

The following is a model Memorandum of Understanding (MOU) concerning full faith and credit of domestic violence or sexual assault protection or restraining orders. The language may be used as a starting point for tribal and county governments in reaching an agreement that protects the sovereignty of both governments, while facilitating the enforcement of protection/restraining orders and providing for the safety of survivors of physical and sexual abuse. The model MOU does not attempt to serve as a one-size-fits-all answer for every community. Tribal and county governments are encouraged to modify the language as necessary, in the development of a document that is workable in their communities.

MEMORANDUM OF UNDERSTANDING
BETWEEN THE COUNTY OF ____
AND THE ____ TRIBE
CONCERNING FULL FAITH AND CREDIT
OF PROTECTION ORDERS

This Memorandum of Understanding (“MOU”) is entered into this ____ day of ____, 200__, between the County of _____, a political subdivision of the State of _____ (“County”), and the _____ Tribe, a federally recognized Indian Tribe (“Tribe”), both hereinafter collectively referred to as “governments”.

This MOU represents good faith commitments, which are being made by each of the parties in a spirit of cooperation and are not intended as obligations that may be compelled by either party if both parties are not in full agreement. Rather, this MOU represents the belief that these commitments will be of mutual benefit to the parties.

RECITALS

WHEREAS, the Tribe and the County recognize that each is a governmental entity with responsibility for the health, safety, and general welfare of its people.

WHEREAS, the Tribe and the County recognize that nearly 1/3 of American women report physical or sexual abuse by a husband or boyfriend at some point in their lives.

WHEREAS, the Tribe and the County recognize that violence against Native women is higher than that of the general population of women, with 1 out of every 3 Indian women being raped in their lifetimes, and Indian women experiencing the violent crime of battering at a rate of 23.2 per 1,000, compared with 8 per 1,000 among Caucasian women.

WHEREAS, the Tribe and the County recognize that the United States Congress enacted the Violence Against Women Act (VAWA), most recently amended and reauthorized in 2005, which created penalties for gender-related violence and grant programs for states and Indian tribes to address violence against women.

WHEREAS, the Tribe and the County recognize that a key component of revisions in law in VAWA was the full faith and credit provision, which declares that all valid protection orders issued by a State, Indian tribe, or territory shall be accorded full faith and credit by the court of another State, Indian tribe, or territory, and enforced as if it were the order of the enforcing State, tribe, or territory.

WHEREAS, the Tribe and the County recognize the important correlation between affording full faith and credit to valid foreign protection orders and the safety of survivors of domestic or sexual violence.

WHEREAS, the Tribe and the County wish to set forth in this MOU the understandings under which the governments shall follow in processing and enforcing valid foreign protection orders in their jurisdictions.

NOW THEREFORE, the Tribe and the County agree to proceed as follows:

I. AREAS OF INTEREST

Lands subject to this MOU include those lands within the boundaries of the Tribe's reservation and those lands within the boundaries of _____County.

II. TRIBAL ENFORCEMENT OF _____ COUNTY PROTECTION ORDERS

Whenever any law enforcement officer of the _____ Tribe is presented with an order, either ex parte or permanent, civil or criminal, or verifies the existence of such an order with the court or law enforcement of the issuing jurisdiction, which restrains any person from harassing, annoying, stalking, contacting or coming within a certain proximity to another person, that was issued by _____ County Court, that officer and court shall enforce such order and all provisions of such order, including the award of custody and property in such protection order, as if it were issued by the _____ Tribal Court.

III. COUNTY ENFORCEMENT OF _____ TRIBAL PROTECTION ORDERS

Whenever any law enforcement officer of the _____ County is presented with an order, either ex parte or permanent, civil or criminal, or verifies the existence of such an order with the court or law enforcement of the issuing jurisdiction, which restrains any person from harassing, annoying, stalking, contacting or coming within a certain proximity to another person, that was issued by _____ Tribal Court, that officer and court shall enforce such order and all provisions of such order, including the award of custody and property in such protection order, as if it were issued by the _____ County Court.

IV. ROLE OF LAW ENFORCEMENT IN ENFORCING FOREIGN PROTECTION ORDERS

If a law enforcement officer of the _____ Tribe or the _____ County is presented with a protection order, either ex parte or permanent, or verifies the existence of such an order

with the court or law enforcement of the issuing jurisdiction or by the oral statements made by the protected person under said protection, the officer shall enforce such order as if it had been entered by the _____ Court. This shall include arresting a person violating such order without the necessity of a warrant, if the officer has probable cause to believe the person has violated the protection order, and taking all necessary steps to assure the protection of the protected person, including but not limited to the detention and extradition of the person who has violated the protection order.

V. IMMUNITY FOR GOOD FAITH ENFORCEMENT OF FOREIGN PROTECTION ORDERS

An officer or any other law enforcement official of the Tribe or County who acts in good faith in enforcing a foreign protection order and its terms shall be immune from suit for wrongful arrest or any other civil or criminal action. This immunity shall include a tribal officer who affects the arrest of a non-Indian for violation of a protection order.

VI. ROLE OF TRIBAL OR COUNTY COURT IN ENFORCING FOREIGN PROTECTION ORDERS

The Tribal or County Court shall enforce a protection order, either ex parte or permanent, civil or criminal, and all provisions of that protection order, including child custody and property awards, if all the following are satisfied:

- 1) The respondent received notice of the order in compliance with requirements of the issuing jurisdiction;
- 2) The order remains in effect in the issuing jurisdiction;
- 3) The issuing court had jurisdiction over the parties and subject matter;
- 4) The respondent was afforded reasonable notice and an opportunity to be heard prior to the issuance of a permanent protection order or in the case of an ex parte order, it appears from the face of the order that a hearing will be conducted within reasonable time to allow the respondent to raise any defenses he may have to the issuance of a permanent protection order.

VII. SERVICE OF PROCESS

If a protection order is issued by the _____ Tribal Court, but service must be affected by _____ County law enforcement, _____ County law enforcement shall serve the protection order free of charge, in the spirit of government-to-government cooperation and public policy. If a protection order is issued by the _____ County Court, but service must be affected by _____ Tribal law enforcement, _____ Tribal law enforcement shall serve the protection order free of charge, in the spirit of government-to-government cooperation and public policy.

VIII. JURISDICTION

Nothing in this Agreement shall limit or waive the regulatory authority or jurisdiction of either party. Likewise, nothing in this agreement nor any decision made by the Tribe or the County, whether or not the decision is consistent with this MOU, shall give any third party any cause of action or claim. This MOU is not intended to provide any remedy not already provided by law.

IN WITNESS WHEREOF, this MOU serves to document the voluntary cooperation and good faith efforts between the ___ Tribe and ___ County regarding the processing and enforcement of valid foreign protection orders by and between the parties. In full recognition of this understanding, the parties hereto have executed this MOU on the day and year of the last date of signature below:

PASSED BY THE BOARD OF _____ COUNTY COMMISSIONERS
this _____ day of _____, 200__

_____ County Board of Commissioners, _____ County, _____ [State]

[Name], Chairperson

[Name], Commissioner

[Name], Commissioner

Attest: _____
Clerk of the Board of County Commissioners

Approved as to Form: _____
[Name], County Attorney

PASSED BY THE ___ TRIBAL COUNCIL
this _____ day of _____, 200__

The _____ Tribe

[Name], Chairperson

[Name], Secretary

Approved as to Form: _____
[Name], Tribal Attorney