

**TITLE 37  
DOMESTIC VIOLENCE  
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**TITLE 37  
DOMESTIC VIOLENCE**

**CHAPTER 37.01  
General Provisions**

**37.0100     Policy and purpose.**

Domestic violence is a serious problem that is not in any way culturally sanctioned. The Turtle Mountain Domestic Violence Code intends to promulgate a responsible Tribal response to domestic violence. The Tribe intends to communicate that domestic violence represents an aberration and danger to the mental, physical and cultural well being of the Tribe and Tribal members. It is also the intent of the Tribe that victims of domestic violence receive the maximum assistance and protection under the law and to hold perpetrators accountable for their conduct.

**37.0101     Authority of the Tribe to regulate domestic violence within its jurisdictional territory.**

1. By treaty, the Tribe has the right to exclude non-members as well as an inherent authority to protect its political integrity and provide for the welfare of its members and others who choose to live within its territory.
2. Domestic violence on the Turtle Mountain Indian Reservation seriously impacts the ability of the Tribe to provide for the health and well being of its Tribal members and threatens the political integrity of the Tribe.
3. The Turtle Mountain Band of Chippewa Indians shall exercise jurisdiction over all persons and all aspects of domestic violence on the Turtle Mountain Indian Reservation. However, the criminal provisions of this ordinance shall not apply to non-Indians.

**37.0102     Definitions.**

1. "ABUSE" means:
  - a. Intentionally, recklessly or negligently causing or attempting to cause physical harm or mental anguish to another person; and
  - b. Threatening or placing another person in reasonable fear or apprehension of imminent physical injury.
2. "SEXUAL ASSAULT" means:
  - a. Any unwelcome sexual contact;
  - b. Causing another person to involuntarily engage in sexual activity by force; and
  - c. Causing another person to involuntarily engage in sexual activity by threat of force or duress.
3. "ADVOCATE" means an employee of, or volunteer for a program for victims of domestic violence, who:
  - a. Renders advocacy, counseling or assistance to victims of domestic violence;
  - b. Supervises the employees or volunteers of the program;
  - c. Administers the program; or
  - d. Works under the direction of a supervisor of the program.
4. "COUNSELING" means services provided by authorized agencies that provide services for, but not limited to, domestic violence, domestic violence evaluations, alcohol and drug rehabilitation, parenting and mental health education.
5. "COURT" means the Tribal Court.
6. "DOMESTIC VIOLENCE" means abuse, mental anguish, physical harm, bodily injury, assault, sexual assault or the infliction of reasonable fear of bodily injury between family and/or household members. All crimes

involving threat, violence, assault, physical abuse, sexual abuse or others enumerated in the Tribal Mountain Tribal Code and the Turtle Mountain Domestic Violence Code committed against or between family or household members may be charged as domestic violence and may be punished as provided in Chapter 37.03 of the Turtle Mountain Domestic Violence Code.

7. "DOMESTIC VIOLENCE SHELTER" means a location that provides emergency housing on a 24-hour basis for victims of sexual assault, domestic violence or both. Confidentiality and protection of the location is encouraged.
8. "FAMILY OR HOUSEHOLD MEMBER" means spouse, former spouse, common-law spouse, domestic partner, parent, grandparent, child, sibling, half sibling, cousin, aunt, uncle and adult person or emancipated minor presently residing together or who have a child in common regardless of whether they have been married at any time.
9. "DOMESTIC PARTNER" means adults or minors who are dating, have dated, are engaged in a sexual relationship or who have been engaged in a sexual relationship. This shall include those persons involved in same sex relationships.
10. "MANDATORY ARREST" means if there is probable cause to believe a person has committed an offense of domestic violence as defined by this Section, a police officer SHALL arrest, with or without a warrant. The victim need not sign a complaint for an arrest to occur. Even if it is against the expressed wishes of the victim, the police officer shall arrest.
11. "MENTAL ANGUISH" means causing a person psychological or emotional damage by any type of physical or verbal communication or contact including, but not limited to, physical or verbal threats, verbal abuse, physical abuse, harassment, stalking or any contact that is detrimental to the psychological and mental well-being of that person or any other family or household member.
12. "PHYSICAL HARM" means the impairment of physical condition which includes, but shall not be limited to, any skin bruising, pressure sores, bleeding, failure to thrive, malnutrition, dehydration, burns, fracture of any bone, subdural hematoma, soft tissue swelling, injury to any internal organ or any physical condition which imperils health or welfare.
13. "PERPETRATOR" means a person who is alleged to have committed or has been convicted of committing an act of abuse or domestic violence.
14. "POLICE OFFICER," "officer," or "police" means any law enforcement officer having legal jurisdiction.
15. "PRIMARY AGGRESSOR" means the person(s) who has caused or has threatened to cause significant physical or emotional harm to another in his family or household, as compared to other party(s) involved. This is regardless of which party was the first aggressor. In determining whether one person is a primary aggressor, consideration shall include but is not limited to:
  - a. Prior history of domestic violence;
  - b. The relative severity of the injuries inflicted on each person;
  - c. The likelihood of future injury to each person;
  - d. Whether one of the persons acted in self-defense; and
  - e. Relative ability to inflict harm between the parties involved.
16. "PROGRAM OF INTERVENTION FOR PERPETRATORS" means a specialized domestic violence offenders' program that accepts court orders and voluntary participants and also:
  - a. Offers intake, orientation and placement in a domestic violence class.
  - b. Offers a minimum of fifteen (15) hours of education classes.
  - c. Offers other programs designed to provide information and interventions to stop violence against Native women.

- d. Utilizes historical and cultural information in educating perpetrators of domestic violence regarding responsible Native behavior in the family, community and nation.
  - e. Makes available and integrates the specialized function, knowledge and expertise of elders, medicine and traditional people.
17. "PROGRAM FOR VICTIMS OF DOMESTIC VIOLENCE" means a specialized program for victims of domestic violence and their children whose primary purpose is to provide advocacy and related services that include but are not limited to advocacy, shelter, crisis intervention, supportive services, referral, and makes available the specialized knowledge and expertise of elders, medicine and traditional people.
  18. "PROTECTION ORDER" means a court order granted for the protection of victims of domestic violence.
  19. "SAFETY PLAN" means a written or oral outline of actions to be taken by a victim of domestic violence to secure protection and support after an assessment of the dangerousness of the situation has been made.
  20. "TRIBE" means the Turtle Mountain Band of Chippewa Indians.
  21. "TURTLE MOUNTAIN INDIAN RESERVATION" means all land within the exterior boundaries of the Turtle Mountain Indian Reservation and all trust land outside of the exterior boundaries of the Turtle Mountain Indian Reservation.
  22. "VICTIM" means family or household member(s) who have been subjected to domestic violence.

**37.0103 Severability clause.**

If the Tribal Court or any other court declares any chapter, section, clause or part of the Turtle Mountain Domestic Violence Code invalid or unconstitutional, such declaration shall not render invalid the remainder thereof, but shall be confined in its operation to the offending section.

**37.0104 Immunity.**

Any law enforcement officer, tribal prosecutor, court official or any advocate acting in good faith accordance with the Turtle Mountain Domestic Violence Code shall have immunity from any civil or criminal liability.

**CHAPTER 37.02  
Domestic Violence Crimes**

**37.0200 Crimes involving "Domestic Violence."**

1. The existing Tribal Code may have previously defined crimes involving domestic violence. The purpose of the Turtle Mountain Domestic Violence Code is to clarify that domestic violence is a separate act punishable separately from the underlying crime. When there is a finding that the following crimes have been committed against a family or household member with the purpose of, or having the effect of, inflicting physical harm or bodily injury or placing the family or household member in imminent fear or apprehension of physical harm or bodily injury, the Turtle Mountain Domestic Violence Code shall also apply:
  - a. Homicide Offenses;
  - b. Sexual Offenses;
  - c. Assault Offenses (Battery, Aggravated Assault, Simple Assault, and Intimidation);
  - d. Kidnapping;
  - e. Abduction;
  - f. Weapons Law Violations;
  - g. Terrorizing;
  - h. Threats and Intimidation;
  - i. Arson;

- j. Breaking and Entering;
  - k. Stalking;
  - l. Disorderly Conduct;
  - m. Harassment;
  - n. Destruction of Property;
  - o. Trespass;
  - p. Burglary;
  - q. Vandalism of Property;
  - r. Stolen Property Offenses;
2. Committing one or more of the above stated crimes shall not diminish the seriousness of domestic violence or take precedence over the crime of domestic violence. Under this Section, the commission of one of the above referenced crimes against a family or household member with the purpose of, or having the effect of, inflicting physical harm or bodily injury or placing the family or household member in imminent fear or apprehension of physical harm or bodily injury shall trigger the application of the Turtle Mountain Domestic Violence Code. Even if the criminal complaint charges one the above offenses, the person may be charged with the crime of domestic violence and may be punished as provided in Chapter 37.03 of the Turtle Mountain Domestic Violence Code.

**37.0201**

**Stalking.**

1. The active stalking of a person and their family members is a basic and often primary activity used by domestic violence offenders to establish, or re-establish control over domestic violence victims. Through the pursuit or following of the victim by the perpetrator, the risk to the victim of physical assault by the stalker is greatly increased. The goal of this Section is to provide safety and protection to both victims and potential victims and to set standards of behavior within the family that are consistent with traditional Native values.
2. Stalking Definitions:
  - a. "CREDIBLE THREAT" means a verbal or written threat, a threat implied by a pattern of conduct or a combination of verbal/written statements and conduct made, either directly or through a third party, with the intent to place the person who is the target of the threat in reasonable fear of his/her safety. The main standard for establishing that a credible threat exists is the victim's perception of a threat to his/her safety.
  - b. "HARASS" means a knowing and willful pattern of conduct directed at a specific person, either directly or through a third party, which seriously alarms, annoys, torments or terrorizes the person, and which serves no legitimate purpose. Harassing behavior can include, but is not limited to:
    - (1) Vandalism;
    - (2) Annoying or threatening telephone calls;
    - (3) Following or other violations of an order for protection;
    - (4) Actual Assaults;
    - (5) Sending unwanted letters or e-mails;
    - (6) Sending unwanted messages or threats through third parties;
    - (7) Showing up at a victim's home or workplace;
    - (8) Attempting to obtain private information about the victim through others;
    - (9) Leaving gifts for the victim;
    - (10) Disabling or otherwise tampering with the victim's vehicle;
    - (11) Taking mail from the victim's mailbox;
    - (12) Entering the victim's home or place of residence whether the victim is or is not there;
    - (13) Parking near or driving by the victim's residence or workplace for no legitimate reason; and

(14) The use of agencies or institutions that constitutes a pattern of conduct consistent with retaliation by initiating investigations, restrictions or sanctions against the victim.

- c. "PATTERN OF CONDUCT" means conduct which has caused the victim to suffer substantial emotional distress or fear. This course of conduct should contain a series of acts carried out by the defendant over a period of time, however short, which demonstrates a continuity of purpose (i.e., to annoy, harass, follow, etc.), and which would cause a reasonable person to suffer similar emotional distress or fear.
  - d. "FAMILY" or "HOUSEHOLD MEMBER" means any spouse, parent, child, stepparent, stepchild, grandparent, grandchild, relative with whom the victim has a familial relationship, relative who resides with the victim or any other relationship as defined under Section 37.0102.
3. Any person who, either directly or through a third party, willfully, maliciously and repeatedly follows, harasses or engages in a pattern of conduct which poses a credible threat to another and is likely to place that person in reasonable fear of his/her safety or the immediate safety of his/her family shall be guilty of stalking and may be punished as provided in this Turtle Mountain Domestic Violence Code.
  4. The present incarceration of the person making the threat shall not bar prosecution under this Section.

**37.0202**

**Violations of civil protection orders.**

1. A person who knowingly violates or a person who aids and abets another person to knowingly violate a Protection Order is guilty of an offense of domestic violence and may be punished as provided in Chapter 37.03 of the Turtle Mountain Domestic Violence Code.
2. A person who enters Tribal jurisdiction with the intent to engage in conduct that violates any portion of a Protection Order is guilty of an offense of domestic violence and may be punished as provided in Chapter 37.03 of the Turtle Mountain Domestic Violence Code.
3. Any act committed outside the boundaries of the Turtle Mountain Indian Reservation and completed inside the Turtle Mountain Reservation are crimes subject to the jurisdiction of the Turtle Mountain Tribal Court.
4. Interference with an emergency call to law enforcement shall be considered a violation of a Protection Order
5. A person who violates a valid Protection Order issued by any court and causes a family or household member to enter Tribal jurisdiction because of the violation of a valid Protection Order is guilty of an offense of domestic violence and may be punished as provided in Chapter 37.03 of the Turtle Mountain Domestic Violence Code.
6. Any person granted a Civil Protection Order from the Tribal Court or any other court of competent jurisdiction cannot be punished for a violation of that Protection Order.
7. It shall not be a defense to a charge of violation of a Protection Order that the victim consented to the violation by encouraging contact or violation of the Protection Order.

**37.0203**

**Disclosure of domestic violence shelters.**

Any person who knowingly publishes, disseminates or otherwise discloses the location of any domestic violence shelter or any place designated as a domestic violence shelter as defined in Section 37.0102 without proper authorization is guilty of a crime of domestic violence and may be punished as provided in Chapter 37.03 of the Turtle Mountain Domestic Violence Code.

**37.0204**

**Protection for advocates.**

1. Because of the potential for violence on the part of the perpetrator, the Tribe recognizes that advocating for those who have been the victims of domestic violence can be a dangerous situation for the advocate.
2. Any person who harasses, annoys or intimidates an advocate for a domestic violence victim is guilty of a crime of domestic violence and may be punished as provided in Chapter 37.03 of the Turtle Mountain Domestic Violence Code.
3. A person committing any of the following acts is guilty of an offense of domestic violence as defined in this Ordinance and may be punished as provided in Chapter 37.03 of the Turtle Mountain Domestic Violence Code:
  - a. Making any written or verbal threats to an advocate for a victim of domestic violence with the intent to interfere with the right of any victim of domestic violence to obtain a Civil Protection Order or to pursue criminal charges against a perpetrator of domestic violence;
  - b. Making any written or verbal threat that places an advocate in apprehension of bodily injury because of that advocate's representation of a domestic violence victim.
4. In addition to any other penalty provided by Tribal Law, a person convicted of a crime of violence against a domestic violence advocate because of their advocacy of domestic violence victims shall be sentenced to a minimum of five (5) days in jail and ordered to pay a special assessment to Victims of Crime Assistance of \$500.00. This enhanced penalty shall not be subject to suspension by the Court.

**37.0205 Voluntary intoxication as defense or mitigating circumstance prohibited.**

The fact that the perpetrator was under the influence of alcohol or drugs at the time of the offense shall not be utilized by law enforcement, prosecutors or the court to mitigate the severity of the violence. Voluntary intoxication, which is available as a legal defense only in cases involving specific intent crimes, shall not be available as a defense to a perpetrator of domestic violence, nor shall it be utilized to lessen the consequences to the perpetrator.

**37.0206 Juveniles.**

Any juvenile committing domestic violence as defined in the Turtle Mountain Domestic Violence Code may be subject to prosecution and all other conditions outlined under the Turtle Mountain Domestic Violence Code. Any such proceeding shall be closed.

**CHAPTER 37.03**

**Criminal and Civil Penalties; Other Sanctions**

**37.0300 Criminal penalties.**

1. First Offense:
  - a. Any person who commits an act of domestic violence shall be deemed guilty of the offense of domestic violence. A person convicted of a first offense of domestic violence shall be imprisoned for a term of not less than ten (10) days nor more than one (1) year and shall be fined an amount not less than One Hundred Dollars (\$100.00) nor more than Five Thousand Dollars (\$5000.00). Mandatory counseling as well as restitution shall be part of sentencing as provided in Section 37.0304 of the Turtle Mountain Domestic Violence Code.
  - b. The Court may suspend imposition of fines and imprisonment for the first offense and place defendant on probation for not less than three (3) months nor more than one (1) year. When a sentence is suspended, there must be complete and total compliance with the orders of the Court requiring completion of the domestic violence program and counseling as ordered.

2. Second Offense: A person convicted of a second offense of domestic violence within a five (5) year period shall be imprisoned for a term of not less than thirty (30) days nor more than one (1) year and fined an amount not less than five hundred dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00). Mandatory counseling as well as restitution shall be part of sentencing as provided in Section 37.0304 of the Turtle Mountain Domestic Violence Code. Said sentencing shall be in accordance with Section 37.0300(4) below.
3. Third and Subsequent Offenses: A person convicted of a third or subsequent offense of domestic violence within a five (5) year period of the last conviction shall be imprisoned for a term of not less than ninety (90) days nor more than one (1) year and fined an amount not less than one thousand dollars (\$1,000.00) nor more than Five Thousand Dollars (\$5,000.00). Mandatory counseling shall be part of sentencing as provided in Section 37.0304 of the Turtle Mountain Domestic Violence Code. Said sentencing shall be in accordance with Section 3000(D) below.
4. For second and subsequent convictions: Upon complete and total compliance with the orders of the Court requiring completion of the domestic violence program and/or counseling as ordered, the Court may suspend up to half of the imposition of fines and/or imprisonment for domestic violence offense(s). However, if the Court suspends half of the imposition of fines and/or imprisonment under this section, the perpetrator must be placed on probation for not less than one (1) year. Failure to comply with terms of probation shall result in the completion of the original sentence.
5. In cases involving the failure to comply with the Court's orders of counseling, the violation of a protection order, the commission of any crime during the protection order period or the violation of any other condition of sentencing, the Court shall find the person in contempt and shall impose all or part of the suspended sentence for the original offense and again require the perpetrator to complete the entire counseling program upon release from jail.
6. Prosecution for the offense of domestic violence shall not preclude prosecution for any other offense arising from the same circumstances.
7. Person convicted of domestic violence shall not be released from custody for community service.
8. A person convicted of domestic violence shall not be released from custody to attend funeral or wake services unless said services are for a member of the person's immediate family and shall be at the discretion and condition of the Turtle Mountain Tribal Court. Immediate family shall mean husband, wife, son, daughter, brother, sister, father, mother, aunt, uncle or grandparent.
9. A person convicted of domestic violence shall not be released from custody for holidays.
10. A person convicted of domestic violence may be released for employment at the discretion and condition of the Turtle Mountain Tribal Court.
11. Allowance against any sentence for a term of imprisonment shall be given by the Court to a defendant for all time spent in custody as a result of the criminal charge for which the sentence was imposed or as a result of the conduct on which such charge was based. "Time spent in custody" shall include time spent in custody, in a jail or in a mental institution for the offense charged, whether that time is spent prior to trial, during trial, pending sentence or pending appeal.
12. A person found guilty of the crime of domestic violence may also be ordered to pay the reasonable costs of the person's prosecution.

**37.0301 Civil penalties.**

1. A person who convicted of domestic violence may be held liable for a civil penalty.
2. Restitution shall be ordered when deemed appropriate by the Turtle Mountain Tribal Court.
3. Upon conviction for a crime of domestic violence, the Turtle Mountain Tribal Court may order the removal any weapons from the defendant's possession for a period of five to ten (5-10) years.

**37.0302 Other conditions in addition to penalties.**

1. In addition to the penalties above, the Court shall impose any condition it deems necessary to prevent further domestic violence including, but not limited to, restricting the defendant's ability to have contact with the victim and other family or household members and requiring the defendant to make periodic reports to the Court for the duration of the sentence and probation.
2. A Police Officer may remove any weapons or firearms that are in plain view, otherwise discovered during the domestic violence related investigation or are in the possession and control of the perpetrator. Such weapons may be the subject of forfeiture proceedings.

**37.0303 Pre-sentencing evaluation.**

1. Prior to sentencing a person convicted for a domestic violence offense and upon motion of either party, the Court may order any personal evaluation that the Court deems necessary.
2. Prior to the personal evaluation, the Court must outline the scope of the evaluation.

**37.0304 Court ordered treatment and counseling.**

1. If alcohol, drugs or other substance abuse is determined to be a primary factor in the domestic violence arrest, a mandatory chemical dependency evaluation shall be conducted.
2. The results of the chemical dependency evaluation and any compliance with the recommendations of the evaluation may be considered by the Court prior to sentencing.
3. A person convicted of domestic violence shall be ordered to participate in appropriate counseling which may include domestic abuse and/or substance abuse counseling.
4. The Court shall provide that qualified personnel will talk with the victim and discuss the availability of domestic violence services and groups.
5. The Court may order the person convicted of domestic violence to pay any cost for counseling or other treatment ordered pursuant to this Chapter.
6. A follow-up assessment shall be done at the completion of the mandated counseling.
7. A treatment provider shall do the assessment and shall forward a written copy of the findings and recommendations to the Court.
8. All treatment records will be sealed by the Court and may be reviewed only with written permission of the Judge.

**37.0305 Special court rules.**

1. In addition to the Rules of Court generally applicable to such proceedings, the Court is authorized to take the following actions in a proceeding involving alleged domestic violence offenses:
  - a. The Court shall, at the earliest stage of the proceedings, impose release conditions restraining the accused from committing further acts of violence against the alleged victim or any other person regardless of whether the Court orders bond release or recognizance release.
  - b. In domestic violence cases, orders of release must be in writing and can only be made at a bond hearing.

- c. A Domestic Violence Victim Advocate may accompany the alleged victim to the any hearing related to the charges associated with domestic violence.
  - d. Any written statement made by the alleged victim under oath and signed by the victim describing the alleged acts of domestic violence shall not be considered inadmissible solely because of a hearsay objection. Such a statement shall be subject to ordinary judicial analysis for admissibility of evidence in the Tribal Court.
  - e. The following evidentiary privileges do not apply in any criminal proceeding in which a spouse or other family or household member is the victim of an alleged crime involving domestic violence perpetrated by the other spouse:
    - (1) The privilege of confidential communication between spouses.
    - (2) The testimonial privilege of spouses.
  - f. Except as otherwise provided in Section 37.0305, a victim of domestic violence may refuse to disclose and may prevent an advocate, elder or medicine person from disclosing confidential oral communication between the victim and the advocate and written records and reports concerning the victim unless the privilege is waived by the victim.
    - (1) The privilege does not relieve a person from any duty imposed in the mandatory reporting of child abuse or neglect.
    - (2) A person may not claim the privilege when providing evidence in proceedings concerning child abuse or neglect.
2. In addition to the Rules of Court generally applicable to such proceedings, the Court shall take the following actions in a proceeding involving alleged domestic violence offenses:
- a. When offered to the Court, input from the victim shall be considered in determining the sentence to be imposed.
  - b. Upon conviction, the perpetrator shall be ordered to participate in an appropriate counseling program.
  - c. Failure to comply with a court order requiring a perpetrator to attend and cooperate in evaluation and/or undergo treatment as described in a treatment plan shall constitute contempt of court and is punishable as such. The Court may also order the imposition of any suspended sentence.

**37.0306 Child custody and visitation.**

- 1. In every proceeding where child custody is disputed, a determination by the court that domestic violence has occurred raises a rebuttable presumption that it is detrimental to the child and not in the best interest of the child to be placed in the sole custody, joint legal custody or joint physical custody of the perpetrator of domestic violence. In determining whether the presumption applies, it is irrelevant whether the domestic violence occurred in the presence or outside the presence of the child.
- 2. When the custody of a child or visitation by a parent is at issue and the Court has made a finding of domestic violence:
  - a. The primary consideration of the court shall be the safety and well being of the child and of the parent who is the victim of domestic violence;
  - b. The court shall consider the perpetrator's history of causing or causing reasonable fear of physical harm, bodily injury or assault; and
  - c. The court shall also consider the perpetrator's overall lifestyle including alcohol and other chemical use.
  - d. If a parent is absent or relocates because of an act of domestic violence by the other parent, the absence or relocation is not a factor that shall weigh against absent or relocated parent.

3. When the custody of a child or visitation by a parent is at issue and the Court has made a finding of domestic violence, there is a rebuttable presumption that it is in the best interest of the child to reside with the parent who is not a perpetrator of domestic violence in the location of that parent's choice, whether that location is inside or outside the confines of the Indian reservation.
4. When the modification of an order for custody or visitation is at issue and the Court has made a finding of domestic violence since the order was established, a change of circumstances is established.
5. When the visitation by a parent is at issue and the Court has made a finding of domestic violence, the following conditions apply:
  - a. Only if the court finds that adequate provisions for the safety of the child and the parent who is a victim of domestic violence can be made, may the court award visitation by a parent who committed domestic violence.
  - b. In a visitation order, a court may:
    - (1) Order the exchange of a child to occur in a protected setting;
    - (2) Order visitation supervised by an independent third person or agency;
    - (3) Order the perpetrator of domestic violence to attend and complete, to the satisfaction of the court, a program of intervention for perpetrators as a condition of visitation;
    - (4) Order the perpetrator of domestic violence to attend and complete, to the satisfaction of the court, a program for chemical dependency;
    - (5) Order the perpetrator of domestic violence to abstain from possession or consumption of alcohol or controlled substances during the visitation and the 24 hours preceding the visitation;
    - (6) Order the perpetrator of domestic violence to pay a fee to defray the costs of supervised visitation;
    - (7) Prohibit overnight visitation;
    - (8) Require a bond from the perpetrator of domestic violence for the return and safety of the child; and/or
    - (9) Impose any other condition that is deemed necessary to provide for the safety of the child, the victim of domestic violence or other family or household member.
  - c. Whether or not visitation is allowed, the court may order the address of the child and the victim to be kept confidential.
  - d. Supervised visitation shall be conducted by an independent third party as approved jointly by the court and the victim.
6. In resolving custody or visitation issues, the Court shall not order parties into mediation, counseling, alternative justice, peace-making, circle sentencing, traditional Native ceremonies or any other type of situation that would put the victim in the position of dealing directly with the perpetrator.
7. All sentences imposed under the Turtle Mountain Domestic Violence Code shall be accompanied by a written statement by the court setting forth the reasons for imposing a particular sentence and such statement is to become a part of the record in the case.

**37.0307 Religious consideration.**

As appropriate to their sentence, persons who practice a traditional Indian religion or any other religion may participate in additional counseling or ceremonies at their own expense.

**37.0308 Mandatory cooling off period.**

Any person arrested under this Ordinance shall be held without bail, in the custody of the police department, for a period of not less than twelve (12)

hours and not to exceed seventy-two (72) hours, as a mandatory "cooling off" period. Release, after the 12-hour period, is at the discretion of a Turtle Mountain Tribal Judge and in accordance with Section 37.0305 of this Code.

**CHAPTER 37.04**  
**Duties of Tribal Officials**

**37.0400**     **Duties of police officers.**

1. When responding to a domestic violence situation, the primary duty of the police officer is to enforce the laws and ensure victim safety.
2. If the victim is present when the officer arrests a person for domestic violence, the officer shall advise the victim of reasonable means to prevent further abuse, the availability of a shelter, the availability of other services in the community and give the victim immediate notice of any legal rights and remedies available in accordance with policies and protocols adopted in accordance with this Ordinance.
3. Whether or not the victim signs a complaint and whether or not the arrest is against the expressed wishes of the victim, if probable cause exists that any crime involving domestic violence was committed within 48 hours of a report to law enforcement, or any crime involving domestic violence was committed in the presence of the officer, the officer shall arrest the perpetrator with or without a warrant.
4. Whenever a law enforcement officer makes an arrest for domestic violence, he/she shall complete and sign a complaint against the alleged abuser on behalf of the Turtle Mountain Tribe. He/she shall submit a detailed report of the circumstances of the arrest, along with statements from the victim and other witnesses.
5. Whenever a police officer investigates an allegation of domestic violence, whether or not an arrest is made, the officer shall make a written incident report of the alleged abuse and submit that report to his/her supervisor, the Tribal Prosecutor's office and Victims of Crime Assistance within 48 hours.
6. If a law enforcement officer receives complaints of domestic violence from two or more persons, circumstances shall be evaluated to determine if there was a primary physical aggressor. If the officer determines that one person was a primary physical aggressor, the officer may arrest the person who has committed domestic violence. In determining whether a person is the primary aggressor, the officer shall consider:
  - a. The history of domestic violence, documented prior complaints, convictions and the law enforcement officer's own prior knowledge of the family;
  - b. The relative severity of the injuries inflicted on each person, i.e., "Who in this relationship poses the most danger to the other?";
  - c. The likelihood of future injury to each person, i.e., "Who is at the most risk of future harm?";
  - d. Whether one of the persons acted in self-defense and/or in defense of others; and
  - e. The degree to which one of the persons has acted with more deliberate intent to control, isolate, intimidate, emotionally demean or cause injury, pain or fear of harm to the person or a third party.
7. When he/she has probable cause to believe a crime of domestic violence is occurring or has just occurred, a law enforcement officer need not obtain a search warrant in order to enter a residence or seize property.
8. A law enforcement officer shall not threaten, suggest or otherwise indicate the possible arrest of all parties to discourage requests for intervention by any party.
9. The Victim shall be furnished with a copy of the following statement:

If you are the victim of domestic violence and you believe that law enforcement protection is needed for your physical safety, you have the right to request that the officer assist in providing for your safety. You may also request that the officer assist you in obtaining your essential personal effects, locate or take you to a safe place, including but not limited to a shelter, a family member or friend's residence or a similar place of safety. If you are in need of medical treatment, you have the right to request that the officer assist you in obtaining medical treatment. You may request a copy of the report at no cost from the law enforcement department.

The Office of the Tribal Prosecutor will be notified of the incident and they shall determine whether to file charges against your abuser. An emergency order of protection will be issued against your abuser at the time of the arrest or at your request. You also have the right to go to Court and file a petition requesting any or all of the following temporary orders for relief.

- a. An order restraining your abuser from abusing, harassing, stalking, threatening, annoying, telephoning or otherwise contacting you and committing other acts of domestic violence;
- b. An order removing your abuser from the residence regardless of ownership and to stay away with no contact;
- c. An order preventing your abuser from removing any property from your household except for clothing and other such personal effects which may only be removed when the abuser is accompanied by a police officer;
- d. An order awarding you custody or visitation of a minor child or children;
- e. An order specifying arrangements for visitation by your abuser, including required supervised visitation;
- f. An order restraining your abuser from harassing or interfering with minor children in your custody;
- g. An order directing the party not granted custody to pay support of minor children or to pay support of the other party if there is already a legal obligation to do so.
- h. An order protecting other family and household members;
- i. An order directing your abuser to stay away from your or any other designated household/family member's place of residence, school, place of employment, or any other specified place frequented by you;
- j. An order prohibiting your abuser from using or possessing any firearm or other weapon specified by the court;
- k. An order granting you possession and use of the automobile and other essential personal effects regardless of ownership; and
- l. An order requiring your abuser to pay certain costs and fees, such as rent or mortgage payments, child support payments, medical expenses, expenses for shelter, court costs, and attorney's fees.

The forms you need to obtain an order for protection are available from Victims of Crime Assistance and/or the Clerk of Court. Victims of Crime Assistance is available to assist you in obtaining information relating to domestic violence, treatment of injuries and places of safety and shelter. You also have the right to seek reimbursement for losses suffered because of the abuse, including medical and moving expenses, loss of earnings or support, and other expenses for injuries sustained and damage to your property. This can be done through Tribal Court.

The written notice must not include the addresses or locations of shelters and must be provided in the native language of the victim, if practicable, when the native language of the victim is not English.

10. A law enforcement officer responding to an allegation of 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 (or children) to a temporary shelter;
  - c. Assisting the victim and any minor child (children) in obtaining immediate medical treatment, including obtaining transportation to a medical facility;
  - d. Removal of any weapons from the perpetrator's immediate possession;
  - e. Assisting the victim in removing essential personal effects; and
  - f. Giving the victim immediate and adequate notice of the rights of victims and the remedies and services available to victims of domestic violence.
11. When an order is issued upon a request of the applicant under this Ordinance, the Court shall order an appropriate law enforcement officer to accompany the applicant and assist in placing the applicant in possession of the dwelling or residence, or otherwise assist in execution or service of the Protection Order, which may include referral to Victims of Crime Assistance.
  12. When a perpetrator is scheduled to be released from custody or escapes from custody, the Police Department and/or Tribal Prosecutor shall make reasonable efforts to notify the victim prior to the release of the perpetrator from custody.
  13. In all cases of domestic abuse, the numbers of all written reports made by the officer(s) shall be tabulated. A quarterly report shall be made by the police department, setting out the numbers of reports of domestic violence, investigations and arrests. Such statistics shall be made available to appropriate agencies and the public.

**37.0401**

**Duties of the Tribal Prosecutor.**

1. The Office of the Tribal Prosecutor shall evaluate a complaint of domestic violence based upon all available facts. A case shall not be dismissed solely because the victim may be an uncooperative witness.
2. If the Office of the Tribal Prosecutor has decided to dismiss the criminal charges filed against the alleged perpetrator of domestic violence or to decline prosecution of an alleged crime involving domestic violence, the Office of the Tribal Prosecutor shall make reasonable efforts to notify the victim of the dismissal or failure to prosecute.
3. Release of a defendant from custody must not be delayed because of the requirements of Section 37.0401 (2).
4. A victim of domestic violence is entitled to all rights granted to victims of crime including but not limited to:
  - a. Be informed of all hearing dates and continuances;
  - b. Be able to provide the court with a victim impact statement, victim-opinion statement and an assessment of the risk of further harm;
  - c. Be present at sentencing and address the court;
  - d. Advise the Court of conditions of probation and parole required to ensure the safety of the victim and other family or household members;
  - e. Restitution for losses sustained as a direct consequence of any criminal conduct;
  - f. Apply for any available victim's compensation and to be informed of procedures for applying.
5. The prosecutor shall notify the victim of domestic violence of the victim's rights set forth in this section in writing. For notice to be meaningful, it should be actual, timely and written in a language in which the victim is competent.

**37.0402**

**Duties of the Tribal Court.**

1. When a defendant is arrested for any violation under this Code, the Court shall automatically issue a temporary ex-parte Protection Order as provided in Chapter 37.05 of this Code.
2. The Court shall order that anyone immediately arrested under this Code be held in the custody of the Police Department for a period not less than 12 hours as a mandatory "cooling off" period, regardless of when arraignment occurs.
3. Prior to release of the defendant, the Court shall provide information to the victim regarding the availability of domestic violence services and groups or refer the victim to appropriate service providers.
4. Because of the serious nature of domestic violence:
  - a. Disposition of cases shall not be delayed or dismissed because of concurrent dissolution of marriage proceedings or other civil actions.
  - b. Any requirement that the victim's location be disclosed shall be waived and communication with the victim regarding the domestic violence case shall be conducted through the victim's advocate or the Court.
  - c. Docket sheets of criminal actions arising from acts of domestic violence shall be identified by any reasonable means.
  - d. When the Court dismisses criminal domestic violence charges upon a motion by the prosecutor or upon a finding of insufficient evidence, the specific reasons for the dismissal must be recorded in the Court file. Other than for insufficient evidence, any dismissal may be appealed by the Tribe or the victim to the Tribal Appeals Court.
  - e. The Court shall not dismiss a criminal case involving domestic violence for the sole reason that a civil compromise or settlement is reached. Evidence of a civil compromise or settlement shall not be admissible in the criminal proceeding as evidence of consciousness of guilt or innocence, as an admission against interest or used to impeach a victim's testimony.
  - f. No Judge or officer of the Court will issue or initiate any search warrant, pick-up order, summons, bench warrant or any notice of court proceedings specifying the domestic violence shelter/program as the individual's residence and/or location. The shelter or domestic violence program shall not be named as a party in any court action involving individual victims that may or may not be receiving advocacy services from the domestic violence shelter/program.

**37.0403**

**Mandatory training.**

1. All employees and officials of law enforcement and the criminal justice system shall participate in a minimum forty (40) hours of initial training and sixteen (16) hours of annual training.
2. The training shall include but not be limited to the dynamics of domestic violence, the impact of victimization, offender's education programs, and coordinated systems response in order to facilitate implementation of this ordinance and the technical aspects in making a domestic violence arrest including probable cause, self-defense, mutual arrest, evidence gathering and report writing.
3. The Turtle Mountain Domestic Abuse Task Force shall be responsible for coordinating the training curriculum.
4. Failure to participate in the required training shall result in disciplinary action by an immediate supervisor with a minimum of a written reprimand placed in the personnel file and monitoring to ensure attendance at training.

**CHAPTER 37.05  
Civil Protection Orders**

**37.0500**

**Jurisdiction for civil protection orders.**

1. The Turtle Mountain Tribal Court shall have jurisdiction:
  - a. When the petitioner or respondent is domiciled or found on the Turtle Mountain Indian Reservation;
  - b. When any act of domestic violence occurs within the exterior boundaries of the Turtle Mountain Indian Reservation;
  - c. When the Court is being asked to recognize and enforce a valid Protection Order of another court of competent jurisdiction; and
  - d. Over any petition for Protection Orders under this Domestic Violence Code.
2. The Court shall construe this Section liberally to exercise maximum jurisdiction.
3. This Section is not exclusive of the situations in which the Court may exercise jurisdiction.

**37.0501 Change of judge for civil protection orders.**

1. Motions for a change of Judge must be filed within five days of service upon the perpetrator.
2. Relationship by blood or marriage is not sole cause for a change of Judge.

**37.0502 Availability of civil protection orders.**

1. Any of the following persons may seek relief under this Chapter by filing a Civil Petition with the Court alleging that domestic violence has been committed by the Respondent. The person may petition for relief on behalf of any victim including minors within the family or household members:
  - a. Any person claiming to be the victim of recent domestic violence;
  - b. Any family member or household member of a person claimed to be the victim of domestic violence on behalf of the alleged victim;
  - c. A Police Officer;
  - d. A Victim Advocate; and/or
  - e. The Tribal Prosecutor.
2. There is no minimum requirement of residency to petition for a Protection Order.

**37.0503 Procedures for filing civil petitions for protection orders.**

1. No filing fees shall be required for filing a petition nor shall a bond be required to obtain relief under this Chapter.
2. The Petitioner, or the victim on whose behalf a petition has been filed, is not required to file for annulment, separation or divorce as a prerequisite to obtaining a Protection Order.
3. Standard petition forms with instructions for completion shall be available upon request from the Court Clerk.
4. A Protection Order does not preclude the rights of any party or child that are to be adjudicated at subsequent hearings in the proceeding.

**37.0504 Procedures for issuance of temporary and permanent protection orders.**

1. If the Court has a reasonable belief that the Petitioner or the person on whose behalf the petition is filed is the victim of an act of domestic violence committed by the Respondent, the Court shall immediately grant a Temporary Ex Parte Protection Order based upon the facts contained within the verified statement or Affidavit.
2. Within fourteen (14) days of the issuance of a Temporary Ex Parte Protection Order, excluding holidays and weekends, a hearing shall be held to determine whether the Order should be extended for an additional period of time, made permanent or modified in any respect.
3. Service must be made upon the Respondent at least five days prior to the hearing. If service cannot be made, the Court may set a new date.
4. Service shall be pursuant to the procedure set forth in the Turtle Mountain Tribal Code.

5. The Court may issue protection to both parties only if each party has completed a petition pursuant to Section 5040 of this Code and the Court, after a hearing, has made specific written findings of fact that both parties committed acts of domestic violence and that neither party acted in self-defense. The Order must clearly define the responsibilities and restrictions placed upon each party so that a law enforcement officer may readily determine which party has violated the Order if a violation is alleged to have occurred.
6. If the Court does not find sufficient reasonable cause to grant a Temporary Ex Parte Protection Order, the Court shall serve notice to appear upon both parties and hold a hearing on the petition for a Protection Order within five (5) days after the filing of the Petition, excluding holidays and weekends.
7. Any Protection Order granted pursuant to this Chapter shall be forwarded by the Court to the Police Department within 24 hours of issuance. In the case of a Temporary Emergency Ex-Parte Protection Order issued in accordance with Section 5080 or a Temporary Ex-Parte Protection Order, it shall be filed immediately upon issuance. The Police Department shall make information available to each officer as to the existence and status of every Protection Order issued under this Chapter.

**37.0505**

**Contents of a protection order in general.**

1. A Petition shall briefly describe the incident(s) of domestic violence and shall be a verified petition or supported by an affidavit made under oath stating the facts and circumstances justifying the requested order.
2. In addition to any other required information, the petition for a Protection Order must contain a statement listing each civil or criminal action involving both parties.
3. Protection Order shall include provisions:
  - a. Restraining the Respondent from committing any acts of domestic violence;
  - b. Restraining the Respondent from harassing, stalking, threatening telephoning or otherwise contacting the Petitioner directly or indirectly, or engaging in any other conduct that would place any named family or household members in reasonable fear of bodily injury;
  - c. Prohibiting the use, attempted use or threatened use of physical force that would reasonably be expected to cause bodily injury;
  - d. Requiring the respondent to surrender for safekeeping any firearm or other specified dangerous weapon in the Respondent's immediate possession or control or subject to the respondent's immediate control, if the Court has probable cause to believe that the Respondent is likely to use, display or threaten to use the firearm or other dangerous weapon in any further acts of violence. If so ordered, the Respondent shall surrender the firearm or other dangerous weapon to Law Enforcement;
  - e. Restraining one or both parties from transferring, removing, encumbering, mortgaging, concealing, disposing or altering property except as authorized by the Court;
  - f. Requiring that an accounting be made to the Court for all authorized transfers, encumbrances, dispositions and expenditures; and
  - g. Notifying the parties involved that the knowing violation of any provision of the order may constitute contempt of court punishable by fines, imprisonment or both.
4. A Protection Order may include any other relief the Court deems appropriate, including but not limited to:
  - a. Excluding the Respondent from the residence of the victim (whether or not the Respondent and the victim share the residence), school, place

- of employment or a specified place frequented by the Petitioner and any named family or household member;
- b. Awarding temporary child custody and/or establishing temporary visitation rights with regard to the minor children of the parties;
  - c. If visitation is granted there shall be set rules for the exchange of the children for visitation. These rules may include, but are not limited to times, places and persons allowed to visit;
  - d. Ordering temporary use and possession of personal property, including motor vehicles, to either party;
  - e. Ordering the Respondent to make timely payments on existing debts of the Respondent including, but not limited to, mortgage or rental payments and necessary utilities in order to maintain the Petitioner in their residence;
  - f. Ordering the Respondent to pay child support in accordance with the Turtle Mountain Band of Chippewa Indian's Child Support Guidelines;
  - g. Ordering the Respondent to pay such support as may be necessary for the support of a party and any minor children of the parties and reasonable attorney's fees and costs.
  - h. Ordering the Respondent to surrender all firearms and weapons to the custody of Law Enforcement while the Protection Order is in effect; and
  - i. Ordering other lawful relief as the Court deems necessary for the protection of the victim of domestic violence, including orders or directives to Law Enforcement or other appropriate departments and programs; and
5. No order or agreement under this section affects title to any real property in any manner.

37.0506

**Duration and amendments to permanent protection orders in general.**

1. A Protection Order shall be enforced until further order of the Court but not to exceed three hundred sixty five (365) days and may be subject to amendment for extension at the discretion of the Court or at the request of one of the parties.
2. After thirty (30) days, the Court may, in its discretion, revoke, modify, extend or amend a Protection Order upon subsequent petition filed by either party.

37.0507

**Temporary emergency ex parte protection orders.**

1. During the hours that the Court is closed, the Court shall provide for the availability of a Judge or other authorized personnel who shall authorize the issuance of Temporary Emergency Ex Parte Protection Orders by any appropriate and effective method. The following conditions apply:
  - a. Temporary Emergency Ex Parte Orders will be issued upon a good cause showing that it is necessary to protect the applicant or others from domestic violence;
  - b. Immediate and present danger of domestic violence to the applicant or others constitutes good cause for purposes of this section;
  - c. Any Order issued under this section expires seventy-two hours after its issuance unless it is continued by the judge or authorized personnel in the event of continuing unavailability of the Court. At that time, the applicant may seek a Temporary Ex Parte Protection Order from the Court; and
  - d. Any Order issued under this section and any documentation in support of the Order must be immediately certified to the Court.
2. If an officer cannot make an arrest, but there is probable cause to believe a person is in immediate and present danger of domestic violence, the Judge or other person authorized to issue Temporary Emergency Ex Parte Protection Orders may issue a Temporary Emergency Ex Parte Protection Order.

37.0508

**False allegations of domestic violence; Effect.**

If, after investigation, the Court finds that a petitioner's allegations of domestic violence in a domestic violence protection order proceeding, divorce proceeding, child custody proceeding, child visitation proceeding, separation proceeding or termination of parental rights proceeding are false and not made in good faith, the Court shall order the party making the false allegations to pay court costs and reasonable attorney's fees incurred by the other party in responding to the allegation.

37.0509

**Foreign domestic violence protection orders; Full faith and credit recognition and enforcement.**

1. Subject to Section 37.0510, a domestic violence Protection Order issued by a court of competent jurisdiction of another state, Indian tribe, the District of Columbia or a commonwealth, territory or possession of the United States must be accorded full faith and credit by the Court of Turtle Mountain Band of Chippewa Indians and enforced as if the Order was issued by a Turtle Mountain Tribal Court.
  - a. A foreign domestic violence Protection Order is enforceable on the Turtle Mountain Reservation if all of the following are satisfied:
    - (1) The Respondent received notice of the Protection Order in compliance with requirements of the issuing jurisdiction;
    - (2) The Protection Order is in effect in the issuing jurisdiction;
    - (3) The issuing court had jurisdiction over the parties and the subject matter;
    - (4) The Respondent was afforded reasonable notice and opportunity to be heard sufficient to protect that person's right to due process. In the case of Ex Parte Protection Orders, notice and opportunity to be heard must have been provided within the time required by the law of the issuing jurisdiction and in any event within a reasonable time after the Protection Order was issued, sufficient to protect the Respondent's due process rights. Failure to provide reasonable notice and opportunity to be heard is an affirmative defense to any prosecution for violation of the foreign Protection Order or any process filed seeking enforcement of the Protection Order; and
    - (5) If the Protection Order also provides protection for the Respondent, a petition, application or other written pleading must have been filed with the issuing court seeking such a Protection Order and the issuing court must have made specific findings that the Respondent was entitled to the Protection Order.
2. A person entitled to protection under a foreign domestic violence Protection Order may file the foreign Protection Order in the Tribal Clerk of Court's Office. The person filing the Protection Order shall also file an affidavit with the Clerk of Court certifying the validity and status of the foreign Protection Order and attesting to the person's belief that the Protection Order has not been amended, rescinded or superseded by any other Orders from a court of competent jurisdiction. If a foreign Protection Order is filed under this Section, the Clerk of Court shall transmit a copy of the Protection Order to the appropriate local law enforcement agency. Filing of a foreign Protection Order under this Section is not a prerequisite to the Order's enforcement by this Tribe. A fee for filing the foreign Protection Order shall not be assessed.
3. A law enforcement officer may rely upon any foreign domestic violence Protection Order that has been provided to the officer by any source. The officer may make arrests for violation of the Protection Order in the same manner as for violation of a Protection Order issued by this Tribe. A law enforcement officer may rely on the statement of the person protected by

the Protection Order that the Protection Order is in effect and that the Respondent was personally served with a copy of the Protection Order. A law enforcement officer acting in good faith and without malice in enforcing a foreign Protection Order under this section is immune from civil or criminal liability for any action arising in connection with the enforcement of the Protection Order.

4. Any person who intentionally provides a law enforcement officer with a copy of a foreign domestic violence Protection Order known by that person to be false or invalid or who denies having been served with a Protection Order when that person has been served with such an Order is guilty of a class 2 misdemeanor.

**37.0510 Tribal registry for protection orders.**

1. The Court shall maintain a registry of all orders for protection issued by the Court. The Clerk of Court shall provide Law Enforcement with certified Protection Orders within 24 hours after issuance.
2. The Clerk of Court shall also provide the Police Department with any modifications of revocations of, withdrawal of and/or expiration of Protection Orders.
3. The information contained in the registry is available at all times to the Court, law enforcement agencies and domestic violence shelters.
4. Facsimile copies shall be recognized.

**CHAPTER 37.06  
Domestic Violence Leave Act**

**37.0600 Policy and purpose.**

Victims of Domestic Violence are often times forced to flee from a perpetrator in order to avoid future danger and violence. In so fleeing, victims frequently miss days of employment and employers respond by terminating or disciplining such employees. The purpose of this chapter is to preclude all Reservation employers from terminating any employee who can document that an instance of domestic abuse contributed to his/her absence from employment. Employers have the option of granting such employees leave with pay or leave without pay because of domestic violence related absences.

**37.0601 Discharges for absence of employment due to domestic violence prohibited.**

When an employee demonstrates, either through the filing of criminal or civil proceedings in a court of law or by such other method satisfactory to the employer, that she has been the victim of domestic violence and that such violence contributed to her absence(s) from work or tardiness at work, it shall be a violation of this Chapter for any employer located within the Turtle Mountain Indian Reservation to terminate or otherwise discipline any employee who has missed work or is tardy. In lieu of disciplinary action, the employer shall grant the employee leave, with or without pay, dependent upon the policies of the employer.

**37.0602 Penalty for violation.**

Any employer who willfully violates this Chapter shall be subject to a civil penalty of \$500.00 payable to the Tribe in addition to any other remedies the wrongfully discharged employee may have against the employer. Nothing in this Section shall preclude a private party from commencing a wrongful termination action against an employer for violation of this Chapter.