

Chapter XXVII

CIVIL CLAIMS AND REMEDIES FOR DOMESTIC AND SEXUAL VIOLENCE

PART ONE – GENERAL PRINCIPLES

2701. PURPOSE – The Bay Mills Indian Community recognizes that certain forms of violence pose a specialized risk to the Tribe and its members, and that, in the absence of broad criminal jurisdiction, a clear legal process is necessary to address these forms of violence. The Bay Mills Indian Community adopts this Chapter for the protection of the Tribe and its members from adverse consequences of domestic and sexual violence through restitution, rehabilitation, and prevention of future violent acts.
2702. JURISDICTION. The Bay Mills Tribal Court shall have jurisdiction over complaints for conduct occurring within the boundaries of the Bay Mills Indian Reservation against: tribal members; non-members who have engaged in a consensual relationship with the Bay Mills Indian Community, its instrumentalities or its members; and, non-members whose actions are alleged to threaten the economic security of the Bay Mills Indian Community or of a Tribal member, or the physical or mental welfare of a member of the Tribe. For purposes of this Chapter:
- A. A person is in a consensual relationship with the Tribe, its instrumentalities, or its members where that person is:
 - 1. An employee or contractor of the Bay Mills Indian Community or a tribal member and at least some duties are performed within the Reservation;
 - 2. A lessee or sub lessee of the Tribe, its instrumentalities, or its members;
 - 3. A spouse, domestic partner, intimate partner, child, or a household resident (lawfully or unlawfully) of a Bay Mills tribal member;
 - 4. An employee of an independent entity operating within the Reservation, where that entity provides goods, services, or education to members of the Bay Mills Indian Community on the Reservation; and/or
 - 5. An overnight visitor to the Bay Mills Indian Reservation.
 - B. A person threatens the economic security of the Tribe or its members where they have inflicted, or threatened to inflict, Domestic Violence, Dating Violence, Family Violence, Sexual Violence, or Stalking Violence against a member of the Bay Mills Indian Community or a minor child who is eligible for membership in the Bay Mills Indian Community.

- C. A person threatens the physical or mental welfare of a member of the Tribe where they have inflicted, or threatened to inflict, Domestic Violence, Dating Violence, Family Violence, Intentional Infliction of Emotional Distress, Intimate Partner Violence, Sexual Violence, or Stalking Violence against a member of the Bay Mills Indian Community or a minor child who is eligible for membership in the Bay Mills Indian Community.

2703. DEFINITIONS – As used in this Chapter, the following terms have the meanings prescribed herein:

- A. “Defendant” means the person who is accused in a case being brought to court.
- B. “Dating Violence” shall mean acts described in Section 2703(C) which are committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship; the type of relationship; and the frequency of interaction between the persons involved in the relationship. Gender and/or sexual orientation are not relevant to the determination as to whether such relationship exists.
- C. “Domestic Violence” or “Family Violence” means, except for an act of self-defense, committing at least one of the following acts by a Family Member, Intimate Partner of a Parent or Guardian, or Household Member of the victim:
 - 1. Assault, as set forth in section 2705 of this Chapter;
 - 2. Battery, as set forth in section 2706 of this Chapter;
 - 3. Conversion of real or personal property, as set forth in section 2707 of this Chapter;
 - 4. Intentional infliction of emotional distress, as set forth in section 2711 of this Chapter;
 - 5. False imprisonment, as set forth in section 2710 of this Chapter;
 - 6. Controlling or limiting a family and/or household member’s ability to acquire, use, and maintain financial resources; and/or
 - 7. Causing a family and/or household member to involuntarily engage in sexual activity by force, threat of force, or duress.
- D. “Family member, Intimate Partner, or Household member” means any person who meets any of the following criteria:
 - 1. A person who is a current or former spouse;

2. A person who is in a current or former dating or romantic relationship;
 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; and/or
 6. A person who has or previously established a legal relationship, including:
 - a. As a guardian;
 - b. As a ward;
 - c. As a custodian;
 - d. As a foster parent; and/or
 - e. A person who has a child in common.
- E. "Plaintiff" means the person who is initiating the case in court.
- F. "Sexual Violence" means a non-consensual physical sexual act, regardless of penetration, a physical sexual act where consent is obtained by physical or psychological coercion, or the non-consensual recording or distribution of recordings of sexual activity of another person.
- G. "Stalking Violence" engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others that results in substantial emotional distress. This may include trespass, or cyber stalking, which involves threats and/or harassment delivered by electronic communication.
- H. "Victim" means the person that was harmed or injured as a result of a wrongful act.

PART TWO – ACTIONABLE CLAIMS

2704. Dating Violence, Domestic Violence, Family Violence, Sexual Violence, Stalking Violence Dating Violence, or Civil Trespass are all actionable claims under this Chapter.
2705. **ASSAULT** – Any person who shall attempt or threaten to do bodily harm to another person through unlawful force or violence or dangerous instrumentality shall be deemed responsible for assault. Each incidence of assault may be brought as a separate claim.

2706. BATTERY – Any person who shall willfully strike, make harmful or offensive contact with another person, or otherwise inflict bodily harm shall be deemed responsible for battery. Each incidence of battery may be brought as a separate claim.
2707. CONVERSION – Any person who shall intentionally take or render control over another person’s personal property, or exercises exclusive control over property jointly owned with another, which seriously interferes with the other’s right to control and/or use that property, shall be deemed responsible for conversion.

Factors for consideration by the Court to determine the seriousness of interference:

1. Extent and duration of the actor’s exercise of control;
 2. The actor’s intent to assert control inconsistent with the other’s right of control;
 3. The harm done to real property;
 4. The harm done to the personal property; and/or
 5. The inconvenience and expense caused to the other.
2708. DATING VIOLENCE. Any person who shall intentionally, knowingly, or recklessly subject another person to Dating Violence shall be deemed responsible for such acts. Each incidence of Dating Violence may be brought as a separate claim.
2709. DOMESTIC OR FAMILY VIOLENCE. Any person who shall intentionally, knowingly, or recklessly controls or limits a family and/or household member’s ability to acquire, use, and maintain financial resources; and/or causes a family and/or household member to involuntarily engage in sexual activity by force, threat of force, or duress shall be deemed responsible for Domestic or Family Violence. Each incidence of Domestic or Family Violence may be brought as a separate claim.
2710. FALSE IMPRISONMENT – Any person who shall intend to restrain or confine the victim or a third person within a bounded area fixed by the actor, which results in the direct or indirect confinement of the victim, and the victim is conscious of the confinement or is harmed by it, will be deemed responsible for false imprisonment.

For purposes of this Section, the following applies:

- A. Threats of force and threats of force to the detainee or the detainee’s family may constitute a sufficient act of restraint;
- B. An act of restraint can be a physical barrier, such as a locked door, the use of physical force to restrain;
- C. A bounded area means that freedom of movement is limited in all directions; and

D. If there is a reasonable means of escape, that area is not bounded.

2711. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS – Any person who shall intentionally or unreasonably subject another to emotional distress which they should recognize as likely to result in illness or adversely affect the victims’ mental health, shall be deemed responsible for intentional infliction of emotional distress. This includes Stalking Violence as defined in this Chapter.

A. The actor will be liable:

1. For the physical, emotional, and mental illness or bodily harm when those actions were the cause of the victim’s harm;
2. Whether or not the actor had no intention of inflicting that specific harm; and
3. Whether or not the act is directed against the victim.
4. Acts that may constitute intentional infliction of emotional distress include:
 - a. Threats to harm victim, victim’s children, other family members, or pets; and
 - b. Extreme acts that intentionally cause or threaten to cause extreme humiliation to the victim;
 - c. Extreme acts of stalking;
 - d. Extreme acts of cyber stalking, which are be threats and/or harassment delivered by electronic communication.

2712. SEXUAL VIOLENCE. Any person who shall intentionally, knowingly, or recklessly inflict sexual violence on another person shall be deemed responsible for such acts and may be subject to civil relief under this chapter. Each incidence of sexual violence may be brought as a separate claim.

2713. STALKING VIOLENCE. Any person who shall intentionally, knowingly, or recklessly subject another person to Stalking Violence shall be deemed responsible for such acts. Each incidence of Stalking Violence may be brought as a separate claim.

2714. CIVIL TRESPASS – Any person who shall willfully enter upon the lands or premises of another, or of the Bay Mills Indian Community (including lands which are held in trust for the Bay Mills Indian Community with other Indian tribes), without lawful authority and after having been forbidden to do so by the owner or occupant or after being asked to leave, refuses to do so, is responsible for trespass, which may result in a civil fine of up to \$5,000, temporary or permanent exclusion from the premises, or both.

In proceedings for Civil Trespass brought by the Bay Mills Indian Community, the Tribal Court may award reasonable attorney fees and costs actually incurred by the Tribe in seeking relief.

PART THREE – PROCEEDINGS UNDER THIS CHAPTER

2715. **RULES OF PROCEDURE FOR CLAIMS UNDER THIS CHAPTER.** Except where otherwise stated in this Chapter, the Tribal Court shall apply the rules set forth in Chapter IV of the Tribal Code – Rules for Civil Cases. Defendants shall have the right to be represented by legal counsel at their own expense.
2716. **STATUTE OF LIMITATIONS.** All claims arising under this Chapter shall be brought within one-year of their occurrence; provided, where the Plaintiff was a minor when the actionable claim occurred, the Plaintiff must bring a claim within one year of emancipation or reaching the age of 18.
2717. **PERSONS AUTHORIZED TO BRING A COMPLAINT UNDER THIS CHAPTER.** Any individual who is a victim of Domestic Violence, Dating Violence, Family Violence, Sexual Violence, Stalking Violence, or Trespass may bring a complaint, in accordance with Part Two of this Chapter, before the Tribal Court under this Chapter. A parent or legal guardian may file a complaint on behalf of a minor child or other incapacitated person.

The Bay Mills Indian Community, through the Bay Mills Tribal Prosecutor, may file a complaint under this Chapter where:

- A. The Tribe seeks prospective injunctive relief; and/or,
 - B. A Victim, or their legal guardian, makes a written request to the Tribal Prosecutor to bring such on action on their behalf against an individual who is not a member of the Bay Mills Indian Community; *provided*, that any Restitution sought in such an action shall not be paid to the Bay Mills Indian Community.
2718. **EVIDENTIARY STANDARD** – The burden of proof is met by a preponderance of the evidence. The Court will consider evidence to make a factual determination of what remedies may be appropriate. The parties may present evidence in the following ways, including, but not limited to, the following:
- A. Testimony of Petitioner made under oath;
 - B. Testimony of other witnesses;
 - C. Police reports;
 - D. Medical reports of injuries;
 - E. Relevant psychological reports;

- F. Pictures of injuries;
- G. Evidence of destruction of property;
- H. A personal diary documenting abuse;
- I. Email, social media, or text/phone messages; and/or
- J. Affidavits from witnesses.

For purposes of this Chapter, the Tribal Court shall not consider evidence relating to the Plaintiff's previous dating or marital relationships or sexual activities in assessing the Defendant's potential liability.

2719. REMEDIES – Due to the individualized nature of Domestic Violence, Dating Violence, Family Violence, Sexual Violence, or Stalking Violence, the Tribal Court will assess the proper remedies on a case-by-case basis in the manner that will most appropriately provide for restitution, compensation, or protection of the victim (or all three). The Tribal Judge may order any of the following:
- A. A protection order pursuant to Chapter XXV of the Bay Mills Tribal Code; provided, that the issuance of such an order complies with all procedural requirements of Chapter XXV.
 - B. An injunction that the defendant shall not further abuse or threaten to abuse the victim;
 - C. That defendant pay for any necessary medical, dental, or mental health expenses resulting from the abuse;
 - D. That defendant pay for all Court fees incurred by the victim in bringing a claim under this Chapter;
 - E. That defendant pay for all damage incurred during each incident of violence done to victim's personal property, including but not limited to, vehicles, off road vehicles, boats, home belongings, and personal belongings;
 - F. That defendant shall vacate a joint residence with the victim;
 - G. The termination of a lease or sublease to the defendant of property owned by the Bay Mills Indian Community or its instrumentalities (whether such land is held in trust, fee, or restricted fee status);
 - H. That the victim and/or the abuser participate in counseling, domestic violence, or batterer programs;

- I. Arrangements that detail safe custody and visitation for any minor children in common;
 - J. Award use and possession of jointly owned vehicles;
 - K. Referral to Tribal Social Services for investigation surrounding custody agreements and child safety;
 - L. For individuals who are not tribal members, temporary banishment from the Bay Mills Indian Community for up to one year;
 - M. Recommendation to the Executive Council for the permanent banishment of Defendant from the Bay Mills Indian Community;
 - N. All remedies currently available in civil actions listed in Chapter IV – Rules for Civil Cases, including but not limited to,
 - 1. Sale of defendant’s property to satisfy court ordered judgment;
 - 2. Recover possession of premises according to Chapter IV, Section 415.2, as domestic violence may be considered to pose a serious or continuing health hazard.
 - O. Financial restitution for physical or mental pain and suffering, provided that such restitution is not excessive or punitive;
 - P. That the Defendant be prohibited from possessing a firearm within the boundaries of the Bay Mills Reservation; and/or,
 - Q. Any other remedy the Tribal Court Judge shall deem appropriate that will adequately provide for the compensation or restitution of the harm sustained by the victim consistent with Tribal, state, and federal civil limitations – including but not limited to a civil fine of up to \$5,000.00.
2720. ADDITIONAL CONSIDERATIONS TO BE MADE BY THE COURT – Domestic violence may come in many forms, so the Court may make the following considerations when assessing a proper remedy:
- A. The Court should make a good faith effort to respect the victim’s viewpoint by listening to the victim’s story and what remedies the victim believes will best address the abuse in the relationship.
 - B. Understanding that the most pervasive element in domestic violence is the exercise of control over the victim, the Court may consider a defendant’s continuing pattern of controlling behavior while deciding an appropriate remedy.

2721. PENALTIES FOR PERJURY AND FALSE TESTIMONY – Any plaintiff, defendant, legal counsel, or lay-advocate who knowingly or intentionally makes a false statement, whether orally or in writing, or procures or induces another person to do so in any judicial proceeding brought under this Chapter in Tribal Court is guilty of civil perjury and may be sentence to a payment of a fine not to exceed \$5,000.