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RESOLUTION

Enacting the Domestic Abuse Code on the Blackfeet Indian Reservation, as Chapter 5 Part II Section 11 of the Blackfeet Law and Order Code

No. 147-2022

WHEREAS, The Blackfeet Tribal Business Council is the duly constituted governing body within the exterior boundaries of the Blackfeet Indian Nation pursuant to Section 16 of Act of June 18, 1934 and Amendments thereof, and

WHEREAS, The Blackfeet Tribal Business Council has been organized to represent, develop, protect and advance the views, interests, and resources education and resources of the Blackfeet Indian Reservation, and

WHEREAS, Pursuant to the Blackfeet Tribal Constitution and Bylaws, Article VI, Section 1(k), the Blackfeet Tribal Business Council is empowered to promulgate ordinances for the purposes of safeguarding the peace and safety of residents of the Blackfeet Indian Reservation, and to establish minor courts for the adjudication of claims or disputes arising amongst the members of the tribe, and for the trial and punishment of members of the tribe charged with the commission of offenses set for in such ordinances, and

WHEREAS, In 1967, the Blackfeet Tribe adopted and approved the Blackfeet Law and Order Code, and on March 25, 1996, codified "Domestic Abuse" in Chapter 5 Part II Section 5 into the Criminal Offenses in the Blackfeet Law and Order Code, and

WHEREAS, On October 1, 1987 the Blackfeet Tribal Business Council passed Tribal Ordinance #82; the "Domestic Abuse Law," and

WHEREAS, The offense of Domestic Abuse is also defined in Chapter 9 of the current Blackfeet Family Code, and

WHEREAS, The Blackfeet Tribal Business Council recognizes that the three different laws pertaining to Domestic Abuse causes confusion, and the Tribal Council desires to create a singular law pertaining to Domestic Abuse on the Blackfeet Indian Reservation, and

WHEREAS, The Blackfeet Tribal Business Council, the Blackfeet Law and Order Committee, the Chief and Associate Judges for the Blackfeet Tribal Court, the Blackfeet Legal Department, the Prosecutor's Office for the Blackfeet Tribe, the Blackfeet Domestic Violence Program, the Montana Native Women's Coalition, and the Blackfeet Public Defender's Office (Stakeholders) worked together to create a draft law governing Domestic Abuse on the Blackfeet Indian Reservation, and

WHEREAS, The Stakeholders informed the Blackfeet Tribal Business Council that, in addition to increased penalties for abusers and additional protection for victims, that the draft law would enable the Blackfeet Tribe to take advantage of "Enhanced Sentencing Authority"(ESA) pursuant to the Tribal Law and Order Act (TLOA), and enable the Blackfeet Tribe to exercise "Special Domestic Violence Criminal Jurisdiction"(SDVCJ) pursuant to the Violence Against Women's Act (VOWA), and

WHEREAS, The Blackfeet Tribal Business Council is aware that of the 574 Federally Recognized Tribes only five (5) have passed laws opting into the ESA pursuant to TLOA, and the Blackfeet Tribe, aspiring to end Domestic Abuse on the Blackfeet Indian Reservation, desires to be the sixth, now

THEREFORE, BE IT RESOLVED:

Section 1. Repeal. That the Blackfeet Tribal Business Council hereby repeals all former laws, resolutions, excerpts and ordinances enacting any laws pertaining to "Domestic Abuse" of the Blackfeet Law and Order Code, for the Blackfeet Indian Reservation, effective immediately.

Section 2. Replacement and Codification. That the Blackfeet Tribal Business Council hereby adopts the new **"Domestic Abuse Law" (**hereinafter "Chapter 5 Part II Section 11"**)** to be codified in the *Blackfeet Law and Order Code, 1967, as amended*, effectively replacing Chapter 5 Part II Section 5 of the Blackfeet Law and Order Code, Chapter 9 of the Blackfeet Family Code, and Ordinance #82 of the Blackfeet Law and Order Code; to which, said Domestic Abuse Law is further attached and incorporated into this resolution by reference.

Section 3. Severability. If any provisions of Chapter 5 Part II Section 11 or the application thereof to any person, entity or circumstance is held invalid, such invalidity shall not affect any

other provision or applications of Chapter 5 Part II Section 11 and such invalidity shall be severed from the Blackfeet Law and Order Code.

Section 4. Repeal of Conflicting Laws. Chapter 5 Part II Section 11 shall supersede any conflicting Tribal ordinances, resolutions or other Tribal enactments, pertaining to Domestic Abuse on the Blackfeet Indian Reservation, enacted prior to this Resolution.

Section 5. Publication. The Blackfeet Tribal Business Council hereby approves the Domestic Abuse Code "Chapter 5 Part II Section II of the Blackfeet Law and Order Code" attached hereto and incorporated into this Resolution by this reference. After an opportunity for a sixty (60) day public comment the Domestic Abuse Code will be codified into the Blackfeet Law and Order Code, Family Code.

1. A copy of Chapter 5 Part II Section 11 shall be made available by notice in local media, that the Code will be available on the Blackfeet Nation Website- with comments to be made by email; or, by hard-copy from the Legal Department with written comment to be made to the Legal Department.

2. Upon conclusion of the public comment period, the Blackfeet Tribal Business Council will review comments for final approval.

Section 6. Effective Date. Upon the conclusion of the final approval, this law will become immediately effective on the Blackfeet Indian Reservation and the provisions and deterrents established by Chapter 5 Part II Section 11 are in effect moving forward and cannot be applied retroactively; however, the Tribal Court may subject a defendant to a term of imprisonment greater than one (1) year but not to exceed three (3) years for any one (1) offense, or a fine greater than $5,000 but not to exceed $15,000, or both, if the defendant is a person accused of any criminal offense who

1. has been previously convicted of the same or a comparable offense by any jurisdiction in the United States; or

2. is being prosecuted for any offense comparable to an offense that would be punishable by more than one (1) year of imprisonment if prosecuted by the United States or any of the States.

Section 7. Signatory Authority Delegation. The Chairman or the Vice-Chairman in the Chairman's absence and the Secretary of the Blackfeet Tribal Business Council are hereby authorized to sign this Resolution and any other documents to effectuate the purposes of this

ATTEST:

LAUREN J. MONROE, JR.
Secretary

THE BLACKFEET TRIBE OF THE BLACKFEET INDIAN RESERVATION

TIMOTHY F. DAVIS
Chairman

CERTIFICATION

I hereby certify that the foregoing Resolution was adopted by the Blackfeet Tribal Business Council in a duly called noticed and convened General Session assembled for business the 4th day of November, 2021, with Six (6) members present to constitute a quorum and by a vote of Six (6) For, Zero (0) Opposed and Zero (0) Abstained.

LAUREN J. MONROE JR., Secretary
Blackfeet Tribal Business Council

(SEAL)

BLACKFEET DOMESTIC ABUSE CODE
CHAPTER 5, PART II, SECTION 11

NOVEMBER ___, 2021 RESOLUTION NO. _____

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Section 1. Title & Legislative Intent

The Blackfeet Tribe declares that domestic abuse is contrary to the cultural integrity, societal values, and collective health and peace of the Blackfeet People. Therefore, the intent of the Blackfeet Domestic Abuse Code (hereinafter referred to as "Code") is to: (1) recognize that domestic abuse is a serious crime against our society; (2) provide victims of domestic abuse the maximum protection from abuse; (3) provide guidance to those who enforce and interpret the law in the protection of victims, and the prosecution of abusers and; (4) that domestic abuse will not to be excused or tolerated, regardless of the intoxication of the abuser.

It is the intent of this Code for law enforcement officers to file domestic abuse charges based on probable cause that domestic abuse has occurred. Probable cause is based upon the officer's personal observations and report, the victim's statement, statements of others, and/or the report of the examining physician and/or any other healthcare professional(s).

On September 30, 1996 (*Congressional Record*, p. S11878) the United States Congress stated that "*anyone who attempts or threatens violence against a loved one has demonstrated that he or she poses an unacceptable risk, and should be prohibited from possessing firearms.*" The Blackfeet Tribe further declares that the spirit of this Code is to recognize that historically and culturally the Blackfeet People have done what is necessary to protect their family and loved ones from harm.

Section 2. Definitions

A. For purposes of this ordinance, the following definitions shall apply.

1. **"Family Member/Household Member/Intimate Partner"** means spouse, former spouse, person related by marriage, parent, child, sibling, cousin, uncle, aunt, niece, nephew, a person related biologically or recognized as related through Blackfeet Customs and Traditions, a person legally related to the victim, a person who has a child in common with the victim, a person of whom is involved in a romantic or sexual relationship with the victim, a person who resides or formerly resided in the residence, and/or is recognized by the victim as a family member.

2. **"Serious Bodily Injury"** means injury which:

   a. creates a substantial risk of death, or death;

   b. causes serious permanent disfigurement or protracted loss or impairment of the function or process of a bodily member or organ;

   c. is reasonably expected to result in serious permanent disfigurement or protracted loss or impairment of the function or process of a bodily member or organ;

   d. strangulation;

   e. causes bruises, spraining, broken/fractured bones, and/or extreme fear; or

f. serious mental illness or impairment.

3. **"Sex trafficking"** means the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act, in which the commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act.

B. Unless otherwise specified in this Code, all other applicable definitions of Chapter 5 of the Blackfeet Law and Order Code or the Blackfeet Family Code shall be used.

Section 3. Domestic Abuse Offense

A. A person commits the offense of domestic abuse if the person purposely, or knowingly, or recklessly causes one of the following acts to a family member or household member or intimate partner:

1. Causes apprehension, attempts to, or causes bodily injury;

2. Causes apprehension, attempts to, or causes serious bodily injury;

3. Attempts to, or succeeds in manipulation, and/or control, by the following means of:

a. mental or emotional abuse,

b. social media,

c. cellular or telecommunications,

d. threats or promises,

e. destruction of property mutually used by the family or household, regardless of ownership; or

f. withholding of material possessions, financial support, legal support, and/or legal entitlements;

4. Attempts to; or succeeds in coercing or forcing the use of an intoxicating substance;

5. Attempts to, or succeeds in kidnapping or holding hostage against one's will; or,

6. Attempts to or succeeds in coercing or forcing of participation in sex trafficking.

Section 4. Penalties

A. First Offense. A person convicted of a first offense of domestic abuse shall be sentenced for a term of not less than ten (10) days not to exceed one (1) year; and, shall be fined an amount not less than five hundred dollars ($500.00) not to exceed five thousand dollars ($5,000.00).

B. Second Offense. A person convicted of a second offense of domestic abuse shall be imprisoned for a term not less than thirty (30) days not to exceed one (1) year; and, shall be fined an amount not less than six hundred dollars ($600.00) not to exceed five thousand dollars ($5,000.00).

C. Third Offense. A person convicted of a third offense of domestic abuse shall be imprisoned for a term no less than one hundred and eighty (180) days not to exceed two (2) years; and, shall be fined an amount not less than one thousand dollars ($1,000.00) not to exceed ten thousand dollars ($10,000.00).

D. Fourth or Subsequent Offense. A person convicted of a fourth or subsequent offense of domestic abuse shall be imprisoned for a term not less than one (1) year not to exceed three (3) years, and shall be fined an amount not less than five thousand dollars ($5,000.00) not to exceed fifteen thousand dollars ($15,000.00).

E. Maximum Imprisonment Penalty. For sentences issued under one incident or charging document, the total sentence shall not exceed three (3) years and/or a fine of fifteen thousand dollars ($15,000).

1. For sentences issued under more than one incident or charging document, the total sentence shall not exceed nine (9) years and/or a fine of forty-five thousand dollars ($45,000).

F. Criminal History. The Tribal Court may subject a defendant to a term of imprisonment greater than one (1) year but not to exceed three (3) years for any one (1) offense, or a fine greater than $5,000 but not to exceed $15,000, or both, if the defendant is a person accused of any criminal offense who

1. has been previously convicted of the same or a comparable offense by any jurisdiction in the United States; or

2. is being prosecuted for any offense comparable to an offense that would be punishable by more than one (1) year of imprisonment if prosecuted by the United States or any of the States.

G. Counseling. The Blackfeet Tribal Court, in its discretion, may impose counseling as part of the sentence. If the Court requires counseling as part of the sentence, release from said counseling shall mean completion thereof, and such counseling shall include, but is not limited to:

1. Alcohol/Drug/Substance Abuse,

2. Domestic Abuse,

3. Anger Control,

4. Family Counseling, or

5. Cultural or Spiritual.

H. Restitution. As a part of the sentence, restitution for damages to property, and/or the cost of victim counseling shall also be levied as part of the sentencing of Defendant.

I. Firearms. A defendant currently facing a charge under this code will be prohibited from owning, to be in possession, or be within arms-reach of a firearm within the exterior boundaries of the Blackfeet Indian Reservation, if that defendant has previously been convicted of domestic abuse two (2) times prior; or, is convicted of domestic abuse in a case where any of the following circumstances were found to exist:

1. Serious bodily injury,
2. Stalking,
3. Use of a deadly weapon,
4. Sexual intercourse without consent,
5. Sexual assault,
6. Sex trafficking, or
7. Serious credible threat of future harm.

Section 5. Rights of the Defendant when Imprisonment Sought is Greater than One (1) Year

In addition to the rights afforded by the Indian Civil Rights Act (1968), as amended, in a case where a defendant is facing imprisonment greater than one (1) year, the Blackfeet Tribal Court shall:

A. provide to the defendant the right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution;

B. at the expense of the Blackfeet Tribe, provide an indigent defendant the assistance of a defense attorney licensed to practice law by any jurisdiction in the United States that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys;

C. require that the judge presiding over the criminal proceeding:

1. has sufficient legal training to preside over criminal proceedings; and
2. is licensed to practice law by any jurisdiction in the United States;

D. prior to charging the defendant, make publicly available the criminal laws (including regulations and interpretative documents), rules of evidence, and rules of criminal

procedure (including rules governing the recusal of judges in appropriate circumstances) of the Blackfeet Tribe; and

E. maintain a record of the criminal proceeding, including an audio or other recording of the trial proceeding.

Section 6. Conviction Order

A Conviction Order must include the following:

A. the type(s) of domestic abuse the defendant was found guilty of, with reference to the specific conduct of that defendant. Example: "The above named defendant was found guilty of domestic abuse by causing apprehension of bodily injury to a family member or household member by threatening the victim with a firearm."

B. Any record of prior domestic abuse convictions against the defendant at the time of sentencing. Example: "Prior to [date of conviction] the above named defendant had zero (0) convictions of domestic abuse, and as of [date of conviction] the above named defendant has one (1) conviction of domestic abuse.

C. The entire total amount of days of imprisonment and total amount of fines. Example: "The above named defendant having been found guilty of domestic abuse, first offense is hereby sentenced to fifteen (15) days imprisonment, and a $500.00 fine."

D. A Notice that two (2) or more convictions in Tribal, or any other jurisdiction, may be used to establish federal habitual offender status pursuant to18 U.S. Code § 117.

A. The Order may extend, modify, or newly impose an order of protection (or similar appropriate) where good cause exists.

B. Immediately following Judgment without undue delay, the Clerk of Blackfeet Tribal Court must furnish Blackfeet Law Enforcement Services a copy of all orders of conviction in cases of domestic abuse.

C. The Tribal Court Judge may not consider a motion to suspend, defer, or place the Defendant on probation until at least one half of the imprisonment sentence has been served.

Section 7. Law Enforcement

A. Mandatory Arrest. Arrest is the mandatory response in domestic abuse cases which involve: Injury to the victim, use or threatened use of a weapon, violation of a restraining order or court order, or imminent danger to the victim. An arrest warrant shall not be required to make an arrest where probable cause exists, within a reasonable timeframe, that domestic abuse has/had occurred. This mandatory arrest provision means:

1. the victim need not sign a statement for an arrest to occur,

2. the arrest of a suspect may occur at his or her place of residence regardless of time or any other place, upon probable cause the suspect is committing, or has committed domestic abuse, even though the offense did not take place in the presence of a law enforcement officer,

3. a summons of an officer to the home or private dwelling by a victim or other person in the dwelling constitutes as exigent circumstance for making an arrest,

4. under this provision a law enforcement officer shall arrest if probable cause is present, even though it may be against the expressed wishes of the victim, and

5. a law enforcement officer may arrest both parties if the officer has probable cause to believe that both parties have committed the offense of domestic abuse.

B. Notice to the Victim. Whenever a law enforcement officer charges any violation of this Code, the officer shall without delay provide the following notice to the victim upon the availability of the victim.

"IF YOU ARE THE VICTIM OF DOMESTIC ABUSE, the Tribe may pursue criminal charges against your abuser. You have the right to be protected and you have the right to request, from the Blackfeet Tribal Court, any of the following:

1. An order restraining your abuser from abusing you;

2. An order directing your abuser to leave your household;

3. An order preventing your abuser from transferring any property;

4. An order from the court enforcing parenting time with either parent;

5. An order restraining your abuser from bothering or interfering with your parenting time with any minor children;

6. An order directing either party to support any minor children; and

7. Services shall be made available through the Blackfeet Domestic Violence Program; including advocacy, education, shelter care, legal services, support, and help."

C. Emergency Protective Order. The Arresting Officer will issue an Emergency Protective Order (EPO) pursuant to this Code if: (1) the victim desires an EPO; or (2) the Arresting Officer sees a need for an EPO based upon imminent harm to the victim(s) in accordance with the process in the Orders of Protection Section 9.

D. No Arrest. Whenever a law enforcement officer is called to the scene of a reported incident of domestic violence, but does not make an immediate arrest, a written report shall be filed within twenty four (24) hours with the supervisor, and the Tribal Prosecutor's Office, and/or the Family Court Presenting Officer if a minor, setting forth the reason(s) for the decision.

If a warrant is requested, the request shall be made within twenty four (24) hours of the incident.

E. Statistical Reports. In all cases of domestic abuse, the officer involved shall make a written report and the numbers of such cases shall be tabulated by Blackfeet Law Enforcement Services for Quarterly Report, setting forth the numbers of reports of domestic abuse investigations and the number of arrests. The report shall be made available to the Blackfeet Tribal Business Council, the Blackfeet Tribal Court, the Blackfeet Domestic Violence Program, Blackfeet Family Services and the public.

F. Immunity. A law enforcement officer shall not be held liable for any civil action for an arrest if the officer's actions were based on the following: (1) probable cause; (2) enforcement in good faith of a court order; (3) or any other action or omission in good faith.

Section 8. Bond for Cases Involving Domestic Abuse

A. A person arrested for domestic abuse and placed in the custody of a detention facility, will be allowed to post bond determined by the Judge of the Court, after a period of forty-eight (48) hours, as a mandatory "Cooling Off" period.

B. A person arrested for domestic abuse serving a "Cooling Off" period will not be permitted to contact the victim(s) by any means.

C. Bond shall be required in cases of domestic abuse to be determined by the bond schedule.

D. A Defendant charged with violating an EPO or Order of Protection shall not be entitled to a bond until after initial appearance.

E. A Defendant charged with domestic abuse involving serious bodily injury, stalking, use of a deadly weapon, sexual intercourse without consent, sexual assault, sex trafficking, or serious credible threat of future harm shall have a "NO BOND" in place until a bond hearing is held on the matter.

1. A bond hearing must be scheduled within seventy-two (72) hours after the initial appearance of the defendant.

2. Bond shall be set in accordance with the Criminal Procedures of the Blackfeet Law and Order Code in relation to factors appropriate for setting bond.

Section 9. Orders of Protection

A. Emergency Protective Order (EPO). An Emergency Protective Order is an exparte order issued by the Court based upon demonstration of an immediate harm to the victim(s), regardless if a criminal complaint is filed to be addressed at the defendant's first appearance in Court.

B. Issuance of an EPO. An EPO may be requested by electronic means to the Judge in the following situations for the purpose of immediate protection of the victim(s):

1. By a law enforcement officer when called to an incident where the suspect has left the scene; or,

2. By a Prosecutor or Presenting Officer when a complaint is filed by law enforcement or a victim.

3. The Tribal Court Judge shall review the EPO immediately and render a decision to grant the EPO. Upon approval of the EPO, the Judge shall sign the order and set a hearing on the order.

4. The EPO pleadings shall be returned by electronic means to the requesting party and the entire file shall be filed by the Tribal Court Judge with the Clerk of Court as soon as possible.

C. Order of Protection. An Order of Protection may be issued after the defendant has been served and has an opportunity for a hearing. An EPO shall be converted to an Order of Protection once due process has been given to the defendant.

D. Appearance of the Defendant. Upon the defendant appearing at the initial appearance, an Order of Protection may be issued from the bench.

1. The Prosecutor shall present the request for the Order of Protection, or to convert an EPO into an Order of Protection.

2. The Judge shall inquire if there is any objection to the Prosecutor's request.

3. If no objection is given, an Order of Protection will be issued until the disposition of the trial or for a term otherwise necessary if a trial is not held.

4. If an objection is raised, the Court will immediately hear the objection; or, upon request by the Defendant, set a hearing on the objection, to which an Order of Protection will be in place until such hearing.

5. Approved Orders of Protection shall be issued at the conclusion of the hearing to all parties, including Blackfeet Law Enforcement Services on the same day without undue delay.

6. All EPOs and Orders of Protection shall be electronically filed in Court and Law Enforcement databases.

D. Defendant not in Custody. A hearing shall be set on the EPO and the Defendant shall be served either by warrant or summons. The EPO shall be in place until the hearing is held.

E. Long Term Order of Protection. The Prosecutor may make a motion for a long term Order of Protection as a part of the disposition of the criminal case regardless of conviction or

not. The long term Order of Protection shall not exceed twelve (12) months unless extended by the Court.

F. Petition for Order of Protection by a Victim. A victim may Petition for an Order of Protection, with or without the assistance of the Domestic Violence Program. The form for an Order of Protection shall be made available at the Blackfeet Tribal Court, the Domestic Violence Program, Blackfeet Law Enforcement Services and applicable websites.

1. Once a Petition for an Order of Protection is filed, the Judge will make a determination as to whether the victim(s) are likely to suffer immediate harm. Filing fees will not be assessed if domestic abuse by the defendant is sufficiently alleged in the Petition.

2. Upon approval of the Petition by the Judge, an EPO shall be granted and a hearing shall be set on the matter as to why the EPO should not become an Order of Protection.

3. If the judge determines that the Petition lacks sufficient allegations for an EPO, the Judge may dismiss the matter or set a hearing on the Petition.

4. Upon approval of an EPO or Order of Protection due to domestic violence, court costs shall not be assessed to the Petitioner.

5. If either party in an order of protection hearing fails to appear after being properly served, the court may issue a show cause hearing; whereas, the absent party may be found in contempt of court and court costs may be assessed.

G. Violation of an EPO or Order of Protection. Upon probable cause, a law enforcement officer shall take into custody a defendant suspected of violating an EPO or Order of Protection, regardless of whether the defendant was invited by the victim to violate the order, the defendant shall be taken into custody. After the defendant has been taken into custody, the following procedures shall be followed.

1. The EPO or Order of Protection shall be verified from a Law Enforcement Dispatcher, and/or a duly appointed Judge, Clerk of Court, or Prosecutor, with a hard copy to be delivered by electronic means or by delivery of a hard copy to the defendant.

2. If the defendant was not previously served with the EPO or Order of Protection, the Law Enforcement Officer shall immediately serve the defendant with the EPO or Order of Protection, and the defendant shall be released from custody absent any other violations of law.

3. If the defendant was previously served with the EPO or Order of Protection, the Law Enforcement Officer shall arrest, and charge the defendant with the appropriate violation of the law.

H. Automatic EPO or Order of Protection. If the Court determines that an Order of Protection is necessary, based upon the nature of the alleged offense charged or history of the parties,

it shall issue an Order of Protection even if said order is against the expressed wishes of the parties.

1. The Court shall issue an Automatic Order of Protection in cases involving serious bodily injury, stalking, use of a deadly weapon, sexual intercourse without consent, sexual assault, sex trafficking, or serious credible threat of future harm.

2. Automatic Order of Protections may be rebutted by the objection procedures established in this code.