deciding whether or not to grant an ex parte temporary protection order, err on protecting the petitioner and any other family members during this initial process, and:
1. Immediately grant an ex parte temporary protection order pending a full hearing, granting such relief as the court deems proper, if:
    - a. Based on the specific facts stated in the affidavit, the court has probable cause to believe that the petitioner or the person on whose behalf the petition has been filed is the victim of an act of domestic violence, sexual assault, or stalking committed by the respondent; and
    - b. Issuance of the ex parte order without prior notice to the respondent is necessary to protect the victim from further abuse.
  2. Cause an ex parte protection order, together with notice of full hearing, to be made immediately available to the petitioner for service by a Police Officer, court Officer, or other authorized person.
  3. An ex parte temporary protection order shall remain in effect for 10 days from the date of issuance.
  4. Hearing. A full hearing shall be held no more than 10 days from the date of issuance of an ex parte temporary protection order to determine whether the temporary order should be vacated, extended, or modified in any respect, or made a permanent order of protection with or without an expiration date. 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.

## NEZ PERCE TRIBAL CODE

\*\*\*Discussion Draft ONLY\*\* CODE REVISION\*\* Discussion Draft ONLY <<<Last updated by OLC/nya 2021-11-01>>>Discussion Draft ONLY\*\* CODE REVISION \*\* Discussion Draft ONLY\*\*\*

- a. 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.
  - b. At the hearing, both parties may testify, and the court will review the record and may consider other relevant evidence. Copies of any writings, declarations, affidavits or other documentary evidence entered as exhibits must be provided to the other party. Rules of Evidence may be relaxed in these proceedings and testimony is not required.
- C. Once granted, the protection order may not be dismissed without a court hearing.
- D. If an ex parte order is not granted, serve notice upon both parties to appear in Tribal court and hold a hearing on the petition for protection order within 72 hours after the filing of the petition; if notice of hearing cannot be personally served, notice shall be provided consistent with the Rules of Civil Procedure of the Nez Perce Tribal Code.

### Section 7.05.39 Contents of a Protection Order [7-3-4 & 7-3-5; 7-4-1, 7-4-2]

- A. An ex parte protection order or a protection order entered after notice and hearing may, when deemed appropriate by the court, include provisions:
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, or stalking upon the petitioner.
  3. Excluding the respondent from the residence workplace, school, and grounds of dwelling of the victim or other specific location where the victim can be found on a regular basis, whether or not the respondent and the victim share that residence until further ordered by the court.
  4. Restraining the respondent from any contact with the victim and his or her family or household members as is necessary for their safety and welfare.
  5. Awarding temporary custody and/or establishing temporary visitation rights with regard to the minor children.
    - a. Restraining any party from interfering with the others custody of the children or from removing the children from the jurisdiction of the court.
    - b. Ordering other relief as the court deems necessary for the protection of a domestic partner, including orders or directives to police officers as allowed under this code.
    - c. Restraining the respondent from contacting, molesting, interfering with or menacing the minor children whose custody is awarded to the petitioner.
    - d. 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.
    - e. In every proceeding where there is at issue the modification of an order for custody or visitation of a minor child, the finding that domestic violence, sexual

## NEZ PERCE TRIBAL CODE

\*\*\*Discussion Draft ONLY\*\* CODE REVISION\*\* Discussion Draft ONLY <<<Last updated by OLC/nya 2021-11-01>>>Discussion Draft ONLY\*\* CODE REVISION \*\* Discussion Draft ONLY\*\*\*

assault, or stalking has occurred since the last custody determination constitutes a finding of a change in circumstances.

- f. In determining custody and/or visitation, the court must consider the perpetrator's history of causing physical harm, bodily injury, assault, or causing reasonable fear of physical harm, bodily injury, or assault to another person.
- g. In a visitation order, the court may:
  - i. Order an exchange of a minor child to occur in a protected setting;
  - ii. Order that visitation be supervised by another person or agency at the perpetrator of domestic violence's expense;
  - iii. Order the perpetrator of domestic violence to attend and complete, to the satisfaction of the court, a program of intervention for perpetrators or other designated counseling as a condition of the visitation;
  - iv. Order the perpetrator of domestic violence to abstain from possession or consumption of alcohol, controlled substances or abuse of prescription drugs during the visitation and for 24 hours preceding the visitation and may order submission of a UA prior to the visit;
  - v. Prohibit overnight visitation; and
  - vi. Impose any other condition that is deemed necessary to provide for the safety of the minor child, the victim of domestic violence, or other family or household member.
- B. Ordering temporary guardianship with regard to an elder or vulnerable adult victim of domestic violence, sexual assault, or stalking if necessary for the safety of the **elder or vulnerable** adult until the matter can be addressed through an action pursuant to [Ch. \_\_\_\_\_] N.P.T.C.
- C. Awarding temporary use and possession of property of the respondent.
- D. Ordering, in the court's discretion, any other lawful relief as it deems necessary for the protection of any claimed or potential victim of domestic violence, including orders or directives to the Nez Perce Police Department.

### Section 7.05.40 Firearms Disqualification

- A. Purpose. It shall be the purpose of this section to prohibit any person who has been convicted of a felony or misdemeanor crime of domestic violence, sexual assault, or stalking as defined under the laws of the Nez Perce Tribe; who is subject to a protection order based upon a finding that the person represents a credible threat to the physical safety of the victim; who is subject to a criminal no contact order entered in the Nez Perce Tribal Court or any court of competent jurisdiction; who has been found mentally incompetent to stand trial; or who has been committed for mental health reasons after a domestic violence, sexual assault, or stalking offense, from possessing a firearm or ammunition.
- B. It shall be unlawful for any person to possess a firearm or ammunition, as defined by [Ch. \_\_\_\_\_] N.P.T.C., who:
  1. Is subject to any court order from a court of competent jurisdiction that restrains such person from harassing, stalking, threatening, having contact or assaulting an

## NEZ PERCE TRIBAL CODE

\*\*\*Discussion Draft ONLY\*\* CODE REVISION\*\* Discussion Draft ONLY <<<Last updated by OLC/nya 2021-11-01>>>Discussion Draft ONLY\*\* CODE REVISION \*\* Discussion Draft ONLY\*\*\*

intimate partner or family member as defined in this Chapter or engaging in any other conduct that would place an intimate partner or family member in reasonable fear of physical harm to the intimate partner or family member, 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 the person was present;
  - b. Include a finding that such person represents a credible threat to the physical safety of such household or family member; and
  - c. By its terms explicitly prohibits the use, attempted use or threatened use of physical force against such household or family 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, as defined by the laws of the Nez Perce Tribe, which involved the use or attempted use of physical force, or the threatened use of physical force, or the threatened use of a deadly weapon against an intimate partner or family member as defined by this Chapter.

### **Section 7.05.41 Duties of Children's Protective Services [7-4-5]**

- A. The Nez Perce Tribal Social Services 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, if not a parent of the child; and
  2. Inquiry concerning the existence of 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 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 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.



## NEZ PERCE TRIBAL CODE

*\*\*\*Discussion Draft ONLY\*\* CODE REVISION\*\* Discussion Draft ONLY <<<Last updated by OLC/nya 2021-11-01>>>Discussion Draft ONLY\*\* CODE REVISION \*\* Discussion Draft ONLY\*\*\**

### PART VI. OTHER ORDERS

#### **Section 7.05.42 Full Faith and Credit Clause [7-3-6]**

- A. Purpose. The purpose of this section is to ensure compliance with the full faith and credit provision of the Violence Against Women Act (VAWA) as set forth in 18 U.S.C. 2265, as it may be amended from time to time, and to ensure that victims of domestic violence are able to move across State and Tribal boundaries without losing the ability to enforce protection orders they have previously obtained to increase their safety.
- B. A foreign protection order is valid if the issuing court had jurisdiction over the parties and matter under the law of the state, territory, possession, Indian tribe, or United States military tribunal.
- C. A person under restraint must be given reasonable notice and the opportunity to be heard before the protection order of the foreign state, territory, possession, Indian tribe or United States military tribunal was issued. In the case of an ex parte order, notice and opportunity to be heard must have been provided within a reasonable time after the order was issued, consistent with due process.

#### **Section 7.05.43 Filing a Foreign Protection Order**

- A. A person entitled to protection who has a valid foreign protection order may file that order by presenting a certified, authenticated, or exemplified copy of the foreign protection order to a clerk of the Nez Perce Tribal Court.
  - 1. 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 the court as long as it contains a facsimile or digital signature by any person authorized to make such transmission.
- B. There shall be a presumption in favor of validity where a protection order appears authentic on its face.
- C. Filing of a foreign protection order with a court and entry of the foreign protection order into any computer-based criminal intelligence information system available in this State used by law enforcement agencies to list outstanding warrants are not prerequisites for enforcement of the foreign protection order.
- D. The court shall accept the filing of a foreign protection order without a fee or cost.
- E. The clerk of the court shall provide information to a person entitled to protection of the availability of domestic violence, sexual abuse, and stalking or other services to victims in the community.
- F. The clerk of the court shall assist the person entitled to protection in completing an information form that includes, but need not be limited to, the following:
  - 1. The name of the person entitled to protection and any other protected parties;
  - 2. The name and address of the person who is subject to the restraint provisions of the foreign protection order;
  - 3. The date the foreign protection order was entered;
  - 4. The date the foreign protection order expires;

## NEZ PERCE TRIBAL CODE

\*\*\*Discussion Draft ONLY\*\* CODE REVISION\*\* Discussion Draft ONLY <<<Last updated by OLC/nya 2021-11-01>>>Discussion Draft ONLY\*\* CODE REVISION \*\* Discussion Draft ONLY\*\*\*

5. Relief granted under \_\_\_\_\_ (specify the relief awarded and citations thereto, and designate which of the violations are arrestable offenses);
  6. The judicial district and contact information of the court administration for the court in which the foreign protection order was entered;
  7. The Social Security number, date of birth, and description of the person subject to the restraint provisions of the foreign protection order;
  8. Whether the person who is subject to the restraint provisions of the foreign protection order is believed to be armed and dangerous;
  9. Whether the person who is subject to the restraint provisions of the foreign protection order was served with the order, and if so, the method used to serve the order;
  10. 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;
  11. An inability to answer any of the above questions does not preclude the filing or enforcement of a foreign protection order.
- G. The clerk of the court shall provide the person entitled to protection with a copy bearing proof of filing with the court.
- H. Any assistance provided by the clerk under this section does not constitute the practice of law. The clerk is not liable for any incomplete or incorrect information that he or she is provided.

###

End *proposed recommendations* to DOMESTIC VIOLENCE chapter.