

Title 7

Section 249

Sec. 249. Special domestic violence criminal offense.

(a) *Jurisdiction.* The Fort Peck Tribal Court is vested with jurisdiction to enforce this section against any person who has committed an act of Dating Violence, Domestic Violence or Violation of a Protection Order against an Indian victim within the Indian country of the Assiniboine and Sioux Tribes provided the defendant has sufficient ties to the Fort Peck Tribes.

A defendant has sufficient ties if the defendant resides or is employed in the Indian country of the Assiniboine and Sioux Tribes; or if the defendant is a spouse, intimate partner, or dating partner of any Indian who resides in the Indian country of the Assiniboine and Sioux Tribes.

(b) *Definitions.*

(1) *Dating Violence* - The term *dating violence* means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

(2) *Domestic Violence* - The term *domestic violence* means violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, or by a person similarly situated to a spouse of the victim. 7 CCOJ 244.

(3) *Indian Country* - The term *Indian country* has the meaning given the term in section 1151 of title 18, United States Code.

(4) *Protection Order* - The term *protection order* means any injunction, restraining order, or other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person; and includes any temporary or final order issued by a civil or criminal court, whether obtained by filing an independent action or as a pendent lite order in another proceeding, if the civil or criminal order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection.

(5) *Spouse or Intimate Partner* - The terms *spouse or intimate partner* has the meaning given the term in section 2266 of title 18, United States Code.

(c) *Offenses; Domestic and Dating Violence, Violations of Protection Orders.*

Every person who commits an act of domestic violence, dating violence or violation of a protective order is punishable by imprisonment not exceeding three years or by fine not exceeding \$15,000, or by both.

Domestic and dating violence include the offenses as stated in 7 CCOJ 244 as well as emotional abuse, controlling or domineering, intimidation, stalking, neglect or economic deprivation.

Violation of a Protection Order includes any act where the protection order was

issued against the defendant, the protection order is consistent with 18 U.S.C. 2265(b), and the violation relates to that portion of the protection order that provides protection against violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, the protected person.

(d) *Rights of Defendants.* In any criminal proceeding under this section, the defendant shall be entitled to:

(1) all applicable rights under the Indian Civil Rights Act, 25 U.S.C. 1301-1304;

(2) if a term of imprisonment of any length may be imposed, the Tribal Court shall:

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

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

(C) require that the judge presiding over the criminal proceeding has sufficient legal training to preside over criminal proceedings; and is licensed to practice law by any jurisdiction in the United States;

(D) prior to charging the defendant, make publicly available the criminal laws, rules of evidence, and rules of criminal procedure (including rules of governing the recusal of judges in appropriate circumstances) of the Fort Peck Tribes; and

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

(3) the right to a trial by an impartial jury that is drawn from sources that reflect a fair cross section of the Fort Peck Reservation community; and do not systematically exclude any distinctive group in the community;

(4) timely notification of the right to petition for a writ of habeas corpus in a court of the United States under section 25 U.S.C. 1303, and the right to petition that court to stay further detention pursuant to 25 U.S.C. 1304(e);

(5) all other rights whose protection is necessary under the Constitution of the United States in order for Congress to recognize and affirm the inherent power of the Fort Peck Tribes to exercise special domestic violence criminal jurisdiction over the defendant.

(AS PER RESOLUTION NOS. 27-201-2013-12, DATED 12/23/2013; 26-788-2014-06, DATED 6/09/2014; 28-1581-2017-02, DATED 2/14/2017.)