

**TITLE XXIII**

**PROTECTION FROM DOMESTIC ABUSE**

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## CHAPTER 1. DOMESTIC ABUSE

### §23-1-1 Short Title

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

### §23-1-2 Definitions

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

- (1) “Abuse” means the occurrence of one or more of the following acts between family or household members who reside together or who formerly resided together:
  - (a) attempting to cause or intentionally, knowingly or recklessly causing bodily injury or serious bodily injury with or without a deadly weapon;
  - (b) placing, by physical menace or threat, another in fear of imminent serious bodily injury;
  - (c) criminal sexual conduct committed against a minor;
  - (d) attempting to cause or intentionally, knowingly or recklessly causing mental and/or emotional injury or anguish; or
  - (e) attempting to cause or intentionally, knowingly or recklessly refusing to provide for the physical needs of a person, including but not limited to a family or household member, a minor or an incompetent person, by a person with whom the law or society places this responsibility or by a person who has undertaken this responsibility. “Physical needs” include food, clothing, shelter, health care or other services which are necessary to maintain the person’s mental and physical health.
- (2) “Adult” means any person eighteen (18) years of age or older, or any person under eighteen (18) years of age who has been emancipated by marriage.
- (3) “Family or household member” means spouses, former spouses, persons living as spouses, parents and children or other person related by consanguinity or affinity.
- (4) “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.
- (5) “Next Friend” means an adult person who is not appointed by the court but who acts on behalf of a minor or an incompetent.

**§23-1-3            Jurisdiction**

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

**§23-1-4            Petition to Seek Relief**

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

**§23-1-5            Contents of Petition**

- (1) A petition filed under the provisions of this Chapter shall state:
  - (a) except as otherwise provided in subsection (7) of this section, the name, address, county of residence of each petitioner and of each individual alleged to have committed abuse and whether the petitioner or individual resides in Indian Country as defined in 18 U.S.C. 1151;
  - (b) the facts and circumstances concerning the alleged abuse;
  - (c) the relationship between the petitioners and the individuals alleged to have committed abuse; and
  - (d) a request for one or more protective orders.
- (2) If a petition requests a protective order for a spouse and alleges that the other spouse has committed abuse, the petition shall state whether or not a suit for divorce of the spouses or suit for custody is pending.
- (3) Any temporary or permanent decree issued in a divorce proceeding in Tribal Court subsequent to an order issued pursuant to this chapter may, in the discretion of the judge hearing the divorce proceeding in Tribal Court, supersede in whole or in part the order issued pursuant to this Chapter.
- (4) If the petitioner is a former spouse of an individual alleged to have committed abuse:
  - (a) a copy of the decree of divorce shall be attached to the petition, or
  - (b) the petition shall state that the decree is currently unavailable to the petitioner and that a copy of the decree will be filed with the Choctaw Tribal Court before the time for the hearing on the petition.

- (5) If a petition requests a protective order for a child who is subject to the continuing jurisdiction of another court or alleges that a child who is subject to the continuing jurisdiction of another court has committed abuse.
- (6) If the petition requests the issuance of a temporary ex parte order, the petition shall:
  - (a) contain a general description of the facts and circumstances concerning the abuse and the need for immediate protective orders; and
  - (b) be signed by each petitioner under oath that the facts and circumstances contained in the petition are true to the best knowledge and belief of each petitioner.
- (7) If the petition states that the disclosure of the petitioner's address would risk abuse of the petitioner or any member of the petitioner's family or household or would reveal the confidential address of a shelter for domestic violence victims, the petitioner's address may be omitted from the petition pursuant to this subsection *and the address of the petitioner is necessary to determine jurisdiction or venue*, the disclosure of such address shall be made orally and *in camera*.

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

- (1) Within ten (10) days of filing a petition under provisions of this chapter, the Choctaw Tribal Court shall hold a hearing, at which time the petitioner must prove the allegation of abuse by a preponderance of the evidence. The defendant shall be given notice by service of process or as otherwise provided by law.
- (2) Upon good cause shown in the ex parte proceeding, the Choctaw Tribal Court may enter such temporary order as it deems necessary to protect from the abused petitioner, any minor children or any person alleged to be incompetent. Immediate and present danger of abuse to the petitioner, any minor children, or any person alleged to be incompetent shall constitute good cause for purposes of this subsection. A temporary order shall last as long as the court deems necessary or until the hearing date, in the discretion of the court.
- (3) If a hearing under subsection (1) of this section is continued, the Choctaw Tribal Court may make or extend such temporary orders under subsection (2) of this section as it deems necessary. A continuance under this subsection shall last no longer than twenty (20) days.

#### **§23-1-7 Protective Orders or Consent Agreements**

- (1) The Choctaw Tribal Court shall be empowered to grant any protective order or approve any consent agreement to bring about a cessation of abuse of the petitioner, any minor children or any person alleged to be incompetent, which relief may include:
  - (a) directing the defendant to refrain from abusing the petitioner, any minor children or any person alleged to be incompetent;

- (b) granting possession to the petitioner of the residence or household to the exclusion of the defendant by evicting the defendant and/or restoring possession to the petitioner;
  - (c) when the defendant has a duty to support the petitioner, any minor children or any person alleged to be incompetent living in the residence or household and the defendant is the sole owner or lessee, granting possession to the petitioner of the residence or household to the exclusion of the defendant by evicting the defendant and/or restoring possession to the petitioner, or by consent agreement allowing the defendant to provide suitable, alternate housing;
  - (d) awarding temporary custody of and/or establishing temporary visitation rights with regard to any minor children or any person alleged to be incompetent;
  - (e) if the defendant is legally obligated to support the petitioner, any minor children or any person alleged to be incompetent;
  - (f) ordering the defendant to pay to the abused person monetary compensation for losses suffered as a direct result of the abuse, including but not limited to medical expenses resulting from such abuse, loss of earnings or support, out-of-pocket losses for injuries sustained, moving expenses, reasonable attorneys' fees and/or ordering counseling or professional medical treatment for the defendant and/or the abused person; and
  - (g) prohibiting the transferring, encumbering or otherwise disposing of property mutually owned or leased by the parties, except when in the ordinary course of business.
- (2) In addition to relief accorded in subsection (1) and in accordance with Title XVIII of this Code, the Chief or Attorney General may petition to have any person, except an enrolled member of the Mississippi Band of Choctaw Indians entitled to reside thereon, excluded from the Mississippi Band of Choctaw Indians' Indian Country, as defined in 18 U.S.C. § 1151.

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

- (1) The granting of any relief authorized under this Chapter shall not preclude any other relief provided by law.
- (2) Any protective order or approved consent agreement shall be for a fixed period of time not to exceed one (1) year. The Choctaw Tribal Court may amend its order or agreement at any time upon subsequent petition filed by either party.
- (3) No order or agreement under this Chapter shall in any manner affect title to any real property.

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

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

**§23-1-10 Penalties, Protective Orders and Consent Agreements**

Violation of a protective order or a court-approved consent agreement known to the defendant shall be a Class A offense. The Tribal Court may hold the defendant in contempt of court and punish the defendant by imprisonment in the Tribal jail for not more than six (6) months or impose a fine of not more than five-hundred dollars (\$500.00), or both.

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

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

**§23-1-12 Reports of Abuse: Confidentiality of Reports**

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

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

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

domestic violence incident brought by any authorized party, or an arrest made in good faith without a warrant when the Attorney General or special prosecutor has probable cause to believe that the person has within twenty-four (24) hours of such arrest knowingly violated the provision of a protective order or court-approved consent agreement entered by a court pursuant to this Title that requires such person to absent himself from a particular geographic area, provided that such order specifically provides for an arrest pursuant to this section for such violation or failure, in good faith, to order such an arrest without a warrant.

- (3) As used in subsections (1) and (2) of this section, the phrase “domestic violence incident” shall mean one or more of the following acts between family or household members who reside together or formerly resided together:
  - (a) acts within §23-1-2; or
  - (b) disturbing the private or public peace within the meaning of §3-2-14 or §3-2-27.

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

- (1) A person who alleges that he, she, a minor child or an incompetent adult as defined in §23-1-2(4) has been the victim of domestic violence may request the assistance of the Choctaw Department of Law Enforcement, which shall respond to the request for assistance. The officer responding to the request for assistance shall take whatever steps are reasonably necessary to protect the complainant, minor child or incompetent adult and provide sources of shelter, medical care, counseling and other services. Upon request by the complainant, and where feasible, the law enforcement officer shall transport the complainant, minor child or incompetent adult to appropriate facilities such as hospitals or public or private facilities for shelter and accompany the complainant, minor child or incompetent adult to his residence, within the jurisdiction in which the request for assistance was made, so that the complainant, minor child or incompetent adult may remove food, clothing, medication and such other personal property as is reasonably necessary to enable the complainant and any minor children who are presently in the care of the complainant, minor child or incompetent adult to remain elsewhere pending further proceedings.
- (2) In providing the assistance authorized by subsection (1) of this section, no officer may be held criminally or civilly liable on account of reasonable measures taken under authority of subsection (1).

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

Any proceeding under this Chapter shall be in addition to other available civil or criminal remedies.