

The Chippewa Cree Tribe of the Rocky Boy's Reservation

Phone: (406) 395-4478 or 4210 - Finance Office
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RR 1 #544
Box Elder, MT 59521



To Approve and Adopt Chippewa Cree Tribe Domestic Violence Code.

Ordinance Number 2-97

Whereas on November 6, 1997, the Rocky Boy's Chippewa Cree Tribe voted to approve the Domestic Violence Code as enclosed.

Chippewa Cree Domestic Violence Code

CHAPTER 1

GENERAL PROVISIONS

Section 101 . The Chippewa Cree Domestic Violence Code is construed to promote the following:

- Deliver prompt and effective response to victims with fairness and compassion.
- Provide safety and protection to victims and their children.
- Utilize the criminal justice system in setting standards of behavior within the family system.
- Impose consequences upon offenders for domestic violence crime.
- Provide opportunity for offenders to make positive changes in their behavior.
- Prevention of future violence in all families through public education programs.

Section 102. Definitions

Unless the context otherwise requires:

1. "Domestic violence/abuse" means the occurrence of one or more of the following acts by a family or household member, but does not include acts of self-defense.

- ! (a) Purposely or knowingly causes physical harm to another family or household member;
- (b) Purposely or knowingly places a family or household member in fear of physical harm; or,
- (c) Purposely or knowingly causes a family or household member to engage involuntarily in sexual activity by force, threat, coerce , or duress.
- (d) Negligently causes bodily injury to a family member with a weapon.

2. Family or household members include:

(a) Spouses or former spouses

(b) Adults or minors who have dated or are involved in an on-going intimate relationship regardless of their gender.

(c) Persons who have a child in common; and

(d) Minor children of a person in a relationship that is described in paragraphs (a) through (c).

3. "Program of intervention for perpetrators" means a specialized program that accepts court orders and voluntary participants that:

(a) Offers intake, orientation, and placement in a domestic violence class;

(b) Offers a minimum of 24 re-education classes;

(c) Makes available and integrates the specialized function, knowledge and expertise of elders.

4. "Program for victims of domestic" means a specialized program for victims of domestic violence and their children that includes but is not limited to advocacy, shelter, crisis intervention, supportive services, and referral.

5. "Safety plan" means a written outline of actions to be taken by a victim of domestic violence to secure protection and support.

6. "Primary aggressor" means - the most significant aggressor and not necessarily the initial participant in the incident.

7. "Probable cause" means- the existence of facts and circumstances that would lead a reasonable and prudent person to believe that a specific person had committed the crime.

CHAPTER 2

CRIMINAL PENALTIES AND PROCEDURES

Section 201. "Crime involving domestic violence" defined.

1. Arson;
2. Assault Offenses Aggravated Assault, Simple Assault, and Intimidation;
3. Burglary, Breaking and Entering;
4. Destruction of Property, Damage, Vandalism of Property
5. Homicide Offenses (Murder and Non negligent Manslaughter, Negligent Manslaughter, and Justifiable Homicide);
6. Kidnapping, Abduction;
7. Sex Offenses, Forcible (Forcible Rape, Forcible Sodomy, Sexual Assault with an Object, and Forcible Fondling);
8. Stolen Property Offenses;
9. Weapon Law violations;
10. Disorderly Conduct;
11. Family Offenses, Non-Violent;
12. **Stalking; see Section 213**
13. Trespass of Real Property; and
14. Intoxication
15. Habitual
16. Harassment

The use of alcohol in the committing of domestic violence or any crime related to domestic violence shall not diminish the seriousness of domestic violence or take precedence over the crime of domestic violence.

Section 202. Violation of certain orders for protection is a misdemeanor.

Section 203 Duties of law enforcement officer to victim of domestic violence; required notice to victim.

1. A law enforcement officer who responds to an allegation of domestic violence shall use all reasonable means to protect the victim and others present from further violence, including:
 - a.) Transporting or obtaining transportation for the victim and any children to a shelter or any other place of safety.
 - b.) Assisting the victim in removing essential personal effects.
 - c.) Assisting the victim and children in obtaining medical treatment, including transporting to medical facility if needed.
 - d.) Giving victim immediate and adequate notice of rights of victims and /or other remedies and services .
 - e.) As part of the notice required by the subsection (d)

Victims of domestic violence who believe that law enforcement protection is needed for their physical safety, have the right to request the officer assist in providing for their safety, including asking for an emergency order for protection that will provide for immediate protection. Victims may also request the police officer assist in obtaining essential personal effects and locating and taking them to a safe place, including but not limited to a shelter, a family member's or friend's residence, or a similar place of safety. If needed, they also have the right to request the police officer assist in obtaining medical treatment. If needed a copy of the report is available from the law enforcement. Be advised the prosecutor will file a criminal complaint against the assailant. Victims also have the right to file a petition requesting a permanent order for protection from domestic violence.

Section 204. Mandatory arrest for crimes; determination of primary aggressor; required report.

1. The law enforcement officer shall have 24 hours, without a warrant to arrest and charge a person with the appropriate crime if the officer has probable cause to believe that the person has committed the domestic violence crime, whether the offense is a felony or a misdemeanor, or if it was committed in or outside the presence of the officer.
2. Regardless of the elements of any other crime committed in conjunction the domestic violence shall be considered a separate and distinct offense and shall be charged in addition to any other crime.
3. If a law enforcement officer receives complaints of domestic violence from two or more opposing persons, the officer shall evaluate each complaint separately to determine who was the primary aggressor. If the officer determines that one person was the primary physical aggressor, the officer need not arrest the other person alleged to have committed domestic violence. In determining whether a person is the primary aggressor the officer shall consider:
 - (a) Prior complaints of domestic violence;
 - (b) The relative severity of the injuries inflicted on each person;
 - (c) The likelihood of future injury to each person; and
 - (d) Whether one of the persons acts in self-defense and/or in defense of others;
 - (e) The dynamics of domestic violence.

4. A law enforcement officer shall not threaten, suggest, or otherwise indicate the possible arrest of all parties to discourage requests for intervention by any party.

5. A law enforcement officer shall not consider the use or abuse of alcohol by either party in making a determination as to whether or not domestic violence has been committed.

6. The employment, economic, educational, social and political status of the alleged perpetrator and/or victim shall not be considered in making an arrest.

7. The law enforcement officer is not required to make an arrest based on who hit who first but shall consider the dynamics of domestic violence and the definition of primary aggressor in determining which party to arrest.

8. In addition to any other report required, a law enforcement officer who does not make an arrest after investigating a complaint of domestic violence or who arrests two or more persons for a crime involving domestic violence must submit a written report setting forth the grounds for not arresting or, in instances where both parties are arrested, describe how the determination was made that both parties acted primarily as aggressors and that neither spouse acted primarily in self-defense.

Section 205. Mandatory arrest for certain violations of orders for protection.

When a law enforcement officer has probable cause to believe that a respondent has violated one of the following orders of the court and verifies the existence of the order, the officer shall, without a warrant, arrest the apparent violator whether the violation was committed in or outside the presence of the officer if the orders are issued in accordance with the Chippewa Cree Domestic Violence Code.

1. An order enjoining the respondent from threatening to commit or committing acts of domestic violence against the petitioner or other family or household member.

2. An order prohibiting the respondent from harassing, annoying, telephoning, contacting or otherwise communicating with the petitioner, either directly or indirectly through family, relations by marriage, friends, and co-workers.

3. An order removing and excluding the respondent from the residence of the petitioner.

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

5. An order prohibiting the respondent from using or possessing a firearm or other weapon specified by the court.

6. An order requiring the respondent to attend domestic violence classes.

7. An order requiring the respondent to abide by all laws of the Chippewa Cree Nation.

The petitioner who is granted an order for protection cannot violate or be arrested for violation of her/his own order for protection.

Section 206. Officials who batter, including enforcement officers; procedure.

Upon receiving notification that a law enforcement officer is a possible perpetrator:

1. The dispatcher shall immediately notify the Chief of Police. He will respond to the call.

2. Line officers may secure the scene and ensure the safety of all parties, if necessary, and await the response of the Chief of Police. However, under no circumstances will line officers investigate calls regarding other officers.

3. Someone of higher rank than the alleged perpetrator must always be involved in responding. The Criminal Investigator will be notified if the Chief of Police is the alleged perpetrator.

Upon receiving notification that a public official is a possible perpetrator:

1. The dispatcher shall notify the on call criminal investigator who shall respond immediately.

Law enforcement officers and public officials who are suspected of committing the crime of domestic violence shall be subject to all provisions of the Chippewa Cree Violence Code.

Section 207. Authority of law enforcement officer to seize weapons.

Domestic violence incidents involving weapons: The responding law enforcement officer:

1. Shall seize all weapons that are alleged to have been involved or threatened to be used in the commission of a crime.
2. Shall seize a weapon that is in the plain view or which is located during a search authorized by a person entitled to consent to the search. The seizure of weapons is without regard to ownership of the weapons; weapons owned by a third party are subject to confiscation when officers conclude that the weapon must be confiscated to protect law enforcement, victims of domestic violence, or others.

Section 208. Immunity.

1. Any law enforcement officer or official shall have immunity from any liability in civil or criminal actions when making arrests for crimes involving domestic violence, if they act in good faith when providing protection for domestic violence victims. This also includes public citizens when making a citizens arrest.
2. Law enforcement officers shall have the same immunity with respect to participation in any court proceedings resulting from arrests made for domestic violence or any crimes involving domestic violence.

Section 209. Conditions of Release

There shall be a mandatory jail sentence for 72 hours prior to the arraignment of any domestic violence crime, including violation of an order for protection.

Section 210 Mandatory arrest for violation of conditions for release.

If a law enforcement officer has probable cause to believe that a person has violated a condition of release imposed in accordance with Section 202, the officer shall, without a warrant, arrest the alleged violator whether the violation was committed in or outside the presence of the officer.

Section 211. Role of the court; sentencing; probation conditions

1. 1st offense; If the alleged assailant pleads guilty or is found guilty, regardless of the severity, the judge shall order a mandatory **30 days** in jail and **\$100.00** fine with a minimum of **15 days** and **6 months probation**.

2. The offender is prohibited from substituting other services or activities such as individual counseling , alcohol treatment or participation in traditional healing practices for participation in a program except those offered through domestic violence program or sought out voluntarily in addition to the required domestic violence program by the offender.

3. In the event the offender does not comply with the domestic violence program and /or other conditions of probation , the court will find the offender in contempt of court and shall impose service of the original sentence during which time the offender must attend the domestic violence program and do community service. Further, the court will order that any resulting contempt of court sentence be served consecutively.

4. Upon any second or subsequent offense, the offender shall be sentenced to a maximum of **60 days** in jail and a **\$300.00** fine with **1 year probation**; minimum of **30 days** in jail and/or any maximum sentencing, fine, rehabilitation, and community service remedies available to the court. An offender shall participate in the program concurrent with any jail and fine sentencing imposed by the court.

Section 212 Ethics, familial relationships of law enforcement, prosecution, and judges to defendant.

All public servants shall be expected to perform their duties and proceed in accordance with this code no matter what the employment, educational, social, and political status of the alleged perpetrator and/or victim. Public servants shall be held to the highest professional standards in responding to the crime of domestic violence.

In instances where law enforcement officers respond to a call involving a relative by blood or marriage, the officer shall:

1. Note the relationship on the case report.

In instances where law enforcement officers have responded to a call involving a relative by blood or marriage, the supervisor reviewing the case report shall:

1. Review for accuracy and ensure that appropriate action has been taken.

A law enforcement officer who fails to respond within the appropriate legal parameters when a relative by blood or marriage is suspected of committing the crime of domestic violence shall be subject to disciplinary action.

In instances where prosecutors and judges are involved in making decisions when the alleged perpetrator of a domestic violence crime is a relative by blood or marriage, the prosecutor and/or the judge shall:

1. Refrain from prosecuting or hearing the case of the crime of domestic violence in the event the alleged perpetrator and/or victim is a relative by blood or marriage, whenever possible.

In the event that a prosecutor or judge is a relative by blood or marriage and circumstances do not allow withdrawal from prosecuting or hearing the case, they shall:

1. Be required to maintain the highest professional standards and shall conduct themselves within the legal parameters of the Domestic Violence Code.

Any perceived improprieties shall be referred to the Criminal Investigator's Office for investigation.

Section 213. Stalking

1. Stalking is defined as: purposely or knowingly causes another person substantial emotional distress or reasonable apprehension of bodily injury or death by repeatedly:
 - a.) following the stalked person; or
 - b.) harassing, threatening, or intimidating the stalked person, in person or by phone, or by other action, device, or method.
2. Attempts by the other person to contact or follow the stalked person after the accused person has been given actual notice that the stalked person does not want to be contacted or followed constitutes *prima facie* that the accused person purposely or knowingly followed, harassed, threatened, or intimidated the stalked person.

Section 214. Classification

Domestic violence crimes are classified as **Class A offenses;** (Chapter 2 Section 2.3 Penalties) therefore, punishable by a maximum of 6 **months imprisonment** or a fine of **\$500.00 or both.**

Certification

I, the undersigned as Secretary of the Business Committee of the Chippewa Cree Tribe, do hereby certify the Business Committee is composed of Nine (9) members of whom Eight (8) constituted a quorum were present at the meeting thereof duly and regularly called, noticed and convened, and held the 6th day of November, 1997, and the foregoing Ordinance was duly adopted at such meeting by the affirmative vote of Seven for and Zero against.

Bert Coen
Chairman, Business Committee

Janice Myers
Secretary, Business Committee