WHITE EARTH NATION
ORDER FOR PROTECTION CODE[1]

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CHAPTER ONE—DEFINITIONS

§ 1.01 Definitions

1. "Adult" means any individual 18 years of age or older and subject to the jurisdiction of the White Earth Nation.

2. "Adult Protection Team" means a multidisciplinary team that collaborates for the purposes of providing case consultation, case management, and/or services to an Elder or Vulnerable Adult; and for the purposes of policy development and implementation, education, prevention, and data sharing.

3. "Victim Advocate" means a person who provides services to victims of dating violence, domestic abuse, domestic violence, sexual assault, or stalking under a victim services provider.

4. "Categorical Vulnerable Adult" means a person who is considered a Vulnerable Adult by their association with services or by placement in a treatment facility. Any person who is hospitalized, or who resides in a nursing home, group home or inpatient treatment facility is a Categorical Vulnerable Adult. Any person who receives home health care, PCA services or attends adult day care is a Categorical Vulnerable Adult. If a person ceases to need these services, he or she is no longer a Categorical Vulnerable Adult. Services include care facilities or services providers licensed, or required to be licensed, by the Minnesota Department of Health, Minnesota Department of Human Services, or the White Earth Nation; or providers under contract with the Minnesota Department of Health, Minnesota Department of Human Services, or the White Earth Nation; or any providers licensed, or required to be licensed, by any of the branches of the federal government that regulate facilities or health care services providers on the White Earth Reservation.

5. "Conservator(s)" means person(s) appointed by the Tribal Court to manage the estate of an Elder or Vulnerable Adult.

6. "Conservatorship" means the appointment of person(s) by the Tribal Court with the power and authority to manage the estate of an Elder or Vulnerable Adult.

7. "Dating partner" refers to a person who is or has been in a social relationship of a romantic or intimate nature with an abusing party, and where the existence of such a relationship shall be determined based on a consideration of the:

    a. length of the relationship;

    b. type of relationship; and

c. frequency of interaction between the persons involved in the relationship.

8. "Dating violence" means violence 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:

    a. length of the relationship;

    b. type of relationship; and

    c. frequency of interaction between the persons involved in the relationship.

9. "Domestic Abuse" means the following, if committed against a family or household member by a family or household member, but does not include acts of self-defense or culturally appropriate discipline of a child:

    a. Attempting to cause or causing physical, mental, or emotional harm to another family or household member;

    b. Placing a family or household member in reasonable fear of physical harm to him or herself or another family or household member. This fear may be produced by behavior that induces fear in the victim, including, but not limited to, harassment, stalking, destruction of property, or physical harm or threat of harm to household pets;

    c. Causing a family or household member to engage involuntarily in sexual activity, which includes, but is not limited to, through coercion, intoxication, force, threat of force, or duress;

    d. Attempting to commit or committing a crime of violence under White Earth Tribal law against another family or household member; or

    e. An overall pattern of abusive or violent behavior which is used to establish and maintain control over a person, and can be demonstrated by behavior that controls, manipulates, or demeans the person by words or emotional harm.

10. "Domestic Violence" includes felony or misdemeanor crimes of violence committed:

    a. by a current or former spouse or intimate partner of the victim;

b. by a person with whom the victim shares a child in common;

c. by a person who is cohabitating with or who has cohabitated with the victim as a spouse or intimate partner;

d. by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the White Earth Nation;

e. by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the White Earth Nation; or

f. by a family or household member as defined under Section 1.01(13).

11. "Elder" means a person subject to the jurisdiction of the White Earth Nation who has attained the age of at least 55 years or older.

12. "Elder/Vulnerable Adult Abuse" means assault, battery, threatening conduct, coercion, harassment, unreasonable confinement, intimidation, cruelty, sexual abuse, emotional abuse, verbal abuse, exploitation, endangerment, abandonment, or financial exploitation of an Elder or Vulnerable Adult, as defined in this subsection. Elder/Vulnerable Adult Abuse includes, but is not limited to, actions that are not accidents and are not therapeutic that cause physical pain or injury including hitting, kicking, slapping, pinching, biting, and aversive or deprivation procedures; restraints or seclusion not authorized under licensing statutes; and forcing an Elder or Vulnerable Adult to perform services or criminal activity for the benefit of another person.

a. "Abandonment" means the desertion of an Elder or Vulnerable Adult by the Elder or Vulnerable Adult's family, caregiver(s), guardian and/or conservator, or their refusal or neglect to provide for the Elder or Vulnerable Adult.

b. "Assault" means attempt to cause bodily harm.

c. "Battery" means actions resulting in bodily harm or an offensive touching of another.

d. "Coercion" means forcing someone to engage in or abstain from conduct which the person has a right to abstain from or engage in.

e. "Cruelty" means acts which result in physical harm, pain, or mental anguish.

f. "Emotional Abuse" means infliction of threats, humiliation, or intimidation by a person on an Elder or Vulnerable Adult.

g. "Endangerment" means an imminent risk of death or serious bodily harm.

h. "Exploitation" means the use of funds, property, or other resources of an Elder or Vulnerable Adult which results or is likely to result in detriment to the Elder or Vulnerable Adult; or the failure to use funds, property, or other resources of an Elder or Vulnerable Adult for the Elder or Vulnerable Adult's benefit or according to the Elder or Vulnerable Adult's wish which results in or is likely to result in detriment to the Elder or Vulnerable Adult.

i. "Harassment" means repeated intrusive or unwanted acts, words, or gestures, including repeatedly placing telephone calls or any form of electronic messaging to another's residence, place of employment, or educational institution for no lawful purpose, or any similar acts that are intended to adversely and unlawfully affect the safety, security, or privacy of another.

j. "Financial Exploitation" means taking money or something of value from an Elder or Vulnerable Adult and using it for someone beside the Elder or Vulnerable Adult's benefit which results or is likely to result in detriment to the Elder or Vulnerable Adult. Financial Exploitation includes, but is not limited to:

    i. use of an Elder or Vulnerable Adult's funds, property, credit, services, or other resources through improper or unauthorized means including coercion, force, deception, undue influence, violation of a fiduciary duty, or theft;

    ii. use of an Elder or Vulnerable Adult's home to engage in illegal activities; and

    iii. any use, for another person's profit or advantage, of the Elder or Vulnerable Adult's funds, property, credit, services, or other resources that leaves the Elder or Vulnerable Adult unable to pay for food, clothing, shelter, health care, or a safe environment.

k. "Intimidation" means willfully placing an Elder or Vulnerable Adult in fear of harm by coercion, extortion, or duress.

l. "Sexual abuse" means knowingly causing another person to engage in a sexual act by threatening or placing that other person in fear, or engaging in a sexual act with another person if that other person is incapable of

appraising the nature of the conduct or physically incapable of declining participation in, or communicating unwillingness to engage in, that sexual act.

m. "Unreasonable Confinement" means confinement which intentionally causes physical injury to an Elder or Vulnerable Adult.

n. "Threatening conduct" means conduct that places another in fear of physical or other harm.

o. "Verbal Abuse" means insulting, frightening, humiliating, or threatening an Elder or Vulnerable Adult or treating an Elder or Vulnerable Adult without respect.

13. "Family or household member" means all of the customary family relationships recognized by the White Earth Nation, including extended family relationships, which include:

a. Adults who are current or former spouses;

b. Adults who are dating, who have dated, or who are engaged in or who have engaged in a sexual relationship;

d. Adults or children who are related or formerly related by marriage as recognized by Western or Ojibwe tradition;

e. Persons who have a child in common or who are expecting a child in common, regardless of whether they have been married or resided together at any time;

f. Children of a person in a relationship described in paragraphs (a) through (e) above;

g. Any adult or children who reside in the household;

h. Persons who have a biological, legal, or kinship parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren;

i. Persons who are related by blood, adoption, or marriage; and

j. Vulnerable adults in the family or household, including adults unable to protect themselves from abuse, neglect, or exploitation.

14. Guardian(s)" *Ganawendaagwad Ganawenjigaade* means for the purposes of this Code person(s) appointed by the Tribal Court having the duty and authority to provide care and control of an Elder or Vulnerable Adult. "

15. "Guardianship" means the appointment of a person by the Tribal Court with the power and authority to make decisions regarding the care and control of an Elder or Vulnerable Adult.

16. "Minor" means an individual who is 18 years of age or younger and subject to the jurisdiction of the White Earth Nation.

17. "Order for Protection" means a court order granted for the protection of victims of dating violence, domestic abuse, domestic violence, or Elder/Vulnerable Adult Abuse.

18. "Petitioner" means the victim(s) of dating violence, domestic abuse, domestic violence, or Elder/Vulnerable Adult Abuse and individuals authorized by this Code to file on their behalf. In the case of a minor, the "petitioner" means the parent, guardian, or legal or physical custodian of the victim, or such other person who by law or tribal custom is authorized to act on behalf of the minor.

19. "Protected Person" means an enrolled member or other person under the jurisdiction of the White Earth Nation for whom a guardian or conservator has been appointed.

20. "Physical harm and bodily injury" means physical pain or injury, illness, or any impairment of physical condition.

21. "Sexual abuse" means knowingly causing another person to engage in a sexual act by threatening or placing that other person in fear, or engaging in a sexual act with another person if that other person is incapable of appraising the nature of the conduct or physically incapable of declining participation in, or communicating unwillingness to engage in, that sexual act.

22. "Sexual assault" means any nonconsensual sexual act proscribed by White Earth Nation Criminal Code, Federal, or State law, including when the victim lacks capacity to consent.

23. "Stalking" means to engage in conduct which the actor knows or has reason to know would cause the victim under the circumstances to feel frightened, threatened, oppressed, persecuted, or intimidated, and causes this reaction on the part of the victim regardless of the relationship between the actor and victim.

24. "Tribal Guardian/Tribal Conservator" means an individual employed by the

White Earth Department of Human Services to serve as a guardian or conservator for the protected person.

25. "Tribal Court" means, or refers to, the White Earth Tribal Court.

26. "Tribe" or "Tribal" means, or refers to, the White Earth Nation.

27. "Unlawful" means, in the absence of a White Earth Nation Criminal Code, acts which are defined as such under federal, tribal, or Minnesota state criminal laws.

28. "Victim Service Provider" means a domestic violence shelter, rape crisis center, or other nonprofit, nongovernmental organization that assists or advocates for victims of dating violence, domestic abuse, domestic violence, sexual assault, or stalking.

29. "Vulnerable Adult" means an individual who is 18 years of age or older, subject to the jurisdiction of the White Earth Nation, and has had a guardian appointed and who is unable or incapable of making responsible decisions regarding their personal care or wellbeing and/or unable to provide for their own personal needs. This person is considered a functional Vulnerable Adult.

CHAPTER TWO—JURISDICTION

§ 2.01 Jurisdiction

1. The Tribal Court has the jurisdiction to hear a cause of action for an order for protection and issue such an order if either the petitioner or the respondent resides within the territorial jurisdiction of the Tribal Court.

CHAPTER THREE—DOMESTIC VIOLENCE/ABUSE ORDER FOR PROTECTION

§ 3.01 Petition for Domestic Violence/Abuse Order for Protection

1. A petition to obtain an order for protection under this section may be filed by:

    a. A person claiming to be the victim of domestic abuse or domestic violence;

    b. A dating partner claiming to be the victim of dating violence;

    c. A credible adult or family or household member at the victim's request;

    d. A Victim Service Provider at the victim's request; or

    e. A family member or tribal agency on behalf of minor child(ren).

2. The petition shall allege the existence of dating violence, domestic abuse, or domestic violence, and shall be verified or supported by an affidavit made under oath stating the specific facts and circumstances justifying the requested order for protection.

3. The petition shall state whether the victim has ever had an order for protection in effect against the respondent and whether there is an existing order for protection in effect or other action pending between the parties.

4. The petition shall state whether a hearing is requested to obtain additional relief under Section 3.09.

5. The petitioner, or victim on whose behalf a petition has been filed, is not required to file for annulment, separation, or divorce as a prerequisite to obtaining an order for protection, but the petition shall state whether any other action is pending between the victim and the respondent.

6. A petition may be filed regardless of the pendency of any other civil or criminal

proceeding related to the allegations in the petition.

7. No filing fee shall be required for the filing of a petition under this section. If an alleged perpetrator has been arrested for the offense of dating violence, domestic abuse, or domestic violence, the Tribal Court or arresting police officer shall advise the alleged victim of the right to file a petition under this section without cost.

8. Standard, simplified petition forms with instructions for completion shall be available to persons not represented by counsel. The White Earth Police Department, Tribal Court, and Victim Service Providers shall keep such forms and make them available upon request.

§ 3.02 Ex Parte Order for Protection

1. The court shall immediately grant an ex parte order for protection without bond if, based on the specific facts stated in the affidavit or verified petition, the court has a reasonable basis to believe that the petitioner, or the person(s) on whose behalf the petition has been filed, is the victim of an act of dating violence, domestic abuse, or domestic violence committed by the respondent, and issuance of the ex parte order is necessary to protect the victim and/or child(ren) from further dating violence, domestic abuse, or domestic violence.

2. The ex parte order shall be effective for up to two (2) years.

3. Upon issuance of the ex parte order for protection, the respondent shall be personally served with the petition and ex parte order for protection. If the petitioner requested a hearing, notice of the initial hearing shall also be personally served upon the respondent.

4. The petitioner may be provided with the ex parte order for protection and notice of the initial hearing, if requested, personally or by mail.

§ 3.03 Ex Parte Order for Protection Not Granted

1. Where an ex-parte order for protection is not granted, the petitioner may request the court to schedule an initial hearing, if not already requested in the petition, or dismiss the petition. The request for an initial hearing shall be made within twenty (20) days of filing the petition. The initial hearing shall be held within ten (10) days of the hearing request. The petition will be dismissed, without notice to the respondent, if no request for a hearing is made by the petitioner.

2. If an initial hearing is requested by the petitioner, the respondent shall be personally served with the petition and notice of initial hearing.

3. The petitioner may be provided notice of the initial hearing personally or by mail.

§ 3.04 Service by Publication

1. If the respondent cannot be served after three (3) attempts have been made within five (5) days of the date the petition was filed, then service by publication is authorized and one copy of the petition, ex parte order for protection, if ordered, and notice of hearing, if requested, shall be sent by certified mail, return receipt requested, to the respondent's last known address. Another copy shall be sent by regular mail to the respondent's last known address.

2. If the court determines at the initial hearing that three (3) attempts have not been made, the court may schedule a continued initial hearing to allow time for personal service or authorize service by publication.

3. Where service is to be perfected by publication, the court shall reschedule the initial hearing date, if a hearing was requested, to occur within ten (10) days after publication.

4. The names or other identifying information of the petitioner or victim(s) shall not be disclosed.

§ 3.05 Request for Hearing

1. The burden shall be on the respondent to request a hearing to contest the ex parte order for protection. The request for an initial hearing shall be made within twenty (20) days of the date the ex parte order was served upon the respondent. The initial hearing shall be held within ten (10) days of the respondent's hearing request.

2. The petitioner may request a hearing if an ex parte order for protection was not granted. The request for an initial hearing shall be made within twenty (20) days of the date the petition was filed. The hearing shall be held within ten (10) days of the petitioner's hearing request.

3. The petitioner may, after an ex part order for protection has been issued, request additional relief under Section 3.09 or other relief not requested in the petition for order for protection under Section 3.08 by following the procedures for modification under Section 3.10.

§ 3.06 Notice to Interested Parties

1. White Earth Tribal Police, Victim Service Provider, and Victim Advocate may be

provided notice of hearing dates and times by mail.

§ 3.07 Hearing

1. The hearings shall be conducted in accordance with the White Earth Rules of Civil Procedure and Rules of Evidence except as provided for in this Code. Findings of fact shall be made by the court acting without a jury.

2. The petitioner has the right to have a Victim Advocate present, whose only job is to support the petitioner and not to provide legal counsel.

3. The petitioner and respondent shall have the right to be represented by counsel of their choice and at their expense.

4. The petitioner and respondent shall have the right to subpoena witnesses to testify on their behalf.

5. The respondent may either admit or deny, in whole or in part, the allegations contained in the petition, and may request a modification of the ex parte order for protection, if issued. Should the respondent deny the allegations, the court will set an evidentiary hearing.

6. Upon the conclusion of the evidentiary hearing, the court shall make its findings and conclusions and enter an order either dismissing the petition or granting an order for protection if the court finds by clear and convincing evidence that the petitioner, or victim on whose behalf a petition has been filed, is the victim of an act of dating violence, domestic abuse, or domestic violence committed by the respondent, and issuance of the ex parte order is necessary to protect the victim and/or child(ren) from further dating violence, domestic abuse, or domestic violence. Based upon the evidence, the court will determine the length of the term of the order for protection, up to five (5) years, and may also prohibit the use of weapons.

§ 3.08 Contents of Domestic Violence/Abuse Order for Protection—Hearing Not Required

1. The court may issue an ex parte order for protection without a hearing and grant relief as the court deems proper, including an order:

    a. restraining the abusing party from committing acts of dating violence, domestic abuse, or domestic violence;

    b. excluding any party from the dwelling they share or from the residence of the other, including a reasonable area surrounding the dwelling or residence,

which area shall be described specifically in the order. The court shall consider ownership of the residence;

c. excluding the abusing party from the place of employment of the petitioner or otherwise limiting access to the petitioner by the abusing party at the petitioner's place of employment;

d. ordering the abusing party to have no contact with the petitioner whether in person, by telephone, mail, e-mail, through electronic devices, or through a third party;

e. directing the care, possession, or control of a pet or companion animal owned, possessed, or kept by a party or a child of a party;

f. directing the respondent to refrain from physically abusing or injuring any pet or companion animal, without legal justification, known to be owned, possessed, kept, or held by either party or a minor child residing in the residence or household of either party as an indirect means of intentionally threatening the safety of such person;

g. allowing the petitioner to retrieve clothing and personal items from the home with the assistance of law enforcement; and

h. order, in its discretion, other relief as it deems necessary for the protection of a family or household member, including orders or directives to the law enforcement or corrections officer as provided by this section.

§ 3.09 Contents of Domestic Violence/Abuse Order for Protection—Hearing Required

1. Upon proper notice and a hearing, the court may provide relief under Section 3.08 and as follows:

   a. award temporary custody or establish temporary parenting time with the minor children of the parties on a basis which gives primary consideration to the safety of the victim and the children.

      i. In addition to the primary safety considerations, the court may consider best interest factors that are found to be relevant to the temporary custody and parenting time award. Best interest factors include, but are not limited to, the following: (1) a child's physical, emotional, cultural, spiritual, and other needs, and the effect of the proposed arrangements on the child's needs and development; (2) any special medical, mental health, or educational needs that the child may have that may require

special parenting arrangements or access to recommended services; (3) the reasonable preference of the child, if the court deems the child to be of sufficient ability, age, and maturity to express an independent, reliable preference; (4) whether dating violence, domestic abuse, or domestic violence has occurred in the parents' or either parent's household or relationship; the nature and context of the dating violence, domestic abuse, or domestic violence; and the implications of the dating violence, domestic abuse, or domestic violence for parenting and for the child's safety, well-being, and developmental needs; (5) any physical, mental, or chemical health issue of a parent that affects the child's safety or developmental needs; (6) the history and nature of each parent's participation in providing care for the child; (7) the willingness and ability of each parent to provide ongoing care for the child; to meet the child's ongoing developmental, emotional, spiritual, and cultural needs; and to maintain consistency and follow through with parenting time; (8) the effect on the child's well-being and development of changes to home, school, and community; (9) the effect of the proposed arrangements on the ongoing relationships between the child and each parent, siblings, and other significant persons in the child's life; (10) the benefit to the child in maximizing parenting time with both parents and the detriment to the child in limiting parenting time with either parent; (11) except in cases in which dating violence, domestic abuse, or domestic violence as described in clause (4) has occurred, the disposition of each parent to support the child's relationship with the other parent and to encourage and permit frequent and continuing contact between the child and the other parent; and (12) the willingness and ability of parents to cooperate in the rearing of their child; to maximize sharing information and minimize exposure of the child to parental conflict; and to utilize methods for resolving disputes regarding any major decision concerning the life of the child.

ii. If the court finds that the safety of the petitioner or the children will be jeopardized by unsupervised or unrestricted parenting time, the court shall condition or restrict parenting time as to time, place, duration, or supervision, or deny parenting time entirely, as needed to guard the safety of the petitioner and the children. The court's decision on custody and parenting time shall in no way delay the issuance of an order for protection granting other relief provided for in this section.

b. establish temporary support for minor children or a spouse, and order the withholding of support from the income of the person obligated to pay the support;

c. provide upon request of the petitioner counseling or other social services for

the parties, if married, or if there are minor children;

d. order the abusing party to participate in treatment or counseling services, including requiring the abusing party to successfully complete a dating violence, domestic abuse, or domestic violence counseling program or educational program;

e. award temporary use and possession of property and restrain one or both parties from transferring, encumbering, concealing, or disposing of property except in the usual course of business or for the necessities of life, and to account to the court for all such transfers, encumbrances, dispositions, and expenditures made after the order is served or communicated to the party restrained in open court;

f. order the abusing party to pay restitution to the petitioner; and

g. order the continuance of all currently available insurance coverage without change in coverage or beneficiary designation.

§ 3.10 Petitioner's Request for Extension, Modification, or Subsequent Domestic Violence/Abuse Order for Protection

1. Upon application and proper notice to all parties, the court may extend or modify the relief granted in an existing order for protection or, if a petitioner's order for protection is no longer in effect when an application for subsequent relief is made, grant a new order.

   a. If the petitioner seeks only the relief under Section 3.08, a hearing is not required, unless the court declines to order the requested relief and the petitioner requests a hearing or the respondent requests a hearing.

   b. If a hearing is requested or required, Sections 3.04, 3.06, and 3.07 apply to service of the application, notice to the parties, and time for the hearing.

2. The court may extend or modify the terms of an existing order or, if an order is no longer in effect, grant a new order upon a showing that:

   a. the respondent has violated a prior or existing order for protection;

   b. the petitioner is reasonably in fear of physical harm from the respondent;

   c. the respondent has engaged in the act of stalking; or

   d. the respondent is incarcerated and about to be released, or has recently been

released from incarceration.

3. A petitioner does not need to show that physical harm is imminent to obtain an extension, modification, or subsequent order under this section.

4. Relief granted by the order for protection may be for a period of up to fifty (50) years, if the court finds that the respondent has violated a prior or existing order for protection on two (2) or more occasions.

5. An order issued under this section may grant relief as outlined in Sections 3.08 and 3.09.

§ 3.11 Respondent's Request for Modification of Domestic Violence/Abuse Order for Protection

1. If the court orders relief under Section 3.10, the respondent may request to have the order vacated or modified if the order has been in effect for at least five (5) years and the respondent has not violated the order during that time.

2. Upon receipt of the request, the court shall set a hearing date. Personal service must be made upon the petitioner not less than thirty (30) days before the date of the hearing.

3. At the hearing, the respondent has the burden of proving by a preponderance of the evidence that there has been a material change in circumstances and that the reasons upon which the court relied in granting or extending the order for protection no longer apply and are unlikely to occur.

4. If the court finds that the respondent has met the burden of proof, the court may vacate or modify the order.

5. If the court finds that the respondent has not met the burden of proof, the court shall deny the request and no request may be made to vacate or modify the order for protection until five (5) years have elapsed from the date of denial.

6. A vacated or modified order under this section must be personally served on the petitioner.

§ 3.12 Petitioner's Request for Dismissal of Domestic Violence/Abuse Order for Protection

1. The court may dismiss the order for protection at the request of the petitioner or victim.

2. The petitioner may request the court to maintain that the respondent shall not commit acts of dating violence, domestic abuse, or domestic violence against the victim, to include that the respondent may not harm or cause fear of harm to the victim; and may not use, attempt to use, or threaten to use physical force that would reasonably be expected to cause bodily injury to the victim, but which enables contact between the parties.

3. If the request is granted by the court, the order shall remain in effect for up to five (5) years, at the discretion of the court.

4. Before the request to dismiss is granted, the victim shall attend dismissal education with a Victim Advocate.

§ 3.13 Dating Violence, Domestic Abuse, or Domestic Violence Incident—Duties of Police Officers and Notice to Victim

1. It is the custom and practice of the White Earth Nation that if there is an incident of dating violence, domestic abuse, or domestic violence and the parties have children in common but are not married, that the mother has custody, unless the mother is the abusing party or there exists a court order to the contrary. If there is an investigation into the dating violence, domestic abuse, or domestic violence incident and minor children are present, the responding officer shall send notice to White Earth Indian Child Welfare within 24 hours of the incident.

2. The primary duty of police officers when responding to a dating violence, domestic abuse, or domestic violence incident is to enforce the laws and to ensure safety.

3. A law enforcement officer responding to an allegation of dating violence, domestic abuse, or domestic violence shall use all reasonable means to protect the victim and prevent further violence, including but not limited to:

    a. Taking action necessary to provide for the safety of the victim and any family or household member;

    b. Transporting or obtaining transportation for the victim or any minor child(ren) to a temporary shelter; and

    c. Assisting the victim and any minor child(ren) in obtaining immediate medical treatment, including obtaining transportation to a medical facility.

4. If the victim is present when the officer arrests a person for dating violence, domestic abuse, or domestic violence the officer shall advise the victim of:

a. reasonable means to prevent further abuse,

b. the availability of a shelter and other services in the community,

c. advise the victim that a victim's advocate will be contacting them, and

d. give the victim immediate notice of any legal rights and remedies available in accordance with policies and protocols that have been adopted in accordance with the White Earth Order for Protection Code.

5. The victim shall be furnished with a copy of the following rights entitled to victims of dating violence, domestic abuse, or domestic violence:

    a. You can ask the county attorney to file a criminal complaint;

    b. You have the right to file a petition with the court requesting an Order for Protection from dating violence, domestic abuse, or domestic violence. The order could include the following:

        i. An order restraining the abusing party from further acts of abuse;

        ii. An order directing the abusing party to leave your household;

        iii. An order preventing the abusing party from entering your home, school, business, or place of employment; or

        iv. An order awarding you custody of or visitation with your minor child(ren).

    c. You have the right to notification if prosecution of the case is declined or criminal charges are dismissed.

§ 3.14 Firearms

1. An order granting relief shall prohibit the abusing party from possessing firearms for the length the order is in effect if the order

    a. restrains the abusing party from harassing, stalking, or threatening the petitioner or restrains the abusing party from engaging in other conduct that would place the petitioner in reasonable fear of bodily injury, and

    b. includes a finding that the abusing party represents a credible threat to the physical safety of the petitioner or prohibits the abusing party from using, attempting to use, or threatening to use physical force against the

petitioner.

c. The order shall inform the abusing party of that party's prohibited status.

d. Except as provided in Section 3.14(3), the court shall order the abusing party to transfer any firearms that the person possesses, within three (3) business days, to a federally licensed firearms dealer, a law enforcement agency, or a third party who may lawfully receive them.

    i. The transfer may be permanent or temporary. A temporary firearm transfer only entitles the receiving party to possess the firearm. A temporary transfer does not transfer ownership or title.

    ii. An abusing party may not transfer firearms to a third party who resides with the abusing party.

    iii. If an abusing party makes a temporary transfer, a federally licensed firearms dealer or law enforcement agency may charge the abusing party a reasonable fee to store the person's firearms and may establish policies for disposal of abandoned firearms, provided such policies require that the person be notified via certified mail prior to disposal of abandoned firearms. For temporary firearms transfers under this section, a law enforcement agency, federally licensed firearms dealer, or third party shall exercise due care to preserve the quality and function of the transferred firearms and shall return the transferred firearms to the person upon request after the expiration of the prohibiting time period, provided the person is not otherwise prohibited from possessing firearms under tribal, state, or federal law. The return of temporarily transferred firearms to an abusing party shall comply with tribal, state, and federal law.

    iv. If an abusing party permanently transfers the abusing party's firearms to a law enforcement agency, the agency is not required to compensate the abusing party and may charge the abusing party a reasonable processing fee.

2. An abusing party who is ordered to transfer firearms under this section must file proof of transfer as provided for in this section. If the transfer is made to a third party, the third party must sign an affidavit under oath before a notary public either acknowledging that the abusing party permanently transferred the abusing party's firearms to the third party or agreeing to temporarily store the abusing party's firearms until such time as the abusing party is legally permitted to possess firearms. The affidavit shall indicate the serial number,

make, and model of all firearms transferred by the abusing party to the third party. The third party shall acknowledge in the affidavit that the third party may be held criminally and civilly responsible under tribal and state law if the abusing party gains access to a transferred firearm while the firearm is in the custody of the third party. If the transfer is to a law enforcement agency or federally licensed firearms dealer, the law enforcement agency or federally licensed firearms dealer shall provide proof of transfer to the abusing party. The proof of transfer must specify whether the firearms were permanently or temporarily transferred and include the name of the abusing party, date of transfer, and the serial number, make, and model of all transferred firearms. The abusing party shall provide the court with a signed and notarized affidavit or proof of transfer as described in this section within two (2) business days of the firearms transfer.

3. When a court issues an order containing a firearms restriction provided for in Section 3.14(1), the court shall determine by a preponderance of evidence if an abusing party poses an imminent risk of causing another person substantial bodily harm.

4. Upon a finding of imminent risk, the court shall order that the local law enforcement agency take immediate possession of all firearms in the abusing party's possession.

5. The local law enforcement agency shall exercise due care to preserve the quality and function of the abusing party's firearms and shall return the firearms to the person upon request after the expiration of the prohibiting time period, provided the person is not otherwise prohibited from possessing firearms under tribal, state, or federal law.

6. The local law enforcement agency shall, upon written notice from the abusing party, transfer the firearms to a federally licensed firearms dealer or a third party who may lawfully receive them. Before a local law enforcement agency transfers a firearm under this section, the agency shall require the third party or federally licensed firearms dealer receiving the firearm to submit an affidavit or proof of transfer that complies with the requirements for affidavits or proofs of transfer established in Section 3.14(2). The agency shall file all affidavits or proofs of transfer received with the court within two (2) business days of the transfer. A federally licensed firearms dealer or third party who accepts a firearm transfer pursuant to this section shall comply with Section 3.14(1) and (2) as if accepting transfer from the abusing party.

7. If the law enforcement agency does not receive written notice from the abusing party within three (3) business days, the agency may charge a reasonable fee to store the abusing party's firearms.

8. A law enforcement agency may establish policies for disposal of abandoned firearms, provided such policies require that the abusing party be notified via certified mail prior to disposal of abandoned firearms.

§ 3.15 Notification of Release of a Perpetrator

1. When an abusing party is scheduled to be released from custody, the White Earth Police Department, DOVE, and State of Minnesota law enforcement shall make reasonable efforts to notify the victim and Victim Advocate prior to, or upon release of, the abusing party from custody.

CHAPTER FOUR—ELDER/VULNERABLE ADULT ABUSE ORDER FOR PROTECTION

§ 4.01 Purpose

1. The purpose of the Elder/Vulnerable Adult Order for Protection is to ensure the safety and welfare of Tribal Elders and Vulnerable Adults.

§ 4.02 Petition for Elder/Vulnerable Adult Abuse Order for Protection

1. A petition to obtain an order for protection under this section may be filed by:

    a. An Elder or Vulnerable Adult claiming to be the victim of Elder/Vulnerable Adult Abuse;

    b. A credible adult or family member on behalf of a Vulnerable Adult or Elder with the Elder's consent;

    c. The Tribe or tribal agency, including Adult Protection Team and *Wii-doo-ka-waa*, on behalf of a Vulnerable Adult or Elder with or without the Elder's consent;

    d. The Tribal Guardian/Tribal Conservator on behalf of a Protected Person; or

    e. A Guardian or Conservator on behalf of a Protected Person.

2. The petition shall allege the existence of Elder/Vulnerable Adult Abuse, and shall be verified or supported by an affidavit made under oath stating the specific facts and circumstances justifying the requested order.

3. The petition shall state whether the petitioner, or individual on whose behalf the

petition was filed, has ever had an order for protection in effect against the respondent and whether there is an existing order for protection in effect or other action pending between the parties.

4. A petition may be filed regardless of the pendency of any other civil or criminal proceeding related to the allegations in the petition.

5. No filing fee shall be required for the filing of a petition under this section.

6. Standard, simplified petition forms with instructions for completion shall be available to persons not represented by counsel. The White Earth Police Department, Tribal Court, and White Earth Human Services shall keep such forms and make them available upon request to victims of Elder/Vulnerable Adult Abuse.

§ 4.03 Ex Parte Temporary Order for Protection

1. The court shall immediately grant an ex parte order for protection without bond if, based on the specific facts stated in the affidavit or verified petition, the court has a reasonable basis to believe that the petitioner or the person on whose behalf the petition has been filed is the victim of an act of Elder/Vulnerable Adult Abuse committed by the respondent, and issuance of the ex parte order is necessary to protect the victim from further abuse; and

2. Schedule an initial hearing within ten (10) days; and

3. Immediately serve the petition, ex parte order for protection, and notice of initial hearing on the respondent by personal service.

4. The petitioner may be served the ex parte order for protection and notice of the initial hearing personally or by mail.

5. The court may fashion additional remedies including any equitable relief deemed necessary to preserve or return the Elder or Vulnerable Adult's assets.

§ 4.04 Ex Parte Temporary Order for Protection Not Granted

1. Where an ex parte order is not granted, the court shall:

   a. Schedule an initial hearing within twenty (20) days; and

   b. Immediately serve the petition and notice of initial hearing on the respondent by personal service.

2. The petitioner may be served notice of the initial hearing personally or by mail.

§ 4.05 Personal Service Not Perfected on the Respondent

1. If the respondent cannot be served after three (3) attempts within five days of the date the petition was filed, then service by publication is authorized and the petition, ex parte order for protection, if ordered, and notice of hearing shall be mailed to the respondent's last known address.

2. If the court determines at the initial hearing that three (3) attempts have not been made, the court may schedule a continued initial hearing to allow time for personal service or authorize service by publication.

3. Where service is to be perfected by publication, the court shall reschedule the initial hearing date to occur within forty-five (45) days of the date the petition was filed.

4. The names or other identifying information of the victim(s) shall not be disclosed.

§ 4.06 Notice to Interested Parties

1. White Earth Tribal Police and other interested parties may be served notice of hearing dates and times by mail.

§ 4.07 Hearing

1. An initial hearing shall be held on the merits of the petition, and to determine the nature and extent of the order.

2. The hearings shall be conducted in accordance with the White Earth Rules of Civil Procedure and Rules of Evidence except as provided for in this Code. Findings of fact shall be made by the court acting without a jury.

3. The burden of proof shall be upon the petitioner.

4. The petitioner and respondent shall have the right to be represented by counsel of their choice and at their expense. The court may appoint an attorney to represent an Elder or Vulnerable Adult at no cost.

5. The court may order the initial hearing to be continued upon the request of the respondent to allow the respondent to obtain counsel or prepare his or her own defense. In such an event, the court shall extend the time period of any order it has previously issued and may issue such additional order(s) modifying, enlarging, or altering the existing order as facts and circumstances may justify.

6. The respondent and the petitioner shall have the right to subpoena witnesses to testify on their behalf.

7. The respondent may either admit or deny, in whole or in part, the allegations contained in the petition, and may request a modification of the ex parte order for protection. Should the respondent deny the allegations, the court will set an evidentiary hearing.

8. Upon the conclusion of the evidentiary hearing the court shall make its findings and conclusions and enter its order either granting a permanent order for protection if the court finds by clear and convincing evidence that the petitioner is in need of an order for protection or dismissing the proceedings.

9. Based upon the evidence, the court will determine the length of the term of the permanent order for protection, up to five (5) years.

§ 4.08 Contents of Elder/Vulnerable Adult Abuse Order For Protection

1. A permanent order for protection shall, when deemed appropriate by the court, include provisions:

    a. restraining the respondent from committing any acts of Elder/Vulnerable Adult Abuse;

    b. ordering temporary guardianship and/or conservatorship with regard to a victim of Elder/Vulnerable Adult Abuse if necessary for the safety of the victim;

    c. removing the victim to a safe location;

    d. implementing a plan to deliver protective services that provides for the victim's needs; the court may order the Adult Protection Team to recommend a plan;

    e. excluding the respondent from the residence of the victim, whether or not the respondent and the victim share that residence. This provision is not voided by the admittance of the abusing party into the dwelling from which the abusing party is excluded;

    f. restraining the respondent from any contact with the victim;

    g. enjoining the respondent from being in close proximity to the dwelling, residence, place of employment, educational institution, or other location

of the victim as deemed appropriate by the court;

h. prohibiting the respondent from using or possessing a firearm or other weapon specified by the court, following the procedures as set forth in Chapter 3, Section 3.14;

i. restraining one or both parties from transferring, removing, encumbering, mortgaging, concealing, disposing, or altering property except as authorized by the court, and requiring that an accounting be made to the court for all authorized transfers, encumbrances, disposition, and expenditures;

j. awarding temporary use and possession of property of the parties;

k. direct the care, possession, or control of a pet or companion animal owned, possessed, or kept by a party or a child of a party;

l. direct the respondent to refrain from physically abusing or injuring any pet or companion animal, without legal justification, known to be owned, possessed, kept, or held by either party or a minor child residing in the residence or household of either party as an indirect means of intentionally threatening the safety of such person;

m. ordering the respondent to timely pay any existing debts of the respondent, including mortgage or rental payments, necessary to maintain the victim in his/her residence;

n. describing any prior orders of the court relating to matters which are superseded or altered by the order for protection;

o. notifying the parties that the willful violation of any provision of the order by the respondent may result in a criminal charge in White Earth Tribal court or state district court, and also constitutes civil contempt of court punishable by a fine of up to $2,500, or imprisonment of up to 180 days, or both and constitutes a violation of this Code for which civil penalties may be assessed;

p. ordering, in the court's discretion, any other lawful relief as it deems necessary for the protection of any victim of Elder/Vulnerable Adult Abuse, including orders or directives to the White Earth Police Department or any other appropriate law enforcement;

q. directing appropriate law enforcement agencies to enforce the terms of the court order; and

r. ordering additional remedies including but not limited to money judgments and any other equitable relief the court deems just.

§ 4.09 Petitioner's Request for Extension, Modification, and Subsequent Elder/Vulnerable Adult Abuse Order For Protection

1. Upon application, notice to all parties, and hearing, the court may extend or modify the relief granted in an existing order for protection or, if a petitioner's order for protection is no longer in effect when an application for subsequent relief is made, grant a new order.

2. The court may extend or modify the terms of an existing order or, if an order is no longer in effect, grant a new order upon a showing that the petitioner demonstrates a continuing need for an order for protection to protect the victim from Elder/Vulnerable Adult Abuse.

3. An order issued under this section may grant relief as outlined in Section 4.08.

§ 4.10 Respondent's Request for Modification of Elder/Vulnerable Adult Abuse Order For Protection

1. If the court orders relief under Section 4.08, the respondent named in the order for protection may request to have the order vacated or modified if the order has been in effect for at least five (5) years and the respondent has not violated the order during that time.

2. Upon receipt of the request, the court shall set a hearing date. Personal service must be made upon the petitioner named in the order for protection not less than thirty (30) days before the date of the hearing.

3. At the hearing, the respondent named in the order for protection has the burden of proving by a preponderance of the evidence that there has been a material change in circumstances and that the reasons upon which the court relied in granting or extending the order for protection no longer apply and are unlikely to occur.

4. If the court finds that the respondent named in the order for protection has met the burden of proof, the court may vacate or modify the order.

5. If the court finds that the respondent named in the order for protection has not met the burden of proof, the court shall deny the request and no request may be made to vacate or modify the order for protection until five (5) years have elapsed from the date of denial.

6. A vacated or modified order under this section must be personally served on the petitioner.

§ 4.11 Petitioner's Request for Dismissal of Elder/Vulnerable Adult Abuse Order For Protection

1. The court may dismiss the permanent order for protection at the request of the petitioner or victim.

2. Upon a request by the petitioner to dismiss the permanent order for protection, the petitioner may request the court to maintain that the respondent shall not commit acts of Elder/Vulnerable Adult Abuse against victim, to include that the respondent may not harm or cause fear of harm to the victim; and may not use, attempt to use, or threaten to use physical force that would reasonably be expected to cause bodily injury to the victim, but which enables contact between the parties.

3. If the request is granted by the court, the order shall remain in effect for up to five (5) years, at the discretion of the court.

CHAPTER FIVE—PENALTIES

§ 5.01 Civil Penalties

1. The court may exercise its civil contempt powers, if necessary, to enforce any orders which may be issued pursuant to this Code.

2. A respondent who willfully violates the terms of an order for protection issued by the White Earth Nation Tribal Court is guilty of civil contempt and may be incarcerated for a period of time up to 180 days in jail or a civil fine of up to one thousand dollars ($1,000) or both. A respondent may also be subject to criminal charges in White Earth Tribal Court or district court.

CHAPTER SIX—FULL FAITH AND CREDIT

§ 6.01 Full Faith and Credit

1. Any order for protection issued by a state or other tribal court that is consistent with the provisions of 18 U.S.C. § 2265 (Violence Against Women Reauthorization Act of 2013), and any amendment thereto, shall be given full faith and credit and enforced as if it were an order of the Tribal Court.

§ 6.02 Severability

1. If any provision of this Title, or the application thereof, to any person is held invalid, such invalidity shall not affect the provisions or applications of this Title which can be given effect without the invalid provisions, and to this end the provisions of this Code are declared severable.

CHAPTER SEVEN—APPEALS

§ 7.01 Who Can Appeal

1. Any party to a proceeding pursuant to this Code my appeal a final court order.

§ 7.02 Appeals Procedure

1. All appeals from proceedings under this Code shall be held by the White Earth Appellate Court.

WHITE EARTH RESERVATION BUSINESS COMMITTEE
WHITE EARTH BAND OF CHIPPEWA INDIANS

Resolution No. 019-19-002

WHEREAS, the White Earth Reservation Business Committee is the duly elected governing body of the White Earth Reservation pursuant to Article VI, Section 1, of the revised constitution of the Minnesota Chippewa Tribe, as amended, and organized under Section 16, of the Act of June 18, 1934 (48 Stat. 984), and

WHEREAS, the White Earth Reservation Business Committee is the duly authorized governing body of the White Earth Band, and

WHEREAS, the White Earth Reservation Business Committee is familiar with the ongoing violence within families that is contrary to Ojibwe values, and

WHEREAS, the White Earth Reservation Business Committee on December 3, 2018 passed a motion which enacted an Order for Protection Code to institute a justice system which responds to victims of domestic violence with fairness, compassion, and in a prompt and effective manner, and

WHEREAS, a working group was developed and drafted a revised Order for Protection Code, and such Code has been presented to the general public of the White Earth Band for a thirty (30) day comment period in accordance with Resolution No. 011-16-017A, and

WHEREAS, the comment period has expired and the working group has finalized the White Earth Order for Protection Code, and recommends the White Earth Reservation Business Committee adopt the same, to be effective December 3, 2018, now

THEREFORE BE IT RESOLVED, that the White Earth Reservation Business Committee hereby approves the Order for Protection Code to repeal and replace the Domestic Violence Code under Title 18 of the White Earth Band of Ojibwe Comprehensive Law and Order Code.

We do hereby certify that the foregoing resolution was adopted by a vote of 2 for, 0 against, 0 silent, a quorum being present at a special meeting of the White Earth Reservation Business Committee held on April 5th, 2019 in White Earth, Minnesota.

Eugene "Umsy" Tibbetts, Vice-Chairman

Leonard Alan Roy, Secretary/Treasurer