

**Lac Vieux Desert Band of Lake Superior Chippewa Indians
Domestic Violence Code**

**Approved by TC Resolution No 2012-017
On March 12, 2012**

Chapter 1

1.1 General Provisions; Policy and Purpose

(a) The purpose of this Code is to protect the health, safety and welfare of the Lac Vieux Desert Band of Lake Superior Chippewa Indians tribal community, by preventing acts of domestic violence, affording victims of domestic violence maximum assistance, safety and support, and holding perpetrators of domestic violence accountable for their actions and for changing their behavior.

1.2 Liability of Law Enforcement Officers

(a) A law enforcement officer shall not be held liable in any civil or criminal action for an arrest based on probable cause, enforcement of any court order, or any other act or omission arising from an alleged domestic violence crime, if the officer acts in good faith and upon the best information so as to provide protection for victims of domestic violence and to carry out the purposes of this Code.

1.3 Court Orders

(a) Restraint provisions contained in orders entered under this Code and duly enacted Court Rules, and comparable provisions contained in orders accorded full faith and credit by the Tribal Court shall govern conduct both on and off the reservation.

1.4 Time Computation

(a) In computing any period of time prescribed or allowed by this Code, the rules detailed within Section 1.4 of the LVD Court Rules shall govern.

1.5 Liberal Construction

(a) The provisions of this Code shall be liberally construed in order to further the purpose stated in Section 1.1 of this Code.

1.6 Repealer

(a) This Code is to be interpreted to supersede and replace any conflicting provisions of all prior Codes and laws of the Band in regards to the offenses detailed within this Code.

Chapter 2

2.1 Definitions

(a) "Abuse" means:

- (1) Intentionally or recklessly or negligently causing or attempting to cause physical harm or mental anguish to another person; or

(2) Threatening or placing another person in reasonable apprehension of imminent serious physical injury.

(b) "Advocate" means a person who is employed to provide services to victims of domestic violence and/or sexual assault.

(c) "Court" means the Lac Vieux Desert Tribal Court.

(d) "Dating Relationship" means: a social relationship of a romantic nature. In determining whether parties have a "dating relationship," the Court shall consider:

(1) The length of time the relationship has existed;

(2) The nature of the relationship;

(3) The frequency of the interaction between the parties.

(4) Any other information that is relevant and helpful to the Court in making a determination of whether the parties have a "dating relationship."

(e) "Domestic Violence" means:

(1) Engaging in any of the following acts against family or household members or persons in a dating relationship:

(A) Attempting to cause or causing physical harm;

(B) Attempting to cause or causing injury to a pet or property damage;

(C) Attempting to cause or causing a family or household member to engage involuntarily in sexual activity by force, threats or duress;

(D) Inflicting injury to household pets, reasonable fear of physical harm, sexual assault, or property damage;

(E) Stalking, as defined in this code at Section 2.1(p);

(2) All crimes involving threats, violence, assault and/or physical or sexual abuse against adults, children, or the elderly, may be charged as domestic violence and those crimes listed under the Major Crimes Act, 18 U.S.C. § 1153.

(3) Any act of self-defense or self-defense of another reasonably taken in response to an act of domestic violence shall not be considered a crime of domestic violence.

(f) "Essential Personal Effects" means those items necessary for a person's immediate health, welfare and livelihood, such as clothing, cribs, bedding, medications, personal documentation, personal hygiene items and tools of trade.

(g) "Family or Household Member" Includes:

(1) Spouses;

(2) Former spouses;

(3) Persons who have a child in common or who are expecting a child in common, regardless of whether they have been married or lived together at any time;

(4) Persons eighteen (18) years of age or older who are related by blood or marriage;

(5) Persons eighteen (18) years of age or older who are presently residing together or who have resided together in the past;

(6) Person who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren;

(7) Physically or mentally disabled persons and their caregivers residing in the household;

(8) Elders fifty-five (55) years of age or older and their caregivers residing the household;

(9) Minor children of a person in a relationship described in (1) through (8) above; or

(10) Vulnerable adults residing in the household, including adults unable to protect themselves from abuse, neglect, or exploitation.

(h) "Harassment" means conduct directed toward a victim/minor victim that includes, but is not limited to, repeated or continuing unconsented contact that would cause a reasonable individual to suffer emotional distress and that actually causes the victim/minor victim to suffer emotional distress.

(i) "Law Enforcement" means the Lac Vieux Desert Tribal Police Department or other applicable police department.

(j) "Minor" means any unmarried person who is less than eighteen (18) years of age, and has not been emancipated by order of a court of competent jurisdiction, or a person who is eighteen (18) years of age, but remains under the continuing jurisdiction of the court.

(k) "Next Friend" means any legally competent adult that petitions or represents a minor in proceedings under this Code.

(l) "Prosecutor" means the Lac Vieux Desert Tribal Prosecutor or any other person authorized by the Tribe to perform the duties of the prosecutor for the purpose of this Code.

(m) "Protection Order" means:

(1) A court order granted for the protection of victims of domestic violence;

(2) A restraining order of which the defendant has received actual notice;

(3) An injunction;

(4) A preliminary injunction;

(5) A condition of probation, pretrial release, release on bond pending appeal or parole.

(n) "Reservation" means all territory within the exterior boundaries of any and all lands held in Trust for the Lac Vieux Desert Band of Lake Superior Chippewa Indians by the United States.

(o) "Restitution" means repayment to a victim of domestic violence including but not limited to property damage, moving expenses, medical expenses related to the incident of domestic violence, or loss of earnings or support.

(p) "Stalking" means a willful course of conduct involving repeated or continuing harassment of another individual or minor that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested and that actually causes the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

(q) "Tribal Court" means the Tribal Court of the Lac Vieux Desert Band of Lake Superior Chippewa Indians as established by Article V of the Lac Vieux Desert Band Constitution.

(r) "Tribe" or "Tribal" refers to the Lac Vieux Desert Band of Lake Superior Chippewa Indians.

(s) "Victim" means a family or household member, or one with whom a dating relationship exists, who has been subjected to domestic violence.

(t) "Unconsented contact" means any contact with another individual that is initiated or continued without that individual's consent or in disregard of that individual's expressed desire that the contact be avoided or discontinued. Unconsented contact includes, but is not limited to, the following:

(1) Following the other person;

(2) Approaching or confronting that individual in a public place or on private property;

(3) Appearing at the individual's work place, school, or residence;

(4) Entering onto or remaining on property owned, leased, or occupied by that individual;

(5) Contacting that individual by telephone;

(6) Sending mail or electronic communications to the individual; or

(7) Placing an object on, or delivering an object to, property owned, leased, or occupied by that individual.

2.2 Act of Domestic Violence

(a) A person commits the crime of domestic violence when:

(1) The person engages in any of the acts outlined within this Code against a family or household members or person in a dating relationship as defined in 2.1(d).

(b) First offense: Any person who commits a crime of domestic violence with no prior conviction of domestic violence in any jurisdiction shall be deemed guilty of the first offense of domestic violence. A person convicted of a first offense of domestic violence shall be imprisoned, for a term of not less than three (3) days or more than one (1) year and shall be fined an amount not less than one hundred dollars (\$100.) or more than five thousand dollars (\$1,000.). A domestic violence assessment and a requirement that the defendant follows through with the recommendations made in the assessment shall be part of sentencing, when available, as well as restitution, when appropriate.

(c) Second offense: A person convicted of a second offense of domestic violence shall be imprisoned for a term of not less than thirty (30) days or more than one (1) year and fined an amount not less than five hundred dollars (\$500.) or more than five thousand dollars (\$5,000.). Mandatory counseling shall be part of sentencing, when available, as well as restitution when appropriate.

(d) Third and subsequent offenses: A person convicted of a third or subsequent offense of domestic violence shall be imprisoned for a term of not less than ninety (90) days or more than one (1) year and fined an amount not less than one thousand dollars (\$1,000.) or more than five thousand dollars (\$5,000.). Mandatory counseling shall be part of the sentencing, when available, as well as restitution when appropriate.

(e) Availability of deferral of sentence for first offenders.

(1) When an individual who has not been convicted previously of an assaultive crime pleads guilty to, or is found guilty of, a violation of Section Eleven and Section 2-62-5 of the Tribal Criminal Code and the victim of the assault is the offender's spouse or former spouse, an individual who has had a child in common with the offender, an individual who has or has had a dating relationship with the offender, or an individual residing or having resided in the same household as the offender, the court, without entering a judgment of guilt and with the consent of the accused and of the prosecuting attorney in consultation with the victim, may defer further proceedings and place the accused on probation as provided in this Section. However, before deferring proceedings under this Subsection, the court shall contact any resource that may have knowledge that the accused has previously been convicted of an assaultive crime or has previously availed himself or herself of this Section. If the search of the records reveals an arrest for an assaultive crime but no disposition, the court shall contact the arresting agency and the court that had jurisdiction over the violation to determine the disposition of that arrest for purpose of this Section.

(2) Upon a violation of a term or condition of probation, the court may enter an adjudication of guilt and proceed as otherwise provided in this Section.

(3) An order of probation entered under this Code may include any condition of probation authorized by the Tribal Court, including, but not limited to, requiring the accused to participate in a mandatory counseling program. The court may order the accused to pay the reasonable costs of the mandatory counseling program. The court also may order the accused to participate in drug court or domestic violence court, when available. The court may order the defendant to be imprisoned for not more than twelve (12) months at the time or intervals, which may be consecutive or nonconsecutive and within the period of probation, as the court determines. However, the period of imprisonment shall not exceed the maximum period of imprisonment authorized for the offense if the maximum period is less than twelve (12) months.

(4) The court shall enter an adjudication of guilt and proceed as otherwise provided in this Code if any of the following circumstances exist:

(A) The accused commits an assaultive crime during the period of probation;

(B) The accused violates an order of the court that he or she receive counseling regarding his or her violent behavior;

(C) The accused violates an order of the court that he or she not have contact with a named individual.

(f) For second and subsequent convictions: The Court may suspend up to half of the imposition of fines and imprisonment for domestic violence offense(s) on the condition that the perpetrator is placed on probation for not less than one (1) year and completes domestic violence counseling or treatment as ordered. Failure to comply with terms of probation shall result in the completion of the original sentence.

(g) Revenue from fines: Revenue from fines may be used to help defray the costs of services required under this Code for defendants who demonstrate that they are unable to afford mandatory services.

2.3 Domestic Violence Without A Weapon / Aggravated Domestic Violence

(a) Any person who commits an act of domestic violence without a weapon, and inflicts serious or aggravated injury upon that person, but did not intend to commit murder or inflict great bodily harm less than murder has committed the crime of aggravated domestic violence.

(b) Sentence for aggravated domestic violence: a person convicted of aggravated domestic violence shall be imprisoned for a term of not less than ninety (90) days or more than one (1) year and fined no less than one thousand dollars (\$1,000.) or more than five thousand dollars (\$5,000.). Mandatory counseling shall be a part of the sentencing as well as restitution when appropriate.

2.4 Violation of a Domestic Violence Restraining Order

(a) Any person who violates a restraint provision contained in an order entered under this Code, or of a comparable provision of an order accorded full faith and credit by the court, of which the person had actual notice prior to the time of the alleged violation, has committed the crime of violating a domestic violence restraining order.

(b) For the purposes of this Code, violation of a domestic violence restraining order shall be considered a crime of domestic violence.

(c) Penalty: Depending on the circumstances, violation of a restraining order or PPO may subject a respondent to immediate arrest and to the civil and criminal contempt powers of the court, which may include up to ninety (90) days' imprisonment and/or a fine up to five hundred dollars (\$500).

2.5 Interfering With Reporting of Domestic Violence

(a) Any person who prevents or attempts to prevent a victim of domestic violence or a witness to an act of domestic violence from calling 911 emergency communication systems, obtaining medical assistance or making a report to any tribal, state or federal law enforcement official, has committed the crime of interfering with the reporting of domestic violence.

(b) Penalty: The penalty for interfering with a report of domestic violence will be up to ninety (90) days imprisonment and/or up to a five hundred dollar (\$500.) fine.

2.6 Assaulting Domestic Violence Staff

(a) Any written or verbal threat or any other assault upon a person acting in an official or professional capacity in the protection of victims of domestic violence shall be considered an assault of the most serious nature and punishable by tribal law.

(b) Penalty: The penalty for assaulting a domestic violence staff person will be up to one (1) year imprisonment, and/or a one thousand dollar (\$1,000.) fine.

Chapter 3

3.1 Stalking: Crime of Stalking and Sentencing

(a) A person commits the crime of stalking if, without lawful authority:

(1) The person willfully and repeatedly engages in unwanted contact with another person, either directly or indirectly; and

(2) The person receiving the unwanted contact is intimidated, alarmed, emotionally distressed, or placed in fear that the stalker intends to injure the person or property of the person or of another person and the feeling of intimidation, alarm, emotional distress or fear is one that a reasonable person in the victim's situation would experience under the circumstances; and

(3) The stalker either:

(A) Intends to frighten, intimidate, alarm or emotionally distress the other person; or

(B) Knows or reasonably should know that the other person being followed is frightened, intimidated, alarmed or emotionally distressed, even if the stalker did not intend such a result.

(b) "Contact" includes, but is not limited to:

- (1) Coming into and remaining in the visual or physical presence of the other person;
- (2) Following the other person;
- (3) Waiting outside the home, property, place of work or school of the other person or of a member of that person's family or household;
- (4) Sending or making written communication in any form to the other person;
- (5) Speaking with the other person by any means;
- (6) Communicating with the person through a third person;
- (7) Committing a crime against the other person;
- (8) Communicating with a third person who has some relationship to the other person with the intent of affecting the third person's relationship with the other person;
- (9) Communicating with business entities with the intent of affecting some right or interest of the other person;
- (10) Damaging the other person's home, property, place of work or school; or
- (11) Delivering directly or through a third person any object to the home, property, place of work, or school of the other person.

(c) Penalty: Stalking will result in up to one (1) year imprisonment and/or up to a one thousand dollar (\$1,000.) fine.

3.2 Stalking a minor

(a) A person commits the crime of stalking a minor if, without lawful authority:

- (1) The person willfully and repeatedly engages in unwanted contact with a minor, either directly or indirectly; and
- (2) The minor receiving the unwanted contact is intimidated, alarmed, emotionally distressed, or placed in fear; the stalker intends to injure the person or property of the person or of another person and the feeling of intimidation, alarm, emotional distress or fear is one that a reasonable person in the victim's situation would experience under all the circumstances; and
- (3) The stalker either:
 - (A) Intends to frighten, intimidate, alarm or emotionally distress the minor; or

(B) Knows or reasonably should know that the minor being followed is frightened, intimidated, alarmed or emotionally distressed, even if the stalker did not intend such a result.

(b) Penalty: Stalking of a minor shall result in not less than ninety (90) days' imprisonment, but no more than a year's imprisonment and/or up to a five thousand dollar (\$5,000.) fine.

3.3 Aggravated Stalking

(a) An individual who engages in stalking is guilty of aggravated stalking if the violation involves any of the following circumstances:

- (1) At least one (1) of the actions constituting the offense is in violation of a restraining order and the individual has received actual notice of that restraining order or at least one (1) of the actions is in violation of an injunction or preliminary injunction.
- (2) At least one (1) of the actions constituting the offense is in violation of a condition of probation, a condition of parole, a condition of pretrial release, or a condition of release on bond pending appeal.
- (3) The course of conduct includes the making of one (1) or more credible threats against the victim, a member of the victim's family, or another individual living in the same household as the victim.
- (4) The individual has been previously convicted of a violation of this Code.

(b) The Tribal Court may place an individual convicted of violating this Section on probation for any term of years, accordingly. If a term of probation is offered, the court may, in addition to any other lawful condition of probation, order the defendant to do any of the following:

- (1) Refrain from stalking any individual during the term of probation;
- (2) Refrain from any contact with the victim of the offense;
- (3) Be evaluated to determine the need for psychiatric, psychological, or social counseling and, if determined appropriate by the court, to receive psychiatric, psychological, or social counseling at his or her own expense.

(c) In a prosecution for a violation of this Section, evidence that the defendant continued to engage in a course of conduct involving repeated unconsented contact with the victim after having been requested by the victim to discontinue the same or a different form of unconsented contact, and to refrain from any further unconsented contact with the victim, gives rise to a rebuttable presumption that the continuation of the course of conduct caused the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

(d) Penalty: Penalty for aggravated domestic violence shall result in no less than ninety (90) days' imprisonment, but no more than one year's imprisonment and/or up to a five thousand dollar (\$5,000.) fine.

(e) A criminal penalty provided for under this section may be imposed in addition to any penalty that may be imposed for any other criminal offense arising from the same conduct or for contempt of court arising from the same conduct.

3.4 Aggravated Stalking of a Minor

(a) An individual who engages in stalking a minor is guilty of aggravated stalking of a minor if the violation involves any of the following circumstances:

(1) At least one (1) of the actions constituting the offense is in violation of a restraining order and the individual has received actual notice of that restraining order or at least one (1) of the actions is in violation of an injunction or preliminary injunction;

(2) At least one (1) of the actions constituting the offense is in violation of a condition of probation, a condition of parole, a condition of pretrial release, or a condition of release on bond pending appeal;

(3) The course of conduct includes the making of one (1) or more credible threats against the minor victim, a member of the minor victim's family, or another individual living in the same household as the minor victim;

(4) The individual has been previously convicted of a violation of this Code.

(b) The Tribal Court may place an individual convicted of violating this Section on probation for any term of years, accordingly. If a term of probation is offered, the court may, in addition to any other lawful condition of probation, order the defendant to do any of the following:

(1) Refrain from stalking any individual during the term of probation;

(2) Refrain from any contact with the minor victim of the offense;

(3) Be evaluated to determine the need for psychiatric, psychological, or social counseling and, if determined appropriate by the court, to receive psychiatric, psychological, or social counseling at his or her own expense.

(c) In a prosecution for a violation of this Section, evidence that the defendant continued to engage in a course of conduct involving repeated unconsented contact with the minor victim after having been requested by the minor victim/minor victim's parent(s)/caregiver to discontinue the same or a different form of unconsented contact, and to refrain from any further unconsented contact with the minor victim, gives rise to a rebuttable presumption that the continuation of the course of conduct caused the minor victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

(d) Penalty: Penalty of aggravated stalking of a minor shall result in not less than one hundred eighty (180) days' imprisonment, but no more than one (1) year's imprisonment and/or up to a five thousand dollar (\$5,000.) fine.

(e) A criminal penalty provided for under this Section may be imposed in addition to any penalty that may be imposed for any other criminal offense arising from the same conduct or for contempt of court arising from the same conduct.

3.5 Use or Possession of a Dangerous Weapon

A person who engages in conduct proscribed under sections 2.3 through 2.5 and who, in the course of engaging in that conduct, possesses a dangerous weapon or an article used or fashioned in a manner to lead any person present to reasonably believe the article is a dangerous weapon, or who represents orally or otherwise that he or she is in possession of a dangerous weapon, is guilty of a crime. If an aggravated assault or serious injury is inflicted by any person while violating this section, the person shall be turned over to federal authority for felony punishment.

3.6 Stalking to be treated as Domestic Violence Crime

All provisions, mandates, and definitions as stated in this Code shall be equally applied and enforced with regards to the crime of stalking as to the crime of domestic violence. The crime of stalking is not limited to family or household members or to persons in a dating relationship.

3.7 Location of Stalking Perpetrator Not Bar to Prosecution

(a) The location of the threatening action by a stalking perpetrator, either directly or through a third party, as corroborated through computer or telephone records, postmarks, or order/delivery records, and/or witnesses as being outside the boundaries of the LVD Reservation, will not bar prosecution under this Section. The act is considered to be a credible threat when full transmittal of the threat has been completed to the victim, when said victim is within the LVD Reservation.

(b) Corroborated initial or intervening acts, used to establish a pattern of conduct for the purpose of probable cause under this Section, but which occurred outside the boundaries of the LVD Reservation, may be used to establish and corroborate said pattern for prosecution of a violation under this Section. However, initial or intervening acts occurring outside the boundaries of the LVD Reservation are not prosecutable as separate offenses under this section.

(c) The present incarceration of the person making the threat shall not bar prosecution under this Section.

Chapter 4

4.1 Law Enforcement Authority; Entering a Residence without a Warrant

(a) A law enforcement officer need not obtain a search warrant to enter a residence where he or she has probable cause to believe a crime of domestic violence is occurring or has just occurred.

(b) When law enforcement responds to 911 or another emergency phone call or to any credible report alleging that domestic violence may be taking place in a residence, the officer may enter the home without a warrant if the officer reasonably believes entering the home is necessary to assure the safety of any potential victim of domestic violence.

4.2 Seize and Hold Weapons and/or Firearms

- (a) Law enforcement officers shall seize all weapons that are alleged to have been involved or were threatened to be used in a domestic violence crime and any weapon in the vicinity of the alleged commission of the offense.
- (b) A law enforcement officer may seize a weapon that is in plain view of the officer or was discovered pursuant to a lawful search as necessary for the protection of the officer or other persons.
- (c) Law enforcement officers are authorized to confiscate weapons and/or firearms from, or accept and hold weapons and/or firearms for a person who is prohibited from possessing or using them.

4.3 Mandatory Arrest

- (a) A law enforcement officer who has probable cause to believe that a person has committed a domestic violence crime within the past four (4) hours shall, without a warrant, arrest the alleged perpetrator. A law enforcement officer shall arrest an alleged perpetrator of domestic violence whether or not the victim signs a complaint and whether or not the arrest is against the express wishes of the victim.
- (b) A person arrested for a domestic violence crime shall not be released from detention until seventy-two (72) hours after arrest unless a court hearing is held prior to the expiration of the seventy-two (72) hour period.
- (c) Law enforcement officers of the Band will follow all jurisdictional guidelines when dealing with a domestic violence situation. If the officer cannot arrest due to lack of jurisdiction, the appropriate authority will be notified of the situation for immediate action.
- (d) The officer will not make dual arrests unless probable cause determines both parties were assaulting each other equally or a determination cannot be made as to who was the primary assaulting party.
- (e) The officer will not subject a victim to a lie-detector test.

4.4 Mandatory Arrest for Violation of Protection Order

(a) When a law enforcement officer has probable cause to believe that a respondent has violated one of the following orders of the Tribal Court or of any other court order entitled to full faith and credit under this Code, the officer shall, without a warrant, arrest the alleged violator. Arrest shall be mandatory where the violation is of one of the following:

- (1) An order not to commit or threaten to commit further acts of domestic violence;
- (2) An order not to contact, harass, annoy, telephone, or otherwise communicate, directly or indirectly, with the alleged victim, the alleged victim's family or household members, or any witness to the alleged act of domestic violence;
- (3) An order to vacate, or stay away from the victim's residence;

(4) An order to stay away from any well-defined geographic area, including, but not limited to, a residence, workplace, school or daycare of the alleged victim, the alleged victim's family or household members, or any witness to the alleged act of domestic violence;

(5) An order prohibiting the possession or use of any firearm or other weapon specified by the court, and to turn such weapon over to law enforcement for safekeeping.

(b) A person arrested for violation of a protection order shall not be released from detention until seventy-two (72) hours after arrest unless a court hearing is held prior to expiration of the seventy-two (72) hour period.

4.5 Cross Complaints of Domestic Violence. If a law enforcement officer receives a complaint alleging domestic violence from two (2) or more opposing persons, the officer shall evaluate each complaint separately to determine who was more likely to have been the primary aggressor. If the law enforcement officer determines that one (1) person was the primary aggressor, the officer need not arrest the other person alleged to have committed a domestic violence crime. In determining whether one (1) party was the primary aggressor, the officer shall consider:

(a) The history of domestic violence, both documented prior complaints and convictions and the officer's own prior knowledge of the family;

(b) The comparative demeanor of the parties involved and the relative severity of the injuries inflicted on each person;

(c) The likelihood of future injury to each person;

(d) Whether one (1) person acted in self-defense or in defense of others;

(e) The degree which one (1) of the persons has acted with a more deliberate intent to control, isolate, intimidate, emotionally demean, cause injury or pain or fear of harm to the person or third party.

4.6 Notice of Escape or Release

(a) Upon the escape from custody of a person arrested for, charged with, or convicted of a criminal offense under this Code, law enforcement shall make reasonable efforts to immediately notify the victim of the crime, the victim's advocate, the Court and the Prosecutor.

(b) When a person who was convicted of a criminal offense under this Code is scheduled to be released from custody, law enforcement shall make reasonable efforts to notify the victim and/or victim's advocate prior to, or upon release of, the person from custody.

(c) If a person who was convicted of a criminal offense under this Code is scheduled for early release, law enforcement shall make reasonable efforts to notify the victim of the crime, the victim's advocate, the Court and the Prosecutor prior to such release.

Chapter 5

5.1 Pre-trial Release; Considerations for Pre-trial Release. In determining whether to order release of a person lawfully arrested for a domestic violence crime, and, if so, under what conditions, the court shall, in addition to any applicable Court Orders, consider:

- (a) The likelihood that the defendant will appear for further criminal proceedings;
- (b) The nature and severity of the offense;
- (c) The likelihood that the defendant will commit a violent crime, seek to intimidate a witness, or unlawfully interfere with the administration of justice;
- (d) The criminal history of the defendant, with particular emphasis on prior acts of domestic violence and other assaultive crimes.

5.2 Conditions for Pre-trial Release. If the court finds that the defendant should be released pending further criminal proceedings, the court may impose one (1) or more of the following conditions of release:

- (a) Posting of bond in an amount deemed adequate to guarantee the appearance of the defendant throughout the criminal proceedings;
- (b) Postponing release until after a further "cooling off" period not to exceed one hundred and twenty (120) hours;
- (c) An order to commit no further acts of domestic violence or exhibit any assaultive behavior;
- (d) An order not to contact, harass, annoy, telephone, or otherwise communicate, directly or indirectly, with the alleged victim, the alleged victim's family or household members, or any witness to the alleged act of domestic violence, except that essential contact may be made through application to the court;
- (e) An order to vacate, or stay away from the victim's residence, even if it is a shared residence or principally owned by the alleged perpetrator;
- (f) An order to stay away from any well-defined geographic area, including, but not limited to, residence, workplace, school or daycare of the alleged victim, the alleged victim's family or household members, or any witness to the alleged act of domestic violence;
- (g) An order prohibiting the possession or use of any firearm or other weapon specified by the court, and to turn such weapon over to law enforcement for safekeeping;
- (h) An order prohibiting the person from possessing or consuming alcohol or controlled substances and from being at any place where alcohol is served or being consumed. The court may order physical, mechanical, chemical or electronic testing to assure compliance;

(i) Any other order the court believes is reasonably necessary to protect and ensure the safety of the alleged victim or family or household member, or to ensure the appearance of the person at subsequent court proceedings.

5.3 Notifying the Defendant of Pre-trial Release Conditions

(a) When pre-trial release conditions are imposed on an alleged perpetrator, the court shall issue a written order containing the conditions of release and a statement, in either boldface type or capital letters, that substantially informs the released person that: **"Violation of this order is a criminal offense and will subject the violator to immediate arrest. You can be arrested even if any person protected by the order invites or allows you to violate it. You have the sole responsibility to fully comply with all of the order's provisions."**

(b) The court shall immediately distribute a copy of the order to law enforcement and direct law enforcement to provide a copy to the alleged perpetrator upon his or her release. Failure to provide the person with a copy of the conditions of release does not invalidate the conditions if the arrested or charged person had notice of the conditions.

5.4 Notifying the Victim of Pre-trial Release

(a) When a person who has been arrested for a crime under this Code is released from custody, the Court shall direct law enforcement to use all reasonable means to notify the victim and/or the victim's advocate that the person is being released and to furnish the victim with a copy of the conditions of release.

5.5 Mandatory Arrest for Violation of Pre-trial Release Conditions

(a) When a law enforcement officer has probable cause to believe that a person has violated a condition of release imposed by the court after an arrest or detention for allegedly committing a domestic violence crime, the officer shall, without a warrant, arrest the alleged violator.

(b) A person arrested for violation of pre-trial release conditions shall not be released from detention until seventy-two (72) hours after arrest unless a court hearing is held prior to the expiration of the seventy-two (72) hour period.

Chapter 6

6.1 Trial Court Authority; Handling Domestic Violence Cases. Because of the serious nature of domestic violence, the court in domestic violence cases:

(a) Shall not dismiss any charge or delay disposition because of a concurrent dissolution of marriage or other civil proceedings;

(b) Shall not require proof that either party is seeking dissolution of marriage prior to instigation of criminal proceedings;

(c) Shall waive any requirements that the alleged victim's location be disclosed to any person upon a showing that there is a possibility of further violence. When the victim's location is not disclosed, any communication with the victim by the attorney of the defendant, or any other person, shall be conducted through the victim's advocate or the court;

(d) Shall not subject a victim to a lie-detector test.

6.2 Rules of Evidence

(a) Spousal privileges not applicable. In any proceeding under this Code where a spouse is the alleged victim of domestic violence, the privilege of confidential communications between spouses and the testimonial privilege of spouses shall not apply to protect the defendant or respondent.

(b) Victim/Advocate privilege. In any proceeding under this Code, a victim of domestic violence may refuse to disclose, and may prevent an advocate from disclosing, confidential communications between the victim and advocate and written records and reports concerning the victim. The victim/advocate privilege shall not, however, relieve the advocate of the mandatory duty to report child abuse and shall not apply when the advocate is required to give evidence in child abuse proceedings.

(c) Evidence concerning domestic violence. In any proceeding under this Code, the Court may admit into evidence without regard to any hearsay rule, expert testimony, learned treatise, articles, videos, or other relevant and reliable evidence concerning the "battered woman syndrome" or otherwise examining the impact of domestic violence on its victims.

6.3 Evidence; Statement by Declarant Relating to Infliction or Threat of Physical Injury, Admissibility; Notice

(a) Evidence of a statement by a declarant is admissible if all of the following apply:

(1) The statement purports to narrate, describe, or explain the infliction or threat of physical injury upon the declarant.

(2) The action in which the evidence is offered under this Section is an offense involving domestic violence.

(3) The statement was made at or near the time of the infliction or threat of physical injury. Evidence of a statement made more than five (5) years before the filing of the current action or proceeding is inadmissible under this Section.

(4) The statement was made under circumstances that would indicate the statement's trustworthiness.

(5) The statement was made to a law enforcement officer.

(b) Circumstances relevant to the issue of trustworthiness include, but are not limited to, all of the following:

(1) Whether the statement was made in contemplation of pending or anticipated litigation in which the declarant was interested.

(2) Whether the declarant has bias or motive for fabrication of the statement, and the extent of any bias or motive.

(3) Whether the statement is corroborated by evidence other than statements that are admissible only under this section.

(c) If the prosecuting attorney intends to offer evidence under this section, the prosecuting attorney shall disclose the evidence, including the statements of witnesses or summary of the substance of any testimony that is expected to be offered, to the defendant not less than fifteen (15) days before the scheduled date of trial or at a later time as allowed by the court for good cause shown.

(d) As used in this section:

(1) "Declarant" means a person who makes a statement.

(2) "Domestic Violence" or "offense involving domestic violence" means an occurrence of one (1) or more of the following:

(A) Causing or attempting to cause physical or mental harm to a family or household member;

(B) Placing a family or household member in fear of physical or mental harm;

(C) Causing or attempting to cause a family or household member to engage in involuntary sexual activity by force, threat of force, or duress;

(D) Engaging in activity toward a family or household member that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed or molested;

(3) "Family or household member" means any of the following:

(A) A spouse or former spouse;

(B) An individual with whom the person resides or has resided;

(C) An individual with whom the person has or has had a child in common;

(D) An individual with whom the person has or has had a dating relationship; as used in the subparagraph, "dating relationship."

6.4 Evidence; Defendant's Commission of Other Acts of Domestic Violence, Admissibility; Notice

(a) Except as provided in Subsection (d) of this Section 6.4, in a criminal action in which the defendant is accused of any offense involving domestic violence, evidence of the defendant's commission of other acts of domestic violence is admissible for any purpose for which it is relevant.

(b) If the prosecuting attorney intends to offer evidence under this Section, the prosecuting attorney shall disclose the evidence, including the statements of witnesses or a summary of the substance of any testimony that is expected to be offered, to the defendant not less than fifteen (15) days before the scheduled date of the trial or at a later time as allowed by the Tribal Court for good cause shown.

(c) This Section does not limit or preclude the admission or consideration of evidence under any other statute, rule of evidence, or case law.

(d) Evidence of an act occurring more than ten (10) years before the charged offense is inadmissible under this section, unless the Tribal Court determines that admitting this evidence is in the interest of justice.

(e) As used in this section:

(1) "Domestic Violence" or "offense involving domestic violence" means an occurrence of one (1) or more of the following:

(A) Causing or attempting to cause physical or mental harm to a family or household member;

(B) Placing a family or household member in fear of physical or mental harm;

(C) Causing or attempting to cause a family or household member to engage in involuntary sexual activity by force, threat of force, or duress;

(D) Engaging in activity toward a family or household member that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed or molested;

(2) "Family or household member" means any of the following:

(A) A spouse or former spouse;

(B) An individual with whom the person resides or has resided;

(C) An individual with whom the person has or has had a child in common;

(D) An individual with whom the person has or has had a dating relationship; as used in the subparagraph, "dating relationship."

6.5 Reasons for Dismissal Required In Court File

(a) When a prosecutor moves to dismiss charges against a defendant accused of domestic violence, or when the court dismisses such charges, the specific reasons for the dismissal must be recorded in the court file.

(b) If the dismissal is based on the unavailability of the alleged victim or any witness, the prosecutor shall indicate the specific reason why such person is unavailable and why the case cannot be prosecuted.

Chapter 7

7.1 Firearms Disqualification; Purpose

(a) It shall be the purpose of this Section to prohibit any person who has been convicted of a crime of domestic violence under tribal, state or federal law, or any person who is subject to an order of protection based upon a finding that the person presents a credible threat of violence to the victim, under tribal, state or federal law, from possessing a firearm.

7.2 Firearms Prohibition

(a) It shall be unlawful for any person to possess a firearm who:

(1) Is subject to any court order from a court of competent jurisdiction that restrains such person from injuring, harassing, stalking or threatening a family or household member or engaging in any other conduct that would place a family or household member in reasonable fear of bodily injury, except that this paragraph shall apply only to those orders that:

(A) Were issued after a hearing of which such person received actual notice and had the opportunity to participate; and

(B) Include a finding that such person represents a credible threat to the physical safety of such household or family member; or

(C) By its terms explicitly prohibit the use, attempted use or threatened use of physical force against such household or family members.

(2) Has been convicted in state, federal or tribal court of any crime of domestic violence that involved the use or attempted use of physical force, or the threatened use of physical force, or the threatened use of a deadly weapon against a household or family members.

(b) A person subject to an order issued under Subparagraph (a)(1) or (2) of this Section 7.1 may petition the court for partial restoration of firearm use privileges.

(1) The person shall have the burden of demonstrating that:

(A) The person no longer constitutes a threat against any household or family member; and,

(8) Prior to issuance of the order, the person used a firearm for subsistence hunting.

(2) If the court finds that the person has met the requirements of Subparagraph (b)(1)(A) and (8) above, the court may exercise its discretion to allow the person to use a firearm for subsistence hunting during authorized hunting seasons. Said firearm shall be stored at the LVD Tribal Law Enforcement facility and may only be released during hunting season under terms and conditions set by the court. Said firearm may only be used for subsistence hunting. The person shall not be allowed to possess or otherwise bring said firearm or any other firearm into the person's residence. Violation of these conditions shall result in immediate revocation of firearm use privileges.

7.3 Penalty

(a) Violating the firearms requirement set forth in Section 7.2, above, shall be considered a crime of domestic violence for the purposes of this Code. Any related sentences for a violation of this Section or any other section of this Code shall be served consecutively.

Chapter 8

8.1 Petition for Order of Protection; Civil Action.

(a) There shall be a civil action known as a Petition for an Order of Protection.

8.2 Venue. A petition may be filed under this chapter in any of the following circumstances:

(a) The petitioner resides or is domiciled within the Band's land;

(b) The respondent resides or is domiciled within the Band's land;

(c) The alleged act of domestic violence occurred within the Band's land;

(d) A communication that allegedly constitutes domestic violence was either transmitted or received within the Band's land.

8.3 Effects of Other Proceedings Pending

(a) A petition for an order of protection may be filed regardless of whether other court proceedings between the parties have been filed or criminal charges have been filed against the alleged abuser.

8.4 Who May File a Petition for Order of Protection

(a) Any one of the following may file a petition for an order of protection on behalf of a victim of domestic violence or stalking:

(1) Any person who alleges that he or she has been the victim of domestic violence or stalking;

(2) A family or household member, or a next friend, on behalf of a victim under the age of eighteen (18) years;

(3) A family or household member, or next friend, on behalf of a victim who is prevented from doing so by hospitalization, by physical or mental disability, or by fear;

(4) Family Services Department on behalf of a victim;

(5) The Tribal Prosecutor.

(b) Family household members, including adults, may file a joint petition; provided, all adults included in the petition sign the petition.

(c) Persons under the age of eighteen (18) must have a parent, guardian, or next friend file the petition unless the parent or guardian is the alleged abuser or unless the youth is emancipated. If the parent or guardian is the alleged abuser, an adult relative or friend may file on behalf of the youth. If the youth is emancipated, the youth may file on his or her own behalf.

8.5 Contents of Petition. A petition for an order of protection shall include the following information:

(a) The name and address where the petitioner would like to receive notices from the court;

(b) An allegation that domestic violence or stalking has taken place;

(c) The names, ages, and tribal status of all persons known to the petitioner to be in need of protection;

(d) The name, age, tribal status and address of the alleged abuser, and his or her relationship to each victim;

(e) A signed statement or separate affidavit filed with the petition stating in the petitioner's own words the specific facts and circumstances of the alleged domestic violence, including whether the petitioner believes that he or she is in danger of further domestic violence;

(f) A statement listing each known civil or criminal action or proceeding, past and present, involving both parties or the custodial or residential placement of a child of the parties; the court of record for each action or proceeding; and any identifying information which may enable the court to access the court records regarding those proceedings.

8.6 Omission of Petitioner's Address in Petition

(a) A petitioner may omit his or her address from the petition and any other documents filed with the court. If such information is omitted, and is determined by the court to be needed to advance the proceedings, the court may order that disclosure be made orally and in chambers, out of the presence of the respondent. If the court orders disclosure, the information shall be kept under seal.

8.7 Filing Fees

(a) A petition for an order of protection shall be filed with the Court Clerk. There shall be no fee for filing the petition.

8.8 Temporary Order of Protection

(a) When the court finds probable cause to believe that there is a danger of domestic violence to the petitioner, based on an allegation that domestic violence has occurred or is about to occur, the court may enter a temporary order of protection on an ex-parte basis, without notice to the respondent, pending a full hearing.

(b) A temporary order may be issued by telephone or fax. A telephone order shall be followed by a written order from the Tribal Judge mailed or faxed within three (3) working days from the date of the telephone order.

(c) Following entry of a temporary order of protection, the court shall:

(1) Set a date for a hearing on the petition for an order of protection in accordance with Section 8.9 of this Code.

(2) Cause the order to be delivered to the LVD Tribal Police Department for enforcement purposes and for service upon the respondent.

(3) Transmit a copy of the order to any additional appropriate law enforcement or other agency designated by the petitioner.

(d) If a hearing is not held within the time required by Section 8.9 below, the temporary order shall expire unless it is re-issued by the court for good cause.

8.9 Notice of Hearing

(a) Upon receipt of a petition for an order of protection, the court shall set a date for hearing to be held within fifteen (15) days or at the next scheduled court date for civil cases, whichever is earlier.

8.10 Service of Process

(a) A petition, notice of hearing, and temporary order of protection issued pursuant to this Code, shall be served on the respondent at least seventy-two (72) hours before the hearing. If service has not been made within seventy-two (72) hours of the hearing, the court may set a new hearing date and re-issue a temporary order of protection as appropriate.

(b) Service may be made by tribal law enforcement or by any officer of the court by handing a copy to the respondent.

(c) If, after a diligent effort has been made to personally serve the respondent, personal service cannot be made, the court may order that the respondent be served by certified mail, return receipt requested. Such service is complete upon delivery of the mail.

(d) If the certified mail is returned with a notation by postal authorities that the respondent refused to accept the mail, or that the mail was unclaimed, the court may order that the respondent be served by mailing a copy by first class mail to the respondent at his or her last and best known address. Service by first class mail shall be complete three (3) days after mailing.

8.11 Order of Protection. Upon and after hearing, if the court finds, by a preponderance of the evidence, that domestic violence or stalking has occurred or is likely to occur in the future, the court may issue an order of protection containing provisions:

(a) Prohibiting the respondent from committing or threatening to commit acts of domestic violence against the petitioner or the petitioner's family or household members.

(b) Prohibiting the respondent from contacting, harassing, annoying, telephoning, or otherwise communicating with the petitioner, the petitioner's family or household members, directly or indirectly, through friends, relatives or co-workers.

(c) Requiring the respondent to vacate, or stay away from, the petitioner's residence, even if it is a shared residence or principally owned by the respondent.

(d) Requiring the respondent to stay away from any well-defined geographic area, including, but not limited to, a residence, workplace, school or daycare of the petitioner or the petitioner's family or household members.

(e) Prohibiting the respondent from possessing or using any firearm or other weapon specified by the court, and ordering the respondent to turn such weapons over to law enforcement for safekeeping

(f) Establishing possession of the parties' residence and use of vehicles or other essential personal effects, regardless of ownership, and directing law enforcement to accompany the petitioner to the residence of the parties to ensure that the petitioner is safely restored to the possession of the residence, vehicle, and other personal effects or to supervise the petitioner's or respondent's removal of personal belongings.

(g) Prohibiting the destruction, liquidation or disposal of any and all joint assets or property and any and all specific assets and property of the petitioner.

(h) Granting temporary custody of any minor children to the petitioner and/or establishing visitation rights. Any temporary custody order shall provide for child support and temporary support of the person having custody of the children in amounts deemed proper by the court.

(i) Ordering the respondent to timely pay any existing debts of the respondent, including mortgage or rental payment necessary to maintain the petitioner in his/her residence.

(j) Ordering the respondent to pay for the support of the petitioner and any minor children if the respondent is found to have a duty to support the petitioner or minor children.

(k) Ordering the respondent to reimburse the petitioner for any expenses associated with the domestic violence incident, including, but not limited to, medical expenses, counseling, shelter, repair or replacement of damaged property, court costs and attorney fees.

(l) Ordering the respondent to attend and successfully complete one (1) or more programs, including, but not limited to, a domestic violence perpetrator program, mental health counseling, substance abuse treatment, and parenting classes, and to execute all forms and releases that are necessary for the court to be kept apprised of the defendant's compliance with the court's order.

(m) Any other order the court believes is reasonably necessary to protect and ensure the safety of the alleged victim or family or household member.

8.12 Service of Order of Protection

(a) All orders of protection not received in court shall be served by law enforcement on the respondent by delivering a copy personally to the respondent.

(b) The clerk of the court shall have a copy of any order issued under this Code forwarded on or before the next judicial day to law enforcement for service upon the respondent. Service of an order under this Code shall take precedence over the service of other documents, unless they are of similar emergency nature.

(c) If law enforcement cannot complete service on the respondent within ten (10) days, the petitioner shall be notified. The petitioner shall provide information sufficient to permit notification if possible.

(d) If the order entered by the court recites that the respondent appeared in person before the court, the necessity for further service is waived and proof of service of that order is not necessary.

(e) Any person who serves an order of protection upon a respondent shall file an affidavit with the court stating the date, time, place, and manner of service, and any other facts necessary for the court to determine if service has been made.

8.13 Duration of Order/Motion to Renew

(a) An order of protection shall remain in effect for a period of two (2) years unless it is terminated or modified by the court prior to that time. The court may make an order of protection for a longer period of time or may make a permanent order of protection if the court determines that it is necessary for the protection of the victim and the victim's family.

(b) A petitioner may file a written motion to renew an order of protection at any time within three (3) months prior to the expiration of the order. The motion shall be supported by a declaration stating why the petitioner believes the order should be renewed. The motion shall be served and a hearing scheduled and conducted according to the procedures set forth in this chapter.

8.14 Request to Terminate or Modify Order by Petitioner. A temporary modification may be made ex-parte upon a showing of immediate danger to the petitioner or a member of the petitioner's family or household. However, an order of protection shall not be dismissed until the following have been completed:

(a) The petitioner will attend a PROTECTION ORDER DISMISSAL session at the local Women's Resource Center or other agency providing this service; and

(b) A full court hearing is held and the request to dismiss the protection order is determined by the Judge.

8.15 Request to Modify Order by Respondent

(a) A respondent may request a modification of an order of protection if the order either:

(1) Removes the respondent from a residence that he or she owns;

(2) Requires the respondent to stay away from a specific residence, school, place of employment or other location;

(3) Grants the petitioner possession and use of automobile and other essential personal items;

(4) Grants the petitioner temporary custody of a child or children;

(5) Provides or denies the respondent visitation with his or her minor child or children;

(6) Requires the respondent to make payments to the petitioner, the court or another party.

(b) Upon receiving the respondent's request, the court shall set a hearing date as soon as practicable, but in no event later than fifteen (15) days after the next day on which court is in session following the filing of respondent's request. Notice of the request for modification and the hearing date shall be served on the petitioner in accordance with Section 8.11(b) through (d) of this Code.

(c) At the hearing, the court shall consider whether any less restrictive alternatives may be appropriate under the circumstances. The court may modify the order where the order works an unreasonable hardship upon the respondent, provided that the safety of the victim and any family or household member remains the primary consideration.

Chapter 9

9.1 Tribal Domestic Violence Full Faith and Credit; Purpose

(a) It is the purpose of this Chapter to ensure that domestic violence protection orders issued by other jurisdictions, including tribal, federal and state courts, be honored and enforced by the LVD Court as well as Tribal Law Enforcement. The Tribal Court Rules obligates the Tribal Court to grant full faith and credit to judgments of other tribal courts, Michigan courts, and federal courts. The Tribe finds that

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federal law, 18 U.S.C. § 2265, requires state and tribal courts to honor protection orders entered by each court. Moreover, MCR 2.615 (Enforcement of Tribal Judgments) provides that judgments, decrees, orders, warrants, subpoenas, records, and other judicial acts are recognized by all state courts of Michigan.

Chapter 10

10.2 HIV Testing Provision for Victims of Domestic Violence; HIV Testing

(a) Victims of sexual assault or abuse

(1) A victim of sexual assault or abuse may request the LVD Tribal Court to order HIV/AIDS testing of the person who has allegedly committed the offense of sexual assault or abuse providing the victim can demonstrate the following:

(A) The defendant has been charged with the offense in LVD Tribal Court, and if the defendant has been arrested without a warrant, a probable cause determination has been made;

(B) The test for the causing agent for acquired immune deficiency syndrome is requested by the victim after appropriate counseling; and

(C) The test would provide information necessary for the health of the victim of the alleged offense and the court determines that the alleged conduct of the defendant created a risk of transmission, as determined by the Center for Disease Control, of the causing agent for acquired immune deficiency syndrome to the victim.

(2) If the test is ordered by the LVD Tribal Court, the defendant will be tested not more than forty-eight (48) hours from the incident or time of indictment.

(3) The defendant will be given appropriate referrals for testing and will be responsible for any costs incurred by the testing.

(4) The test results will be provided to the victim and the defendant.

(b) Follow-up

(1) Follow-up testing may be ordered by the LVD Tribal Court to occur six (6) months and twelve (12) months following the first test.

(2) If the charges are acquitted or dismissed against the defendant the follow-up testing will be suspended.

(c) Incompetence

(1) If the victim is found to be incompetent, the guardian or legal caregiver may request HIV/AIDS testing for the victim.

(2) If the victim is found to be incompetent the guardian or legal caregiver will be provided with the test results along with the defendant.

(d) Confidentiality of test. The results of any test ordered by the LVD Tribal Court shall be disclosed only to the victim or, where the LVD Tribal Court deems appropriate, to the parent or legal guardian of the victim, and to the person tested. The victim may disclose the test results only to a medical professional, counselor, family member or sexual partner(s) the victim may have had since the attack. Any such individual to whom the test results are disclosed by the victim shall maintain the confidentiality of such information.

(e) Disclosure. The LVD Tribal Court shall issue an order to prohibit the disclosure by the victim of the results of any test performed under this subsection to anyone other than those mentioned in Paragraph (d). The contents of the LVD Tribal Court proceeding and test results pursuant to this section shall be sealed. The results of such test performed on the defendant under this section shall not be used as evidence in any criminal trial.

(f) Contempt for disclosure. Any person who discloses the results of a test in violation of this subsection may be held in contempt of court.

(g) Non-native defendant. If the defendant is non-native the charging decision will be made by the state or federal authorities for investigation and all state or federal laws regarding HIV/AIDS testing will apply.