

RESOLUTION NUMBER **TMBC220-03-23** OF THE DULY ELECTED AND CERTIFIED GOVERNING BODY OF THE TURTLE MOUNTAIN BAND OF CHIPPEWA INDIANS

WHEREAS, the Turtle Mountain Band of Chippewa Indians, hereinafter referred to as the Tribe, is an unincorporated Band acting under a revised Constitution and By-Laws approved by the Secretary of the Interior on June 16<sup>th</sup>, 1959 and amendments thereto approved; and

WHEREAS, Article IX (a) Section 1 of the Turtle Mountain Constitution and By-Laws empowers the Tribal Council with the authority to represent the Band and to negotiate with Federal, State, and Local Governments and with private persons; and

WHEREAS, Article IX (a) Section 1 of the Turtle Mountain Constitution and Bylaws requires a 30-day comment period prior to the adoption of any ordinances or amendments to the Tribal Code, whether proposed by resolution or otherwise. Adoption must occur through a roll call vote of the Tribal Council at a publicly held meeting; and

WHEREAS, the Tribe proposes revisions to Title 37 to provide for changes to the Domestic Violence Title to differentiate between crimes of violence and crimes of abuse to ensure the charges are specific because the federal court system ruled our provisions too vague to attach jeopardy; and

WHEREAS, the Tribe, by Resolution No. TMBC112-02-23, approved a 30 day public comment period for proposed revisions to Title 37 of the Domestic Violence Code, and no comments were made; now

THEREFORE BE IT RESOLVED that the Tribe is approving revisions to the Tribal Code, Title 37 Domestic Violence as published in the comment period notice; and

BE IT FURTHER RESOLVED that the Tribal Code will be codified accordingly to insert amendments to Title 37, Domestic Violence.

CERTIFICATION

I, the undersigned Tribal Secretary of the Turtle Mountain Band of Chippewa Indians, do hereby certify that the Tribal Council is composed of **nine (9) members** of whom **seven (7)** constituting a quorum were present at a meeting duly called, convened and held on the on the **23<sup>rd</sup> day of March, 2023** that the foregoing resolution was adopted by an affirmative vote of **six (6) in favor** – Representatives Blaine “Slugger” Davis, Kenneth Malaterre, Craig Lunday, Ron Trottier Sr., Elmer Davis Jr. and Chad Counts; two (2) absent- Representatives Lynn Gourneau and Jon Jon Keplin; none (0) opposed; with the Chairman not voting.

  
Joleen A. Morin, Tribal Secretary **3/28/23**

(  ) SIGNED INTO LAW/Dated this **28** day of **March**, 2023

( ) VETOED/Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2023

  
Jamie Azure, Tribal Chairman

**Title 37.**  
**Proposed Revisions**  
**Domestic Violence Crimes**

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, ~~or~~ sexual abuse or others enumerated in the Tribal Mountain Tribal Code and ~~the Turtle Mountain Domestic Violence Code~~ and set forth in 37.200 (1) "Domestic Assault" and or 37.200.1 "Domestic Abuse" 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.~~
  - a. a spouse;
  - b. a former spouse;
  - ~~a common-law spouse;~~
  - c. domestic partner (as defined in subsection 37.0102.09);
  - d. any persons who have a parent-child or grandparent-child relationship, whether by blood, marriage, or adoption;
  - e. any minor children, by blood, marriage, or adoption, of a parent who is in a relationship that is described in (a) - (e) of this subsection;
  - f. any persons who are siblings by blood, marriage, or adoption;
  - g. any persons who are related by blood, marriage, or adoption within the first degree (cousin, aunt, uncle);
  - h. any persons who are related by blood, marriage, or adoption and the victim is an elder or vulnerable adult;
  - i. any persons who are presently residing together or who have resided together in the past, including emancipated minors; and
  - j. any persons who have a child in common, regardless of whether they are or have been married or have lived together at any time.
9. "DOMESTIC PARTNER" means adults or minors who are ~~dating~~ in a dating relationship (sexual or nonsexual), ~~have dated~~ have been in a dating relationship (sexual or nonsexual) in the past, 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.

**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~~ with the intention to, and reasonably does, place 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:~~
  1. Domestic Assault is any act committed against a spouse or intimate

partner, or against a child of or in the care of the person committing the domestic assault and shall be punished as enumerated in section 37.0300. Such domestic assaults include but are not limited to the crimes defined in the following:

- a. Homicide Offenses, as defined in Title 26, Chapter 26.10 of the Turtle Mountain Tribal Code;
- b. Sexual Offenses, as defined in Title 26, Chapter 26.12 of the Turtle Mountain Tribal Code;
- c. Assault Offenses (Assault, Assault and Battery, Aggravated Assault, and Assault Resulting in Serious Bodily Injury), as defined in Title 26, Chapter 26.13, §26.1304, §26.1305, §26.1305.01, §26.1305.02, §26.1306, and §26.1306.01, of the Turtle Mountain Tribal Code; and or
- d. Kidnapping and abduction, as defined in Title 26, Chapter 26.13, §26.1303 and 26.1301 of the Turtle Mountain Tribal Code;
- e. ~~Abduction.~~

### 37.200.1 Crimes involving "Domestic Abuse."

2. **Domestic Abuse** is any act committed against a spouse or intimate partner, or against a child of or in the care of the person committing the domestic violence. Such domestic abuse includes but are not limited to the crimes defined in the following:
  - a. Weapons Law Violations, as defined in Title 26, Chapter 26.18 of the Turtle Mountain Tribal Code;
  - b. Terrorizing, as defined in Title 26, Chapter 26.1316 of the Turtle Mountain Tribal Code;
  - c. Threats and Intimidation, as defined in Title 26, Chapter 26.13, §26.1311 in the Turtle Mountain Tribal Code;
  - d. Arson, as defined in Title 26, Chapter 26.19, §26.1905;
  - e. Breaking and Entering, as defined in Title 26, Chapter 26.16, §26.1601(2) in the Turtle Mountain Tribal Code;
  - f. Stalking, as defined in Title 26, Chapter 26.13, §26.1317 of the Turtle Mountain Tribal Code;
  - g. Disorderly Conduct, as defined in Title 26, Chapter 26.13, §26.1307 of the Turtle Mountain Tribal Code;
  - h. Harassment, as defined in Title 26, Chapter 26.13, §26.1314 of the Turtle Mountain Tribal Code;
  - i. Destruction of Property (Criminal Damage to Property), as defined in Title 26, Chapter 26.15, §26.1503 of the Turtle Mountain Tribal Code;
  - j. Trespass, as defined in Title 26, Chapter 26.16, §26.1601, §26.1602, and §26.16.01 of the Turtle Mountain Tribal Code;
  - k. Burglary, as defined in Title 26, Chapter 26.14, §26.1402 of the Turtle Mountain Tribal Code; and or
  - l. ~~Vandalism of Property;~~ Criminal damage to property or unauthorized use of a motor vehicle, as defined in Title 26, Chapter 26.15, 26.151503 and Chapter 26.14, 26.1409.
  - m. Stolen Property Offenses;

3. ~~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.~~

### 37.0300 Criminal penalties.

1. First Offense:

- a. Any person who commits an act of ~~domestic violence~~ **domestic assault or domestic abuse** 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~~ **Domestic Assault or Domestic Abuse** 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~~ **Domestic Assault or Domestic Abuse** 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 37.0300(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~~ **Domestic Assault or Domestic Abuse** program and/or counseling as ordered, the Court may suspend up to half of the imposition of fines and/or imprisonment for Domestic Assault or Domestic Abuse 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~~ **Domestic Assault or Domestic Abuse** shall not preclude prosecution for any other offense arising from the same circumstances.
  7. Person convicted of ~~domestic violence~~ **Domestic Assault or Domestic Abuse** shall not be released from custody for community service.
  8. A person convicted of ~~domestic violence~~ **Domestic Assault or Domestic Abuse** 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~~ Domestic Assault or Domestic Abuse shall not be released from custody for holidays.
10. A person convicted of ~~domestic violence~~ Domestic Assault or Domestic Abuse 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~~ Domestic Assault or Domestic Abuse may also be ordered to pay the reasonable costs of the person's prosecution.