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**TITLE XXIII**  
**PROTECTION FROM DOMESTIC ABUSE**

**TO BECOME EFFECTIVE UPON FURTHER ACTION OF THE TRIBAL COUNCIL  
(Resolution CHO 20-032)**

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**TO BECOME EFFECTIVE UPON FURTHER ACTION OF THE TRIBAL COUNCIL  
(Resolution CHO 20-032)**

1 **CHAPTER 1. DOMESTIC ABUSE**

2  
3 **§23-1-1 Short Title**

4  
5 This chapter shall be known and may be cited as the “Mississippi Band of Choctaw Indians’  
6 Protection from Domestic Abuse Law.”  
7

8 **§23-1-2 Definitions**

9  
10 As used in this chapter, unless the context otherwise requires:

11 (1) “Abuse” means the occurrence of one or more of the following acts between family or  
12 household members who reside together or who formerly resided together:  
13

14 (a) attempting to cause or intentionally, knowingly or recklessly causing bodily injury or  
15 serious bodily injury with or without a deadly weapon;  
16

17 (b) placing, by physical menace or threat, another in fear of imminent serious bodily  
18 injury;  
19

20 (c) criminal sexual conduct committed against a minor;  
21

22 (d) attempting to cause or intentionally, knowingly or recklessly causing mental and/or  
23 emotional injury or anguish; or  
24

25 (e) attempting to cause or intentionally, knowingly or recklessly refusing to provide for  
26 the physical needs of a person, including but not limited to a family or household  
27 member, a minor or an incompetent person, by a person with whom the law or society  
28 places this responsibility or by a person who has undertaken this responsibility.

29 “Physical needs” include food, clothing, shelter, health care or other services which are  
30 necessary to maintain the person’s mental and physical health.  
31

32 (2) “Adult” means any person eighteen (18) years of age or older, or any person under eighteen  
33 (18) years of age who has been emancipated by marriage.  
34

35  
36 (36) “Dating Violence” means violence committed by a person who is or has been in a social  
37 relationship of a romantic or intimate nature with the victim, as determined by the length of the  
38 relationship, the type of relationship, and the frequency of interaction between the persons  
39 involved in the relationship.

40  
41 (47) “Domestic Violence” means violence committed by a current or former spouse or intimate  
42 partner of the victim, by a person with whom the victim shares a child in common, by a person  
43 who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, or by  
44 a person similarly situated to a spouse of the victim under the domestic- or family-violence laws  
45 of the Indian Tribe that has jurisdiction over the Indian country where the violence  
46 occurs Mississippi Band of Choctaw Indians.  
47

48 (53) “Family or household member” means spouses, former spouses, persons living as spouses,  
49 parents and children or other person related by consanguinity or affinity.  
50

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(64) “Incompetent” means any adult who is impaired to the extent of lacking sufficient understanding or capacity to make or communicate responsible personal decisions, and who has demonstrated deficits in behavior which evidence an inability to meet personal needs for medical care, nutrition, clothing, shelter or safety.

(75) “Next Friend” means an adult person who is not appointed by the court but who acts on behalf of a minor or an incompetent.

(8) “Protection Order” means:  
(A) any injunction, restraining order, or other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person; and  
(B) includes any temporary or final order issued by a civil or criminal court, whether obtained by filing an independent action or as a pendent 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.

1 **§23-1-3 Jurisdiction**

2  
3 The Choctaw Tribal Court shall have jurisdiction over all proceedings under this Chapter. The  
4 petitioner’s right to relief under this Chapter shall not be affected by his leaving the residence or  
5 household to avoid further abuse.  
6

7 **§23-1-4 Petition to Seek Relief**

8  
9 A person may seek relief under this Chapter for himself by filing a petition with the Choctaw  
10 Tribal Court alleging abuse by the defendant. Any parent, adult household or family member, or  
11 next friend of the abused person may seek relief under this Chapter on behalf of any minor  
12 children or any person alleged to be incompetent by filing a petition with the court alleging abuse  
13 by the defendant.  
14

15 **§23-1-5 Contents of Petition**

16  
17 (1) A petition filed under the provisions of this Chapter shall state:

18  
19 (a) except as otherwise provided in subsection (7) of this section, the name, address,  
20 county of residence of each petitioner and of each individual alleged to have committed  
21 abuse and whether the petitioner or individual resides in Indian Country as defined in 18  
22 U.S.C. 1151;

23  
24 (b) the facts and circumstances concerning the alleged abuse;

25  
26 (c) the relationship between the petitioners and the individuals alleged to have committed  
27 abuse; and

28  
29 (d) a request for one or more ~~protective~~ **protection** orders.

30  
31 (2) If a petition requests a ~~protective~~ **protection** order for a spouse and alleges that the other spouse  
32 has committed abuse, the petition shall state whether or not a suit for divorce of the spouses or  
33 suit for custody is pending.

34  
35 (3) Any temporary or permanent decree issued in a divorce proceeding in Tribal Court subsequent  
36 to an order issued pursuant to this chapter may, in the discretion of the judge hearing the divorce  
37 proceeding in Tribal Court, supersede in whole or in part the order issued pursuant to this  
38 Chapter.  
39

40 (4) If the petitioner is a former spouse of an individual alleged to have committed abuse:

41  
42 (a) a copy of the decree of divorce shall be attached to the petition, or

43  
44 (b) the petition shall state that the decree is currently unavailable to the petitioner and that  
45 a copy of the decree will be filed with the Choctaw Tribal Court before the time for the  
46 hearing on the petition.  
47

1 | (5) If a petition requests a protective protection order for a child who is subject to the continuing  
2 | jurisdiction of another court or alleges that a child who is subject to the continuing jurisdiction of  
3 | another court has committed abuse.

4 |  
5 | (6) If the petition requests the issuance of a temporary ex parte order, the petition shall:

6 |  
7 | (a) contain a general description of the facts and circumstances concerning the abuse and  
8 | the need for immediate protective protection orders; and

9 |  
10 | (b) be signed by each petitioner under oath that the facts and circumstances contained in  
11 | the petition are true to the best knowledge and belief of each petitioner.

12 |  
13 | (7) If the petition states that the disclosure of the petitioner's address would risk abuse of the  
14 | petitioner or any member of the petitioner's family or household or would reveal the confidential  
15 | address of a shelter for domestic violence victims, the petitioner's address may be omitted from  
16 | the petition pursuant to this subsection *and the address of the petitioner is necessary to determine*  
17 | *jurisdiction or venue*, the disclosure of such address shall be made orally and *in camera*.

#### 18 | 19 | **§23-1-6 Notice and Hearing: Temporary Orders**

20 |  
21 | (1) Within ten (10) days of filing a petition under provisions of this chapter, the Choctaw Tribal  
22 | Court shall hold a hearing, at which time the petitioner must prove the allegation of abuse by a  
23 | preponderance of the evidence. The defendant shall be given notice by service of process or as  
24 | otherwise provided by law.

25 |  
26 | (2) Upon good cause shown in the ex parte proceeding, the Choctaw Tribal Court may enter such  
27 | temporary order as it deems necessary to protect from the abused petitioner, any minor children  
28 | or any person alleged to be incompetent. Immediate and present danger of abuse to the petitioner,  
29 | any minor children, or any person alleged to be incompetent shall constitute good cause for  
30 | purposes of this subsection. A temporary order shall last as long as the court deems necessary or  
31 | until the hearing date, in the discretion of the court.

32 |  
33 | (3) If a hearing under subsection (1) of this section is continued, the Choctaw Tribal Court may  
34 | make or extend such temporary orders under subsection (2) of this section as it deems necessary.  
35 | A continuance under this subsection shall last no longer than twenty (20) days.

#### 36 | 37 | **§23-1-7 Protective Protection Orders or Consent Agreements**

38 |  
39 | (1) The Choctaw Tribal Court shall be empowered to grant any protective protection order or  
40 | approve any consent agreement to bring about a cessation of abuse of the petitioner, any minor  
41 | children or any person alleged to be incompetent, which relief may include:

42 |  
43 | (a) directing the defendant to refrain from abusing the petitioner, any minor children or  
44 | any person alleged to be incompetent;

1 (b) granting possession to the petitioner of the residence or household to the exclusion of  
2 the defendant by evicting the defendant and/or restoring possession to the petitioner;  
3

4 (c) when the defendant has a duty to support the petitioner, any minor children or any  
5 person alleged to be incompetent living in the residence or household and the defendant  
6 is the sole owner or lessee, granting possession to the petitioner of the residence or  
7 household to the exclusion of the defendant by evicting the defendant and/or restoring  
8 possession to the petitioner, or by consent agreement allowing the defendant to provide  
9 suitable, alternate housing;  
10

11 (d) awarding temporary custody of and/or establishing temporary visitation rights with  
12 regard to any minor children or any person alleged to be incompetent;  
13

14 (e) if the defendant is legally obligated to support the petitioner, any minor children or  
15 any person alleged to be incompetent;  
16

17 (f) ordering the defendant to pay to the abused person monetary compensation for losses  
18 suffered as a direct result of the abuse, including but not limited to medical expenses  
19 resulting from such abuse, loss of earnings or support, out-of-pocket losses for injuries  
20 sustained, moving expenses, reasonable attorneys' fees and/or ordering counseling or  
21 professional medical treatment for the defendant and/or the abused person; and  
22

23 (g) prohibiting the transferring, encumbering or otherwise disposing of property mutually  
24 owned or leased by the parties, except when in the ordinary course of business.  
25

26 (2) The Choctaw Tribal Court shall have full civil jurisdiction to issue and enforce protection  
27 orders involving any person, whether Indian or non-Indian, including the authority to enforce any  
28 orders through civil contempt proceedings and other appropriate mechanisms, in matters arising  
29 anywhere in the Indian country of the Mississippi Band of Choctaw Indians.  
30

31 (3) In addition to relief accorded in subsection (1) and in accordance with Title ~~XVIII~~ **XX** of  
32 this Code, the Chief or Attorney General may petition to have any person, except an enrolled  
33 member of the Mississippi Band of Choctaw Indians entitled to reside thereon, excluded from the  
34 Mississippi Band of Choctaw Indians' Indian Country, as defined in 18 U.S.C. § 1151.  
35

### 36 §23-1-8 Grant of Relief Not to Affect Property or Orders Availability: Orders Duration

37 (1) The granting of any relief authorized under this Chapter shall not preclude any other relief  
38 provided by law.  
39

40 (2) Any ~~protective~~ **protection** order or approved consent agreement shall be for a fixed period of  
41 time not to exceed one (1) year. The Choctaw Tribal Court may amend its order or agreement at  
42 any time upon subsequent petition filed by either party.  
43

44 (3) No order or agreement under this Chapter shall in any manner affect title to any real property.  
45  
46

### 47 §23-1-9 Testimony By Spouses Not to be Restricted

48 There shall be no restrictions concerning a spouse testifying against his spouse in any hearing  
49 under the provisions of this chapter.  
50

**TO BECOME EFFECTIVE UPON FURTHER ACTION OF THE TRIBAL COUNCIL  
(Resolution CHO 20-032)**

1  
2 | §23-1-10 Penalties, ~~Protective~~ **Protection** Orders and Consent Agreements  
3

4 (1) Violation of a ~~protective~~ **protection** order or a court-approved consent agreement known to the  
5 defendant shall be a ~~Felony~~ **Class A** offense. The Tribal Court may hold the defendant in  
6 contempt of court and punish the defendant by imprisonment in the Tribal jail ~~for not more than~~  
7 ~~six (6) months or impose a fine of not more than five hundred dollars (\$500.00), or both~~ **in**  
8 **accordance with Section 3-9-5.**  
9

10 (2) **Any non-Indian person who has committed crimes occurring within the Indian country of the**  
11 **Mississippi Band of Choctaw Indians related to violations of protection orders when the non-**  
12 **Indian person has sufficient ties to the Mississippi Band of Choctaw Indians as identified in**  
13 **Section 1-2-3(2)(i) and when the following conditions are met:**

14 (i) **the violation relates to that part of the protection order that prohibits or**  
15 **provides protection against violent or threatening acts or harassment against,**  
16 **sexual violence against, contact or communication with, or physical proximity to,**  
17 **another person;**

18 (ii) **the protection order was issued against the non-Indian person;**

19 (iii) **the protection order is enforceable by the Mississippi Band of Choctaw**  
20 **Indians; and**

21 (iv) **the protection order is consistent with 18 U.S.C. § 2265(b).**  
22

23 (3) **In any case where the Tribe seeks to exercise criminal jurisdiction over a non-Indian**  
24 **person for a crime related to violations of protection orders in accordance with subsection (2), the**  
25 **Tribe shall provide to the defendant:**

26 (i) **the right to effective assistance of counsel at least equal to that**  
27 **guaranteed by the United States Constitution;**

28 (ii) **at the expense of the Tribe, provide an indigent defendant the assistance**  
29 **of a defense attorney licensed to practice law by any jurisdiction in the United States that applies**  
30 **appropriate professional licensing standards and effectively ensures the competence and**  
31 **professional responsibility of its licensed attorneys;**

32 (iii) **require that the judge presiding over the criminal proceeding—**

33 (A) **has sufficient legal training to preside over criminal proceedings;**  
34 **and**

35 (B) **is licensed to practice law by any jurisdiction in the United**  
36 **States;**

37 (iv) **prior to charging the defendant, make publicly available the criminal**  
38 **laws (including regulations and interpretive documents), rules of evidence, and rules of criminal**  
39 **procedure (including rules governing the recusal of judges in appropriate circumstances) of the**  
40 **Tribe;**

41 (v) **maintain a record of the criminal proceeding, including an audio or other**  
42 **recording of the trial proceeding; and**

43 (vi) **the right to a trial by an impartial jury that is drawn from sources that—**

44 (A) **reflect a fair cross-section of the community; and**

45 (B) **do not systematically exclude any distinctive group in the**  
46 **community, including non-Indians.**  
47  
48

49 §23-1-11 Participants Presumed Acting in Good Faith: Immunity from Liability  
50

**TO BECOME EFFECTIVE UPON FURTHER ACTION OF THE TRIBAL COUNCIL**  
**(Resolution CHO 20-032)**

1 Any licensed doctor of medicine, licensed doctor of dentistry, intern, resident or registered nurse,  
2 psychologist, social worker, preacher, teacher, attorney, law enforcement officer or any other  
3 person or institution participating in the making of a report pursuant to this Chapter or  
4 participating in judicial proceedings resulting there from shall be presumed to be acting in good  
5 faith, and if found to have acted in good faith shall be immune from any liability, civil or  
6 criminal, that might otherwise be incurred or imposed. The reporting of an abused person shall  
7 not constitute a breach of confidentiality.  
8

### 9 §23-1-12 Reports of Abuse: Confidentiality of Reports

10  
11 A written report of any known or suspected abuse to Choctaw Social Services or the Attorney  
12 General as soon as possible by any person having knowledge of such abuse. Reports of abuse  
13 made under the provisions of this Chapter and the identity of those persons making the reports  
14 shall be confidential. The Attorney General shall forward all reports to Choctaw Social Services  
15 within forty-eight (48) hours of receipt of a report. Once Choctaw Social Services has received a  
16 report it shall determine within forty-eight (48) hours whether there is substantial potential for  
17 criminal prosecution, then it shall investigate the report and/or refer it to the Attorney General for  
18 prosecution.  
19

### 20 §23-1-13 Immunity of Officers for Arrests in Domestic Violence Incidents

21  
22 (1) A law enforcement officer shall not be held liable in any civil action for an arrest based on  
23 probable cause, enforcement in good faith of a court order or any other action or omission in good  
24 faith under this Chapter arising from an alleged domestic violence incident brought by any  
25 authorized party, or an arrest made in good faith without a warrant when the officer has probable  
26 cause to believe that the person has within twenty-four (24) hours of such arrest knowingly  
27 violated the provision of a protective protection order of court-approved consent agreement  
28 entered by a court pursuant to this Chapter that requires such person to absent himself from a  
29 particular geographic area, provided that such order specifically provides for an arrest pursuant to  
30 this section for such violation or failure, in good faith, to make such an arrest without a warrant.  
31

32 (2) The Attorney General or a special prosecutor shall not be held liable in any civil action for his  
33 order of an arrest based on probable cause, enforcement in good faith of a court order or any other  
34 action or omission in good faith under this Title arising from an alleged domestic violence  
35 incident brought by any authorized party, or an arrest made in good faith without a warrant when  
36 the Attorney General or special prosecutor has probable cause to believe that the person has  
37 within twenty-four (24) hours of such arrest knowingly violated the provision of a  
38 protective protection order or court-approved consent agreement entered by a court pursuant to  
39 this Title that requires such person to absent himself from a particular geographic area, provided  
40 that such order specifically provides for an arrest pursuant to this section for such violation or  
41 failure, in good faith, to order such an arrest without a warrant.

1  
2 (3) As used in subsections (1) and (2) of this section, the phrase “domestic violence incident”  
3 shall mean one or more of the following acts between family or household members who reside  
4 together or formerly resided together:  
5

6 (a) acts within §23-1-2 ~~or~~

7  
8 ~~(b) disturbing the private or public peace within the meaning of §3-2-14 or §3-2-27.~~  
9

10 **§23-1-14 Emergency Law Enforcement Response**

11  
12 (1) A person who alleges that he, she, a minor child or an incompetent adult as defined in §23-1-  
13 2(4) has been the victim of domestic violence may request the assistance of the Choctaw  
14 Department of Law Enforcement, which shall respond to the request for assistance. The officer  
15 responding to the request for assistance shall take whatever steps are reasonably necessary to  
16 protect the complainant, minor child or incompetent adult and provide sources of shelter, medical  
17 care, counseling and other services. Upon request by the complainant, and where feasible, the  
18 law enforcement officer shall transport the complainant, minor child or incompetent adult to  
19 appropriate facilities such as hospitals or public or private facilities for shelter and accompany the  
20 complainant, minor child or incompetent adult to his residence, within the jurisdiction in which  
21 the request for assistance was made, so that the complainant, minor child or incompetent adult  
22 may remove food, clothing, medication and such other personal property as is reasonably  
23 necessary to enable the complainant and any minor children who are presently in the care of the  
24 complainant, minor child or incompetent adult to remain elsewhere pending further proceedings.  
25

26 (2) In providing the assistance authorized by subsection (1) of this section, no officer may be held  
27 criminally or civilly liable on account of reasonable measures taken under authority of subsection  
28 (1).  
29

30 **§23-1-15 Proceedings in Addition to Other Remedies**

31  
32 Any proceeding under this Chapter shall be in addition to other available civil or criminal  
33 remedies.  
34  
35  
36