

## CHAPTER 63

### STOCKBRIDGE-MUNSEE TRIBAL LAW DOMESTIC ABUSE RESTRAINING ORDER AND INJUNCTION ORDINANCE

#### Section 63.1 Purpose.

The purpose of this ordinance is to provide protection for spouses, family members and community members who have been abused or are facing the threat of abuse. Furthermore, this ordinance is enacted to strengthen and reaffirm the inherent right of the Stockbridge-Munsee Community Indian tribe to regulate the conduct of its members and persons who consent to its jurisdiction by being physically present within the boundaries of the reservation.

This ordinance should be construed liberally to accomplish the above goals and afford the appropriate protection for any person who petitions for a restraining order or injunction under this ordinance.

#### Section 63.2 Definitions.

In this section:

(A) “Domestic abuse” means the occurrence of one or more of the following acts by a family or household member, but does not include the act of self-defense:

- (1) Intentional infliction of physical pain, physical injury or illness.
- (2) Intentional impairment of physical condition.
- (3) A violation of Sec. 940.225 (1), (2) or (3) of the Wisconsin state statutes.
- (4) A threat to engage in the conduct under subsections (1), (2), or (3).

(B) “Family or household member” means

- (1) Adults or minors who are current or former spouses;
- (2) Adults or minors who live together or who have lived together;
- (3) Adults or minors who are dating or who have dated;
- (4) Adults or minors who are engaged in or who have engaged in a sexual relationship;
- (5) Adults or minors who are related by blood or adoption;
- (6) Adults or minors who are related or formerly related by marriage;

(7) Persons who have a child in common; and

(8) Minor children of a person in a relationship that is described in paragraphs (A) through (G)

(9) “Household member” means a person currently or formerly residing in a place of abode with another person.

(C) “Foreign protection order” means any temporary or permanent injunction or order of a civil or criminal court of the United States, of an Indian tribe or of any state issued for preventing abuse, bodily harm, communication, contact, harassment, physical proximity, threatening acts or violence by or to a person, other than support or custody orders.

(D) “Tribal court” means the Stockbridge-Munsee Community Tribal Court.

(E) “Tribal order or injunction” means a temporary restraining order or injunction issued by the Stockbridge-Munsee Tribal Court in accordance with this ordinance.

### **Section 63.3 Commencement of Action and Response**

(A) No action under this section may be commenced by complaint and summons. An action under this section may be commenced only by a petition described under Section 63.7 (A). The action commences with service of the petition upon the respondent if a copy of the petition is filed before service or promptly after service. If the judge or family court commissioner extends the time for a hearing under Section 63.4 (C) and the petitioner files an affidavit with the court stating that personal service by a Stockbridge-Munsee law enforcement officer or a private server under Section 19 of the Stockbridge-Munsee rules of procedure was unsuccessful because the respondent is avoiding service by concealment or otherwise, the petitioner may serve the respondent by publication of the petition in the tribal newspaper and by mailing if the respondent’s post-office address is known or can with due diligence be ascertained. The mailing may be omitted if the post-office address cannot be ascertained with due diligence.

(B) A petition may be filed in conjunction with an action affecting the family commenced under the Stockbridge-Munsee family, domestic or youth codes, but commencement of an action affecting the family or any other action is not necessary for the filing of a petition or the issuance of a temporary restraining order or an injunction. The respondent may respond to the petition either in writing before or at the hearing on the issuance of the injunction or orally at that hearing.

### **Section 63.4 Two-part Procedure**

Procedure for an action under this section is in 2 parts. First, if the petitioner requests a temporary restraining order the court shall issue or refuse to issue that order. Second, the court shall hold a hearing under Section 63.6 on whether to issue an injunction, which is the final relief. If the court issues a temporary restraining order, the order shall set forth the date for the

hearing on an injunction. If the court does not issue a temporary restraining order, the date for the hearing shall be set upon motion by either party.

### **Section 63.5 Temporary Restraining Order.**

(A) A judge or family court commissioner shall issue a temporary restraining order ordering the respondent to refrain from committing acts of domestic abuse against the petitioner, to avoid the petitioner's residence, except as provided in subsection (B), or any premises temporarily occupied by the petitioner or both, or to avoid contacting or causing any person other than a party's attorney to contact the petitioner unless the petitioner consents in writing, or any combination of these remedies requested in the petition, if all of the following occur:

(1) The petitioner submits to the judge or family court commissioner a petition alleging the elements set forth under subsection 63.7 (A).

(2) The judge or family court commissioner finds reasonable grounds to believe that the respondent has engaged in, or based on prior conduct of the petitioner and the respondent may engage in, domestic abuse of the petitioner. In determining whether to issue a temporary restraining order, the judge or family court commissioner shall consider the potential danger posed to the petitioner and the pattern of abusive conduct of the respondent but may not base his or her decision solely on the length of time since the last domestic abuse or the length of time since the relationship ended. The judge or family court commissioner may grant only the remedies requested or approved by the petitioner.

(B) If the petitioner and the respondent are not married, the respondent owns the premises where the petitioner resides and the petitioner has no legal interest in the premises, in lieu of ordering the respondent to avoid the petitioner's residence under subsection (A) the judge or family court commissioner may order the respondent to avoid the premises for a reasonable time until the petitioner relocates and shall order the respondent to avoid the new residence for the duration of the order.

(C) Notice need not be given to the respondent before issuing a temporary restraining order under this subsection. A temporary restraining order may be entered only against the respondent named in the petition.

(D) The temporary restraining order is in effect until a hearing is held on issuance of an injunction under Section 63.6. The temporary restraining order is not voided if the respondent is admitted into a dwelling that the order directs him or her to avoid. A judge or family court commissioner shall hold a hearing on issuance of an injunction within 7 days after the temporary restraining order is issued, unless the time is extended upon the written consent of the parties or extended once for 14 days upon a finding that the respondent has not been served with a copy of the temporary restraining order although the petitioner has exercised due diligence.

(E) The judge or court commissioner shall advise the petitioner of the right to serve the respondent the petition by published notice if with due diligence the respondent cannot be served as provided under Section 19 of the Stockbridge-Munsee Court procedures. The clerk of court shall assist the petitioner with the preparation of the notice and filing of the affidavit of printing.

### **Section 63.6 Injunction.**

(A) A judge or family court commissioner may grant an injunction ordering the respondent to refrain from committing acts of domestic abuse against the petitioner, to avoid the petitioner's residence, except as provided in subsection (B), or any premises temporarily occupied by the petitioner or both, or to avoid contacting or causing any person other than a party's attorney to contact the petitioner unless the petitioner consents to that contact in writing, or any combination of these remedies requested in the petition, if all of the following occur:

(1) The petitioner files a petition alleging the elements set forth under Section 63.7 (A).

(2) The petitioner serves upon the respondent a copy of the petition and notice of the time for hearing on the issuance of the injunction, or the respondent serves upon the petitioner notice of the time for hearing on the issuance of the injunction.

(3) After hearing, the judge or family court commissioner finds reasonable grounds to believe that the respondent has engaged in, or based upon prior conduct of the petitioner and the respondent may engage in, domestic abuse of the petitioner. In determining whether to issue an injunction, the judge or family court commissioner shall consider the potential danger posed to the petitioner and the pattern of abusive conduct of the respondent but may not base his or her decision solely on the length of time since the last domestic abuse or the length of time since the relationship ended. The judge or family court commissioner may grant only the remedies requested by the petitioner.

(B) If the petitioner and the respondent are not married, the respondent owns the premises where the petitioner resides and the petitioner has no legal interest in the premises, in lieu of ordering the respondent to avoid the petitioner's residence under subsection (A) the judge or family court commissioner may order the respondent to avoid the premises for a reasonable time until the petitioner relocates and shall order the respondent to avoid the new residence for the duration of the order.

(C) The judge or family court commissioner may enter an injunction only against the respondent named in the petition. No injunction may be issued under this subsection under the same case number against the person petitioning for the injunction. The judge or family court commissioner may not modify an order restraining the respondent based solely on the request of the respondent.

(D) (1) An injunction under this subsection is effective according to its terms, for the period of time that the petitioner requests, but not more than 5 years. An injunction granted under this subsection is not voided by the admittance of the respondent into a dwelling that the injunction directs him or her to avoid.

(2) When an injunction granted for less than 5 years expires, the court shall extend the injunction if the petitioner states that an extension is necessary to protect him or her. This extension shall remain in effect until 5 years after the date the court first entered the injunction.

(3) Notice need not be given to the respondent before extending an injunction under subsection (2). The petitioner shall notify the respondent after the court extends an injunction under subsection (2).

### **Section 63.7 Petition.**

(A) The petition shall allege facts sufficient to show the following:

(1) The name of the petitioner and that the petitioner is the alleged victim.

(2) The name of the respondent and that the respondent is an adult.

(3) That the respondent engaged in, or based on prior conduct of the petitioner and the respondent may engage in, domestic abuse of the petitioner.

(B) The petition shall request that the respondent be restrained from committing acts of domestic abuse against the petitioner, that the respondent be ordered to avoid the petitioner's residence, or that the respondent be ordered to avoid contacting the petitioner or causing any person other than the respondent's attorney to contact the petitioner unless the petitioner consents to the contact in writing, or any combination of these requests.

(C) The clerk of tribal court shall provide the simplified forms to help a person file a petition.

(D) A judge or family court commissioner shall accept any legible petition for a temporary restraining order or injunction.

**Section 63.8 Enforcement Assistance.**

(A) If an order is issued under this section, upon request by the petitioner the court or family court commissioner shall order a tribal law enforcement officer to accompany the petitioner and assist in placing him or her in physical possession of his or her residence or to otherwise assist in executing or serving the temporary restraining order or injunction. The petitioner may, at the petitioner's expense, use a private process server to serve papers on the respondent.

(B) Within 24 hours after request by the petitioner, the clerk of the circuit court shall send an authenticated copy of any order issued or provide notice of any order extended under this section to the Stockbridge-Munsee Chief of Police, the county sheriff and the Shawano County Circuit Court clerk; or to any other local law enforcement agency which is the central repository for orders and which has jurisdiction over the petitioner's premises.

(C) Stockbridge-Munsee law enforcement officers shall make available to other law enforcement agencies, through a verification system, information on the existence and status of any order issued under this section. The information need not be maintained after the order is no longer in effect.

**Section 63.9 Enforcement.**

(A) Tribal court orders and injunctions issued under this ordinance will be enforced in accordance with section 813.12 (7) and (8) of the Wisconsin state statutes.

(B) In addition, Stockbridge-Munsee Community law enforcement officers may issue citations in accordance with Section 63.11 if the officer has probable cause to believe that a violation of a tribal court order or injunction has occurred.

(C) The deposit for any citation issued under (B) shall be \$200.00.

**Section 63.10 Transcripts.**

The judge or family court commissioner shall record the temporary restraining order or injunction hearing upon the request of the petitioner.

**Section 63.11 Penalty.**

(A) Whoever knowingly violates any of the following shall be fined not more than \$1,000:

(1) A temporary restraining order or injunction issued under Sections 63.5 or 63.6.

(2) A tribal order or injunction that is filed with a circuit court; or

(3) A foreign protection order.

(B) The petitioner does not violate the court order under Sections 63.5 and 63.6, if he or she admits into his or her residence a person ordered to avoid that residence under those sections.

**Section 63.12 Enforcement of Tribal Orders and Injunctions.**

(A) The Tribal clerk of court is authorized to certify and authenticate any copy of an order or injunction issued pursuant to this ordinance by attesting to the authenticity of the document and stamping the document as follows:

I, [name of tribal court clerk], Clerk of the Stockbridge-Munsee Tribal Court, do hereby certify that the foregoing is a true, correct and complete copy of the instrument herewith set out as appears on the file and of record in my said office.

Dated this \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

/s/

Clerk, Stockbridge-Munsee Tribal Court

(B) A copy of a tribal court injunction or order issued pursuant to this ordinance is considered authenticated when the procedures in subsection (A) have been followed and completed.

**LEGISLATIVE HISTORY**

Domestic Abuse Restraining Orders and Injunctions Ordinance adopted by Tribal Council by Resolution #069-96 on September 3, 1996.