

TRIBAL CODE

CHAPTER 34:

PERSONAL PROTECTION ORDERS AND INJUNCTIONS

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History Note:

Current Ordinance:

Resolution 2015-199, adopted September 22, 2015, adopts Tribal Code Chapter 34:

Personal Protection Orders and Injunctions, effective immediately, and rescinds all earlier Personal Protection Orders and Injunctions Codes.

Prior Ordinance:

Enacted January 7, 1997, Resolution No. 97-1, effective immediately.

Amendments:

Resolution 2017-05, adopted January 3, 2017, amends §34.113 Penalties, and renames and amends §34.118 Jurisdiction over Non-Indians.

Resolution 2016-78, adopted April 5, 2016, amends §34.102 Jurisdiction.

TRIBAL CODE

CHAPTER 34:

PERSONAL PROTECTION ORDERS AND INJUNCTIONS

34.101 Purpose

The purpose of a personal protection order is to ensure the safety and protection of all persons from violence, threats of violence and/or harassment, to ensure the right of the public to a safe and secure community, to protect the community from the effects of violent and harassing acts, and to ensure that whenever an offense of violence or harassment occurs, including domestic abuse, the offender incurs an obligation to the community. Although this Code provides for specific remedies to prevent acts of domestic abuse, this code shall not be limited to protect only victims of domestic abuse, but shall also be interpreted to give effect to the protection of all victims of violence and abuse. This Code shall be interpreted and followed to give effect to these purposes.

34.102 Jurisdiction

The Tribal Court shall have full jurisdiction to issue and enforce personal protection orders and injunctions as provided in this Chapter involving any person in matters arising anywhere in the Indian country of the Indian tribe or otherwise within the authority of the Indian tribe. [See 18 U.S.C. 2265 (e).]

34.103 Personal Protection Order Defined

Personal Protection orders are restraining orders issued by the Tribal Court which require one person to stop harming another. The Tribal Court has the authority to order both domestic and non-domestic personal protection orders. Domestic orders are generally orders to family or household members to refrain from doing something that harms or threatens harm to petitioner. Non-domestic orders are generally orders issued to respondents who have no familial or household relationship to the petitioner. Personal Protection Orders (hereinafter PPO) are generally issued against respondents who have threatened or engaged in domestic abuse, stalking or sexually abusive behavior or have committed an act or acts that reasonably place the petitioner in reasonable apprehension of same.

34.104 Persons Authorized to file

A petition to obtain a PPO may be filed by:

- (1) Any person claiming to be placed in reasonable fear of, or subjected to domestic, family, or dating violence, harassment, stalking, obscene material, or a sexual offense.

(2) Any family or household member, guardian, custodian or person responsible for the care of a minor or vulnerable adult claiming to be placed in reasonable fear of, or subjected to domestic, family, or dating violence, harassment, stalking, obscene material, or a sexual offense.

34.105 Petition - PPO

- (1) An action under this section may only be commenced by the filing of a petition.
- (2) The petition shall allege facts sufficient to show the following:
 - (a) The name of the petitioner and the name of the victim(s).
 - (b) A statement that the victim lives on tribal land or does not live on tribal land.
 - (c) The name and residence of the respondent.
 - (d) A statement that the respondent lives on tribal land, does not live on tribal land, or that respondent's residence is unknown.
 - (e) An indication of whether each of the parties is an Indian, and of the tribe in which that person is enrolled, if any.
 - (f) That the respondent placed the victim in fear of, or subjected victim to domestic, family, or dating violence, harassment, stalking, obscene material or a sexual offense.
 - (g) Whether there is any other civil or criminal action pending between the victim and the respondent.
- (3) If the respondent is a person who is issued a license to carry a concealed weapon and is required to carry a weapon as a condition of his or her employment (including police and corrections officers from all jurisdictions), the petitioner shall notify the court of the respondent's occupation prior to the issuance of the PPO. This subsection does not apply to a petitioner who does not know the respondent's occupation.
- (4) A petitioner may omit his or her address of residence from documents filed with the court under this section. If omitted, the petitioner shall provide the court with a mailing address, which shall not be disclosed in the public file or within any documents provided to the respondent.
- (5) No filing fee shall be required for the filing of a petition under this section.
- (6) If a perpetrator has been arrested for the offense of domestic, family, or dating violence, harassment, stalking, or a sexual offense, the Court or the arresting officer shall advise the victim of the right to file a petition under this section without cost.

34.106 What The Court May Order.

(1) If the Court finds that the petitioner has proven by a preponderance of evidence that the victim has been subjected to prohibited conduct, it may order that the respondent is prohibited from, including, but not limited to, the following:

- (a) Entering onto the victim's residence and/or place of employment.
- (b) Assaulting, attacking, beating, molesting, or wounding a named individual.
- (c) Engaging or attempting to engage in domestic abuse against a named individual.
- (d) Following a named individual.
- (e) Contacting a named individual by any means, including by writing, telephone, other electronic means or by a third person.
- (f) Sending objects to a named individual.
- (g) Threatening to kill or physically injure a named individual.
- (h) Removing minor children from the victim who has legal custody, except as allowed by a custody or parenting-time order.
- (i) Purchasing or possessing a firearm or ammunition.
- (j) Interfering with victim's efforts to remove the victim's children or personal property from premises that are solely owned or leased by the individual to be restrained or enjoined.
- (k) Keeping, failing to surrender or concealing from victim the keys or other instruments necessary to maintain the security of the victim's home.
- (l) Interfering with victim at victim's place of employment or education or engaging in conduct that impairs victim's relationships at victim's employment or education site.
- (m) Keeping, failing to surrender or concealing the vital records or financial instruments of the victim or the petitioner's children.
- (n) Having access to information in records concerning a minor child of both victim and respondent that will inform respondent about the address or telephone number of the victim and the victim's minor child, or about victim's employment address.
- (o) Engaging in stalking conduct.

(p) Any other specific act or conduct that imposes upon or interferes with personal liberty or that causes a reasonable apprehension of domestic abuse, harassment, stalking, or sexually inappropriate behavior.

(q) Posting information and/or images on social media or other forms of communication with the intent to harass, annoy, intimidate, or embarrass the victim, whether or not the victim has access to the information posted.

(r) Approaching or appearing within 1500 feet of the victim.

(s) Taking, transferring, encumbering, concealing, committing an act of cruelty or neglect upon, or otherwise disposing of any animal that is owned, possessed, leased, kept, or held by the petitioner, the respondent, or a minor child residing in the residence or household of the victim or respondent.

(2) A court shall not issue a PPO that restrains or enjoins a respondent from entering onto the victim's residence, if all of the following apply:

(a) The respondent is not the spouse of the moving party;

(b) The individual to be restrained or enjoined, or the parent, guardian, or custodian of the minor to be restrained or enjoined has a property interest in the premises; and

(c) The moving party or the parent, guardian, or custodian of a minor petitioner has no property interest in the premises.

(3) A court shall not issue a PPO that restrains or enjoins conduct described in 34.106(1) if any of the following apply:

(a) The respondent is the unemancipated minor child of the petitioner;

(b) The petitioner is the unemancipated minor child of the respondent; or

(c) The respondent is a minor child less than 10 years of age.

34.107 Procedure for issuance of a PPO; Reasonable Cause Determination.

(1) The court shall issue a PPO if the court determines that there is reasonable cause to believe that the individual to be restrained or enjoined may commit one (1) or more of the acts listed in 34.106(1). In determining whether reasonable cause exists, the court shall consider all of the following:

(a) Testimony, documents, or other evidence offered in support of the request for a PPO.

- (b) Whether the individual to be restrained or enjoined has previously committed or threatened to commit 1 or more of the acts listed in 34.106(1).
- (2) A court shall not refuse to issue a PPO solely due to the absence of any of the following:
- (a) a police report.
 - (b) a medical report.
 - (c) a report or finding of an administrative agency.
 - (d) physical signs of abuse or violence.
- (3) If the court refuses to grant a PPO, it shall state immediately in writing the specific reasons it refused to issue a PPO. If a hearing is held, the court shall also immediately state on the record the specific reasons it refuses to issue a PPO.
- (4) A PPO shall not be made mutual. Correlative separate PPOs are prohibited unless both parties have properly petitioned the court pursuant to 34.105.
- (5) A PPO can be obtained regardless of whether respondent was charged or convicted of the behavior which is alleged in the petition. Petitioner must, however, prove that the allegations contained within the petition are true by a preponderance of the evidence.
- (6) The court shall not deny a petition based on the number of times a petitioner has filed a petition for a PPO against the respondent.

34.108 Ex-Parte Orders.

- (1) An ex parte PPO shall be issued and effective without written or oral notice to the individual restrained or enjoined or his or her attorney if it clearly appears from specific facts shown by verified complaint, written motion, or affidavit that immediate and irreparable injury, loss, or damage will result from the delay required to effectuate notice or that the notice will itself precipitate adverse action before a PPO can be issued.
- (2) An ex parte order issued is valid for not less than 6 months. The individual restrained or enjoined may file a motion to modify or rescind the PPO and request a hearing under the Tribal Court rules. The motion to modify or rescind the PPO shall be filed within 14 days after the order is served or after the individual restrained or enjoined has received actual notice of the PPO unless good cause is shown for filing the motion after the 14 days have elapsed.
- (3) Except as otherwise provided in this section, the court shall schedule a hearing on the motion to modify or rescind the ex parte PPO within 14 days after the filing of the motion to modify or rescind. If the respondent is a person described in 34.105(3) and the PPO prohibits him or her from purchasing or possessing a firearm, the court shall schedule a hearing on the motion to modify or rescind the ex parte PPO within 5 days after the filing of the motion to modify or rescind.

34.109 Personal Protection Orders Shall Include.

A PPO shall include all of the following, and to the extent practicable the following shall be contained in a single form:

(1) A statement that the PPO has been entered to restrain or enjoin conduct listed in the order and that a violation of the PPO will subject the individual restrained or enjoined to 1 or more of the following:

(a) If the respondent is 17 years of age or more, immediate arrest and the civil and criminal contempt powers of the court, and that if he or she is found guilty of criminal contempt, he or she shall be imprisoned for not more than 90 days and may be fined up to \$1,000.00.

(b) If the respondent is less than 17 years of age, immediate apprehension or being taken into custody, and subject to the dispositional alternatives listed in the juvenile section(s) of the Tribal Code.

(c) If the respondent violates the PPO in a jurisdiction other than this Tribal Court, the respondent is subject to the enforcement procedures and penalties of the state, Indian Tribe, or United States territory under which jurisdiction the violation occurred.

(d) A criminal charge of violation of a PPO which is punishable by up to 1 year in custody and a fine up to \$1,000.00 if the conduct violates any provision of the PPO.

(2) A statement that the PPO is effective and immediately enforceable anywhere in this Tribal Court's jurisdiction when signed by a Judge or Magistrate; and that, upon service, a PPO also may be enforced by a state, an Indian tribe, or a territory of the United States.

(3) A statement listing the type or types of conduct enjoined.

(4) An expiration date stated clearly on the face of the order.

(5) A statement that the PPO is enforceable anywhere in the United States by any law enforcement agency, under full faith and credit laws.

(6) The name of the agency which is designated by the court to enter the PPO into the Law Enforcement Information Network.

(7) A statement that the respondent is prohibited from shipping, transporting, possessing, or purchasing any firearm or ammunition for the duration of the qualifying PPO pursuant to 18 USC 922(g)(8).

34.110 Duration of Order.

(1) An order issued pursuant to this section is effective according to its terms, but not for less than 6 months nor more than 2 years.

(2) Extensions:

(a) When an order is set to expire, the court may extend the PPO upon motion of the petitioner, with notice to the respondent, showing good cause. The court may extend the order for up to 2 years after the expiration of the initial order, thereafter each extension may be for up to 5 years, upon the request of the petitioner and at the discretion of the court.

(b) A respondent shall have the right to a hearing on the extension of any order under this paragraph upon the filing of a response to the motion to extend the order. The hearing must be held within 14 days of the respondent's response.

(c) The court shall state on the record and in writing the specific reasons for issuing or refusing to extend the PPO.

34.111 Full Faith and Credit and Entry into L.E.I.N. (18 USC 2265)

(1) A PPO is effective and immediately enforceable anywhere on lands of the Sault Ste. Marie Tribe of Chippewa Indians when signed by a Judge or Magistrate. Upon service, a PPO may also be enforced by a state, an Indian Tribe, or a territory of the United States. See 18 USC 2265.

(2) The court shall designate Sault Tribe Law Enforcement as the agency that is responsible for entering the PPO into the Law Enforcement Information Network as provided by the L.E.I.N. policy.

34.112 Procedures for Court Clerk, Law Enforcement, Notification, L.E.I.N.

(1) The Clerk of Court shall do all of the following immediately upon issuance of a PPO and without requiring a proof of service, on the individual restrained or enjoined:

(a) File a true copy of the PPO with the law enforcement agency designated by the court in the PPO.

(b) Provide the petitioner with not less than 2 true copies of the PPO.

(c) If respondent is identified in the pleadings as a law enforcement officer, notify the officer's employing law enforcement agency, if known, about the existence of the PPO.

(d) If the PPO prohibits respondent from purchasing or possessing a firearm, notify the concealed weapon licensing board in respondent's county of residence about the existence and contents of the PPO. A written notice accompanied by a proof of service must be sent to the local gun board.

(e) If the respondent is identified in the pleadings as a department of corrections employee, notify the state department of corrections about the existence of the PPO.

(f) If the respondent is identified in the pleadings as being a person who may have access to information concerning the petitioner or a child of the petitioner or respondent and that information is contained in Friend of the Court records, notify the Friend of the Court for the county in which the information is located about the existence of the PPO.

(2) The law enforcement agency that receives a true copy of the PPO shall immediately and without requiring proof of service enter the PPO into the Law Enforcement Information Network.

(3) A PPO issued under this section shall be served personally or by the Clerk of Court by registered or certified mail, return receipt requested, delivery restricted to the addressee at the last known address or addresses of the individual restrained or enjoined or by any other manner provided in the Tribal Court rules. If the individual restrained or enjoined has not been served, a law enforcement officer or Clerk of Court who knows that a PPO exists may, at any time, serve the individual restrained or enjoined with a true copy of the order or advise the individual restrained or enjoined about the existence of the PPO, the specific conduct enjoined, the penalties for violating the order, and where the individual restrained or enjoined may obtain a copy of the order. If the respondent is less than 17 years of age, the parent, guardian, or custodian of that individual shall also be served personally or by registered or certified mail, return receipt requested, delivery restricted to the addressee at the last known address or addresses of the parent, guardian, or custodian of the individual restrained or enjoined. A proof of service or proof of oral notice shall be filed with clerk of court. This subsection does not prohibit the immediate effectiveness of a PPO or its immediate enforcement.

(4) The Clerk of Court shall immediately notify the law enforcement agency that received the PPO if either of the following occurs:

(a) The Clerk of Court has received proof that the individual restrained or enjoined has been served.

(b) The PPO is rescinded, modified, or extended by court order.

(5) The law enforcement agency that receives information under 34.112 shall enter the information or cause the information to be entered into the Law Enforcement Information Network.

(6) Subject to subsection 7, a PPO is immediately enforceable in any state, Indian country or United States territory by any law enforcement agency that has received a true copy of the order, is shown a copy of it, or has verified its existence on the Law Enforcement Information Network.

(7) If the individual restrained or enjoined has not been served, the law enforcement agency or officer responding to a call alleging a violation of a PPO shall serve the

individual restrained or enjoined with a true copy of the order or advise the individual restrained or enjoined about the existence of the PPO, the specific conduct enjoined, the penalties for violating the order, and where the individual restrained or enjoined may obtain a copy of the order. The law enforcement officer shall enforce the PPO and immediately enter or cause to be entered into the Law Enforcement Information Network that the individual restrained or enjoined has actual notice of the PPO. The law enforcement officer also shall file a proof of service or proof of oral notice with the Clerk of Court issuing the PPO. If the individual restrained or enjoined has not received notice of the PPO, the individual restrained or enjoined shall be given an opportunity to comply with the PPO before the law enforcement officer makes a custodial arrest for violation of the PPO. The failure to immediately comply with the PPO shall be grounds for an immediate arrest.

34.113 Penalties.

(1) A respondent who is 17 years of age or more and who refuses or fails to comply with a PPO under this section is subject to the contempt powers of the court and/or a criminal charge for violating the protection order. The penalties provided for under this section may be imposed in addition to a penalty that may be imposed for another criminal offense arising from the same conduct. A respondent who is less than 17 years of age who refuses or fails to comply with a PPO issued under this section is subject to juvenile delinquency proceedings and the dispositional alternatives listed in the Juvenile section of the Tribal Code.

(2) A petitioner who knowingly and intentionally makes a false statement to the court in support of his or her petition for a PPO is subject to the contempt powers of the court in addition to any applicable criminal charge.

34.114 Violation of a PPO – Criminal Charge

(1) A person commits the crime of violation of a PPO if the person violates any provision of a PPO that was issued against them, that was issued by a court of competent jurisdiction, and was in effect at the time of the violation.

(2) Sentence – Misdemeanor. The violation of a PPO is a misdemeanor offense and is punishable by up to 1 year incarceration and/or a \$1,000.00 fine.

34.115 Aiding and Abetting Violation of a PPO – Criminal Charge

(1) A person commits the crime of aiding and abetting the violation of a PPO if, they have prior knowledge of the terms of a PPO and they knowingly assist a named respondent to violate the restrictions of the PPO.

(2) Sentence – Misdemeanor. Aiding and abetting the violation of a PPO is a misdemeanor offense and is punishable by up to 1 year incarceration and/or a \$1,000.00 fine.

34.116 Notice to Victim.

After investigating or intervening in a violation of a PPO, a law enforcement officer shall provide the victim with a written copy of information contained in this section. The notice shall include all of the following:

- (1) The name and telephone number of the responding police agency.
- (2) The name and badge number of the responding law enforcement officer.
- (3) A statement that the victim can obtain a copy of the police incident report by contacting the law enforcement agency at the telephone number provided.
- (4) The contact information of the domestic abuse shelter program.
- (5) The contact information for emergency shelter and counseling services.
- (6) A statement that your legal rights include the right to go to court and file a petition requesting a PPO to protect you, other members of your household or other person's for whom you are responsible, which could include an order restraining or enjoining the abuser from:
 - a. Entering onto property including the victim's residence or place of employment
 - b. Assaulting, beating, molesting, or wounding you.
 - c. Threatening to kill or physically injure you.
 - d. Removing minor children from you, except as otherwise authorized by a custody or parenting-time order issued by a court of competent jurisdiction.
 - e. Engaging in harassing or stalking behavior as defined in Tribal Code Chapter 71.

34.117 Arrest Without a Warrant.

- (1) A law enforcement officer shall arrest and take into custody a person without a warrant if:
 - (a) the officer has probable cause to believe a person has violated the terms of a restraining or protective order that was previously personally served upon the person, or that the person to be arrested has actual notice of the order; this provision applies whether the respondent is incarcerated or on conditional release and having contact with individuals for whom protective orders have been issued by a court of competent jurisdiction;
 - (b) the person protected by a foreign restraining or protective order presents a copy of the order to the officer and represents that the order supplied is the most recent order in effect between the parties and that the person restrained by the order was personally served with a copy of the order or has actual notice of the order, and the

officer has probable cause to believe that the person to be arrested has violated the terms of the foreign restraining or protective order;

(c) the person protected by a foreign restraining or protective order has filed a copy of the order with a court or has caused the order to be entered into the Law Enforcement Information Network, or in the databases of the National Crime Information Center of the United States Department of Justice, and the officer has probable cause to believe that the person to be arrested has violated the terms of the order; or

(d) the officer has probable cause to believe that the person to be arrested has failed to comply with a no contact provision of a bond or an interim order issued by a court in a criminal proceeding.

(2) No law enforcement officer shall be held liable criminally or civilly for making an arrest without a warrant upon probable cause as set forth above provided that

(a) The officer acted in good faith; or

(b) The law enforcement officer had a reasonable belief that any protective or restraining order in question is in effect and that the person restrained was personally served with the order or has actual notice of the terms of the order.

(3) No provision of this Code section shall be construed so as to abrogate or infringe upon the sovereign immunity of the Sault Ste. Marie Tribe of Chippewa Indians.

34.118 Jurisdiction over Non-Indians.

(1) In the cases where a non-Indian violates the portion of a protection order that prohibits or provides protection against violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person under this Chapter, the Court's exercise of power may be criminal.

(2) In all other cases where a non-Indian violates a protection order under this Chapter, the Court's exercise of power shall be civil rather than criminal.

34.119 Enforcement of Orders and Injunctions from Other Jurisdictions.

Any domestic violence order, PPO or injunction granted by a court of competent jurisdiction shall be recognized by the Tribal Court and enforced by law enforcement.