

## Chapter XXV

### PERSONAL PROTECTION ORDERS

2501. PURPOSE – The Personal Protection Chapter of the Bay Mills Tribal Code is to promote the protection and safety of tribal and non-tribal members from domestic abuse, physical abuse, sexual abuse, assault, and stalking, and to prevent future acts of violence against tribal members and non-tribal members in these situations.
2502. DEFINITIONS – As used in this Chapter, the following terms have the meanings prescribed herein:
- A. “Cyberstalking” means electronic stalking in which messages are posted about a person, or messages are sent to a person through the internet, computer or another electronic means without their consent.
  - B. “Domestic Violence” or “Family Violence” means, excluding an act of self-defense, committing at least one of the following acts by a family member or household member of the Petitioner
    1. Attempting to cause, threatening to cause or causing physical harm to another family member and/or household member;
    2. Placing a family or household member at risk of physical harm; or.
    3. Causing a family/household member to involuntarily engage in sexual activity by force, threat of force, or duress.
  - C. “Ex parte order” means a Court order granted without a hearing and without input from both parties.
  - D. “Family member” or “Household member” means any person whose relationship with the Respondent meets any of the following criteria:
    1. A person who is a current or former spouse;
    2. A person who is dating or had dated;
    3. A person who is or was engaged in a sexual relationship;
    4. A person who is related by blood or adoption;
    5. A person who is or was related by marriage; or
    6. A person who has or previously established a legal relationship of one of the following:

- a. As a guardian;
  - b. As a ward;
  - c. As a custodian;
  - d. As a foster parent; or
  - e. A person who has a child in common.
- E. “Harassment” means an intentional offense or annoyance of another. Harassment includes conduct or communications to or about an individual, whether or not done anonymously, that is intended to inconvenience, alarm, or offend the victim. Harassment includes, but is not limited to:
1. Any unconsented contact as defined in Subsec. L of this section;
  2. Engaging or causing communication to be made, even anonymously, at extremely inconvenient hours or in offensively coarse language, or in any other manner likely to cause annoyance or alarm to a reasonable person;
  3. Offensive touching;
  4. Insulting, taunting, or challenging another in a manner likely to provoke violent or disorderly response.
- F. “Minor” or “Juvenile” means any person under the age of 18 years of age.
- G. “Ownership Interest Over an Animal” means that if one or more of the following are applicable, the animal and Petitioner may be afforded protections under the protective order:
1. The animal is in the Petitioner’s care;
  2. The Petitioner has an ownership interest in the animal;
  3. The Petitioner keeps or harbors the animal; or
  4. The Petitioner permits the animal to remain on or about the premises occupied by the Petitioner.
- H. “Petitioner” means the person asking for the protection order.
- I. “Respondent” means the one who has the protection order placed against them.
- J. “Sex Offense” means unlawful sexual conduct under the laws of the Tribe or of the United States, including , but not limited to, the following:

1. Rape;
  2. Child molestation or exploitation;
  3. Child seduction;
  4. Sexual conduct in the presence of a minor;
  5. Inappropriate communication with a child;
  6. Sexual battery; or
  7. Sexual misconduct with a minor.
- K. "Stalking" means knowing or intentional repeated or continued harassment, as defined in this Section, of another person that would cause a reasonable person to feel threatened, frightened, or intimidated.
- L. "Unconsented Contact" means any contact with another individual that is initiated or continued without that individual's consent or in disregard of that individual's expressed desire that the contact be avoided or discontinued.

Unconsented contact includes, but is not limited to:

1. Physically following that individual;
2. Confronting the individual at their place of employment or education;
3. Electronic communication, such as phone calls, email, text, and social media messages;
4. Sending mail;
5. Placing objects on the individual's property.

2503. JURISDICTION – The Tribal Court has full civil jurisdiction and authority to issue and enforce Personal Protection Orders as provided in this Chapter against all persons who are members of the Bay Mills Community who live or work on the Reservation of Bay Mills Indian Community, all other persons who live or work on the Reservation, or who are a spouse, intimate partner, or dating partner of a Bay Mills Community member.

This civil jurisdiction includes enforcement against non-Indians and non-members in accordance with 18 U.S.C. § 2265.

- A. Criminal Jurisdiction – The Tribal Court has criminal jurisdiction and authority to enforce criminal penalties against tribal members, including jail time, for violations of Personal Protection Orders as provided in this Chapter.
- B. Full Faith and Credit – Personal Protection Orders issued and served under this Chapter shall be given full faith and credit by another Indian Tribe or State, and enforced by the Court and law enforcement personnel of the Indian Tribal government, State, or Territory as if it were the order of the enforcing Indian Tribe, State, or Territory. 18 U.S.C. § 2265.

2504. PROTECTION ORDERS DEFINED – A Personal Protection Order (PPO) is an Order that is issued to prevent the victim from being further victimized and to restrain the abuser from harming the victim, threatening to harm the victim, unconsented contact, stalking, and harassment.

2505. TYPES OF PPOs – There are two types of personal protection orders: domestic and non-domestic.

- A. Domestic PPOs – Domestic PPOs are orders to family or household members to restrict or enjoin from them from actions that may result in harm, or constitute threats of harm, stalking, or harassment.
- B. Non-domestic PPOs – Non-domestic PPOs are orders to Respondents that do not have a familial or domestic relationship to the Petitioner to restrict or enjoin from them from actions that may result in harm, or constitute threats of harm, stalking, or harassment.

2506. MUTUAL PPOs – Mutual PPOs may be granted to restrict both parties from taking certain actions, such as unconsented contact, to prevent mutual harassment. Each party will be required to file their own petition. This type of order can be granted the following circumstances, including but not limited to:

- A. During or after divorce proceedings;
- B. When each party has presented written evidence of domestic violence or abuse; or

- C. When the Court finds that both parties acted as aggressors or engaged in harassing behavior and neither party acted out of self-defense.
2507. ISSUANCE OF PPOs – PPOs may be granted by the Tribal Court against a Respondent either after a hearing or Ex Parte.
- A. Ex Parte Orders are granted without a hearing. This type of PPO is to be requested by Petitioner under urgent or immediately dangerous circumstances, only. The Court must make factual findings regarding those circumstances in order to grant or deny an Ex Parte Order. The Court will issue an ex parte PPO only if:
    - 1. The Petitioner requested an Ex Parte PPO; and
    - 2. It is clear from the facts and evidence presented to the Court by the Petitioner that immediate and irreparable injury, loss, or damage will result from the delay or from the notice of a hearing itself.
  - B. If a hearing is required, notice will go to both parties. The Respondent will be served personally with notice and the petition for the PPO, along with the notice of the hearing, which shall be scheduled if at all possible within 10 days of the filing of the petition. At the hearing, both parties will have the chance to present their side before the judge. Evidence may be presented to the Court by both parties. The clerk will assist with subpoenas if witnesses are requested to be present.
  - C. PPOs may be issued against any Respondent over the age of 18, or against a minor over the age of 17 years old with proper notification and involvement of the parent, legal guardian, or custodian of the Respondent. Any minor under the age of 17 may be subject to issuance of PPOs only by the Juvenile Division of the Tribal Court.
2508. CRITERIA FOR ISSUANCE OF PPO – The Court, upon finding by a preponderance of the evidence that the Respondent has engaged in one of more of the following acts, shall issue a PPO:
- A. Stalking or cyberstalking the Petitioner;
  - B. Harassment of the Petitioner;
  - C. Assaulting, attacking, beating, molesting, or wounding the Petitioner and/or the Petitioner’s minor child(ren);
  - D. Threatening to kill or physically injure the Petitioner and/or the Petitioner’s minor child(ren);
  - E. Making threats to destroy, damage, or cause harm to the Petitioner’s property;

- F. Inflicting emotional distress on the Petitioner as part of a pattern of conduct to control and/or isolate the Petitioner;
- G. Conviction of Respondent under tribal, federal, or state law, for perpetrating a violent crime against the Petitioner, including but not limited to:
  - 1. Any sexual offense;
  - 2. Any crime involving the use, or threatened use of force and/or violence;
  - 3. Any crime involving the use, or threatened use of a weapon; or
  - 4. Making threats to take, remove, harm, abduct, kidnap, or conceal the Petitioner’s minor child(ren).

2509. EVIDENCIARY SUPPORT – Evidence shall be presented to the Court as a basis of its factual determination whether to grant or deny a PPO. The Court will not deny a PPO based purely on the absence of official administrative reports, such as police reports or medical reports.

The parties may present evidence in the following ways, including, but not limited to:

- A. Testimony of Petitioner made under oath;
- B. Police reports;
- C. Medical reports of injuries;
- D. Pictures of injuries;
- E. Evidence of destruction of property;
- F. A personal diary documenting abuse;
- G. Email, social media or text messages; or
- H. Affidavits from witnesses.

2510. WHAT THE COURT MAY ORDER – The Petitioner may specifically request actions that the Court should take, but ultimately the judge will decide which course of action is warranted. If the Court finds that the Petitioner has proven by a preponderance of evidence that the victim has been subjected to prohibited conduct listed in Section 2508, it may order prohibiting the Respondent from any of the following:

- A. Entering onto the Petitioner’s residence and/or place of employment;

- B. Assaulting, attacking, beating, molesting, wounding, threatening, or engaging in conduct that would place the Petitioner or Petitioner’s child in reasonable fear of bodily injury;
- C. Removing minor child(ren) from their legal custodian’
- D. Purchasing or possessing a firearm;
- E. Interfering with the Petitioner at the Petitioner’s place of employment or education or engaging in conduct that impairs the Petitioner’s employment or educational relationship or environment;
- F. Removing, retaining, injuring, killing, torturing, or threatening to injure kill, torture or neglect an animal that the Petitioner has an ownership interest to cause the Petitioner mental distress or exert control over the Petitioner;
- G. Having access to information in records concerning a minor child of both Petitioner and Respondent that will inform Respondent about the address or telephone number of Petitioner and Petitioner's minor child or about Petitioner's employment address; or
- H. 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.

2511. ADDITIONAL ORDERS FOR DOMESTIC PPOs – The Court may order additional prohibitions on the Respondent in domestic PPO orders, including but not limited to:

- A. Entering a residence shared with Petitioner;
- B. Taking, hiding, or destroying joint property; or
- C. Denying the Petitioner visitation or access with Respondent and Petitioner’s minor child(ren).

2512. LIMITATIONS ON PPOs – The entry of a PPO shall not be utilized to preclude any of the following legal activities:

- A. *Shared Custody of Children* – When there is shared custody of minor child(ren), neither party may deny visitation or access based solely on the existence of a PPO. The parties are permitted to communicate through third parties in order to minimize contact and facilitate adherence to a custody agreement.
- B. *Employment or Educational Situations* – PPOs are not to be used as the sole basis for causing either the Petitioner or Respondent to be terminated, removed, or denied from employment or educational opportunities. This does not preclude any action to

be taken by the Petitioner to seek disciplinary action against Respondent through other appropriate channels. Guidance regarding these circumstances may be sought from the Tribal Court.

- C. *Shared Property* – Under certain circumstances, as with shared residences or property, it may not be appropriate to deprive a Respondent of certain property rights. The judge will make this determination on a case-by-case basis. In the event property needs to be recovered, local law enforcement may be available to assist in a transaction.

2513. PERSONS AUTHORIZED TO FILE – A petition to obtain a PPO against a Respondent may be filed by:

- A. Any person who falls under the jurisdiction of the Bay Mills Tribal Court; and
  - 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; or
  - 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.

2514. PROCEDURE OF ISSUANCE – PPOs may be granted using the following procedure:

- A. An action under this section may only be commenced by the filing of the proper and complete forms by the Petitioner.
- B. A person wishing to file a PPO will be provided forms by the Court.
- C. There are no fee requirements for this filing.
- D. The petition shall include the following information:
  - 1. The name of the Petitioner and the name of the victim, if applicable;
  - 2. The name, date of birth or social security number, and address of the Respondent; and
  - 3. A brief description of the Respondent's appearance; and
  - 4. Petitioner's request for specific orders to be given by the Court.
- E. To protect the Petitioner's confidentiality, all personal information of the Petitioner will be blocked out on the petition.



- F. The Tribal Court Clerk will assist the Petitioner with the filing.
2515. CONTENTS OF A PPO – The order itself must contain, in a single form, the following information:
- A. A statement that the PPO has been ordered to restrain or enjoin conduct listed in the order and that a violation of the PPO will subject the Respondent to tribal, state, and federal criminal penalties.
  - B. A statement that the personal protection order is effective and immediately enforceable anywhere in this state when signed by a judge, and that, upon service, a personal protection order also may be enforced by another Indian Tribe, State or a Territory of the United States;
  - C. A statement that the Respondent may be prohibited from possessing, transporting, or accepting a firearm;
  - D. A statement listing the type or types of conduct enjoined;
  - E. The expiration date of the order;
  - F. Signature of the issuing judge; and
  - G. For Ex Parte Orders, a statement that the Respondent may file a motion to modify or rescind the PPO and request a hearing within 14 days after the Respondent has been served or has received actual notice of the order. The statement must also include that the motion forms and filing instructions are available from the Tribal Court Clerk.
2516. EFFECTIVE DATE – A personal protection order is effective and immediately enforceable within the Reservation of the Bay Mills Indian Community. Upon service, a PPO may also be enforced by another Indian Tribe, State or a Territory of the United States.
2517. DURATION OF ORDER – After the PPO is signed by a judge, the order may last for one (1) year, but without extenuating circumstances cited by the Court, the order shall be issued for six (6) months.
- A. Extensions – When the PPO is set to expire, the Petitioner may request the Court to extend the order. The Petitioner must show good cause.
    - 1. The Respondent has the right to a hearing after notice of the request to extend the order. The Court will schedule a hearing within 14 days of the Respondent’s response.
    - 2. The Court shall state on the record the specific reasons for issuing or refusing to extend the PPO.

2518. VIOLATION OF A PPO – A violation of the order occurs when the Respondent has notice of the PPO and undertakes any action specifically prohibited in the order. A violation of the PPO is a crime and is subject to criminal and/or civil penalties.
- A. If the Respondent violates a PPO and is arrested, the Court will set a date, time, and place for a hearing on the charges, to be held within 72 hours after arrest. Respondent is permitted to post bond at an amount set by the Court. The Court is responsible for notifying the Petitioner of this hearing. If a hearing is not held within 72 hours, the Respondent may be released from jail, with restrictions on Respondent’s presence on the lands of the Bay Mills Indian Community.
  - B. If the defendant violates a PPO and there is no arrest, the Petition should document the violation in as much detail as possible (including dates, times, places, and any witnesses) and file a “Motion and Order to Show Cause for Violating a Personal Protection Order.” The form is available at the Court.
  - C. Anyone who violates a PPO will be subject to fines and/or jail under Section 639 – Disobedience of a Court Order.
  - D. Violations by a Respondent who is between the ages of 16 years and 17 years of age may, at the discretion of the judge, cause the Respondent to be treated as an adult under Section 717(F) – Trial as an Adult. Otherwise, the violation will be subject to the rules and procedures set forth in the Juvenile Code.
2519. PROCEDURE FOR COURT CLERK, LAW ENFORCEMENT, NOTIFICATION, L.E.I.N – Upon the issuance of a PPO, the Tribal Court will do the following:
- A. Without requiring proof of service, the Tribal Court Clerk will:
    - 1. File a true copy of the PPO with the law enforcement agency designated by the Court in the PPO. The law enforcement agency shall then enter the PPO into the Law Enforcement Information Network (L.E.I.N.);
    - 2. Provide the Petitioner with two or more true copies of the PPO; and
    - 3. If the PPO prohibits Respondent from purchasing or possessing a firearm, notify the proper authority about the existence and contents of the PPO;
  - B. Order personal service on the Respondent by Law Enforcement if the Respondent is residing, or employed on the Reservation of the Bay Mills Indian Community. If Respondent cannot be located, the clerk shall cause a written, certified copy of the order to be sent by first class mail to the Respondent, return receipt requested, to the address on the petition.

- C. If the Respondent is under the age of 18, the parent, guardian, or custodian of the Respondent must also be served and properly notified of the order.
  - D. Immediately notify the law enforcement agency that received the PPO if the following occurs:
    - 1. The Tribal Court Clerk has received proof that Respondent has been served; or
    - 2. The PPO is rescinded, modified, or extended by Court order.
2520. PENALTIES FOR PERJURY AND FALSE TESTIMONY – Any Petitioner who knowingly or intentionally makes a false statement to the Court in support of his or her petition for a PPO is subject to fines and/or jail under for violations of Sections 635 – Perjury and 636 – False Reports of the Bay Mills Tribal Code.