

KICKAPOO TRIBE OF ORDINANCES

DOMESTIC VIOLENCE PROTECTION ORDINANCE

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KICKPAOO TRIBE OF OKLAHOMA
DOMESTIC VIOLENCE PROTECTION ORDINANCE

HISTORY: [Approved November 14, 2014, Resolution KTO-2014-49]

CHAPTER ONE

SECTION 100. ENACTMENT CLAUSE

BE IT ENACTED BY THE COUNCIL OF THE KICKAPOO TRIBE OF OKLAHOMA THE ORDINANCE OF DOMESTIC VIOLENCE PROTECTION CODE FOR ALL MEMBERS OF THE KICKAPOO TRIBE OF OKLAHOMA.

SECTION 101. PURPOSE

Domestic Abuse is a serious offense against society, the Kickapoo Tribe of Oklahoma, and the family. This Ordinance is to provide victims of domestic abuse the maximum possible protection from further abuse. The strength of the Kickapoo Tribe of Oklahoma is founded on healthy families. Families and children damaged by domestic abuse, including children, must be healed by immediate intervention of law enforcement, prosecution, education, counseling, and other appropriate services.

SECTION 102. SPECIFIC APPLICABILITY

The chapter herein applies specifically to the Domestic Violence Protection Ordinance and takes precedence over any general laws of applicability.

SECTION 103. DEFINITIONS

For purposes of this chapter, except as may be specifically provided otherwise, the following terms shall be defined as provided herein.

(a) **Advocate** means an employee or volunteer for a program that provides services to victims of domestic abuse who:

1. Has a primary function of rendering advice, counseling, or assistance to victims of domestic abuse; supervising the employees or volunteers of the program; or administrating the program; and
2. Has undergone a minimum level of training as set by the Kickapoo Tribe of Oklahoma Program for Victims of Domestic Abuse.

(b) **Department** means the Kickapoo Tribe of Oklahoma's department, agency or program primarily responsible for oversight of domestic abuse services and recognized as such by the Business Committee of the Kickapoo Tribe of Oklahoma.

(c) **Domestic Abuse** shall mean any act of physical harm, threatened imminent physical harm, act of sexual abuse, emotional abuse, stalking or harassment by an adult, emancipated minor, or minor child thirteen (13) years of age or older against another adult, emancipated minor or minor child who is a protected person.

(d) **Dating Relationship** means 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. A minimal frequency or duration of “dates” shall not of itself prohibit the finding of a dating relationship. For purposes of this Act, a casual acquaintance or ordinary fraternization between persons in a business or social context shall not constitute a dating relationship.

(e) **Emotional Abuse** shall mean the repeated use of threats, intimidation, or extreme ridicule such that it would inflict humiliation and/or emotional suffering upon a reasonable person and does actually inflict such suffering upon a protected person.

(f) **Family or Household Members** means spouses, ex-spouses, present spouses of ex-spouses, parents, foster parents, children, persons otherwise related by blood or marriage, persons living in the same household or who formerly lived in the same household or persons who are the biological parents of the same child regardless, of their marital status, or whether they have lived together at the time. This shall be without regard to age, capacity or infirmity.

(g) **Harassment** means a knowing and willful course or pattern of conduct by an adult, emancipated minor, or minor thirteen (13) years of age or older, directed at a specific person which seriously alarms or annoys the person, and which serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial distress to the person. “Harassment” shall include, but not be limited to, harassing or obscene telephone calls, texting, digital, cyber or other electronic means of communication including social media posts or use of third parties or networks.

(h) **Predominate Aggressor** shall mean the person involved in a domestic abuse incident who is primarily responsible for the incident as indicated by, but not limited to the person:

1. Who is not currently under the protection of Court orders issued pursuant to this Act;
2. Of whom the other party is afraid;
3. Is determined to have inflicted the most severe injuries;
4. Who has tried to intimidate or negatively control the other party or parties;
5. Appears most likely to pose the larger threat of future violent behavior.

(i) **Program for Abusers** means a specialized program, recognized by the Kickapoo Tribe of Oklahoma’s program for victims of domestic abuse or Courts as based on an effective model, which provides education or treatment for perpetrators of domestic abuse.

(j) **Protected Person** shall mean persons who are or were related as spouses, family members, parents, foster parents, children, or persons otherwise related by blood or marriage, persons who are or were in a dating relationship, persons who are presently residing together or who have resided together in the past, persons who have a child in common, regardless of their marital status, or whether they are or have lived together at any time, and for the purposes of the issuance of a protection order, any other person with a sufficient relationship to the abusing person as determined by the Court and other relationships between people that under the traditions and customs of the Kickapoo Tribe of Oklahoma are viewed as creating domestic or kinship relationships.

(k) **Program for Victims** means that a program which the Kickapoo Tribe of Oklahoma acknowledges as serving victims of domestic abuse, their children, and families by providing advocacy, shelter, crisis intervention, counseling, education or other appropriate services.

(l) **Stalking** means the willful, malicious, and repeated following of a person by an adult, emancipated minor, or minor thirteen (13) years of age or older, with the intent of placing the person in reasonable fear of death or great bodily injury.

(m) **Petitioner** means the party filing a Petition for a Protective Order or moving for a Pendent lite order in another proceeding.

(n) **Protection Order**

- a. 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
- b. 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.

(o) **Victim** means the person or persons to be protected under a Protective Order, whether they are the petitioners or have such filed on their behalf by a third party.

SECTION 104. EVIDENTIARY STANDARDS

(a) **Testimonial Privileges**

1. In a proceeding where a spouse or other family or household member is allegedly the victim of domestic abuse, the following evidentiary privileges do not apply to protect the perpetrator:

- i. The privilege of confidential communication between spouses, and
- ii. The testimonial privilege of spouses.

2. A victim of domestic abuse may prevent an advocate from disclosing confidential oral communication and the written records and reports of the program if the victim claims the Advocate-Victim privilege. The Advocate-Victim privilege does not relieve the Advocate of the mandatory duty to report child abuse, and does not apply when the Advocate is required to give evidence in child abuse court proceedings.

(b) **Evidence, Hearsay Exception.** The Court shall admit into evidence as an exception to the hearsay rule learned treaties or other reliable materials which describe and explain the “battered women’s syndrome” or otherwise examine the impact of violence upon victims.

SECTION 105. DUTIES OF LAW ENFORCEMENT OFFICER

(a) A Law Enforcement Officer who responds to a domestic abuse call shall use all reasonable means to protect the victim and children and prevent further violence, including but not limited to:

1. Taking action necessary to assure the safety of the victims and children;
 2. Confiscating any weapon involved in the alleged domestic abuse;
 3. Transporting or obtaining transportation of the victim and children to a shelter;
 4. Assisting the victim in removing essential personal effects;
 5. Assisting the victim and children in obtaining medical treatment including transportation to a medical facility or calling for an ambulance;
 6. Giving the victim immediate and adequate notice of rights, remedies and available services.
- (b) If a Law Enforcement Officer receives cross complaints of domestic abuse from two or more opposing persons, the Officer shall arrest the primary aggressor. In determining whether a person was the primary aggressor, the Officer shall consider:
1. The Kickapoo Tribe of Oklahoma's intent to protect victims of domestic abuse;
 2. The history of domestic abuse between the persons involved;
 3. The relative severity of the injuries inflicted or serious threats creating fear of bodily injury;
 4. The likelihood of future injuries to each person;
 5. Whether one of the persons acted in self-defense; and
 6. The Officer's experience in handling domestic abuse cases. If the Officer determines that one person was the primary aggressor, the Officer is not required to arrest the other person believed to have caused physical harm or bodily injury.
 7. A Law Enforcement Officer shall not threaten the arrest of all parties to discourage requests by any party for intervention from any Law Enforcement.

SECTION 106. DUTY OF PROSECUTOR

(a) The Prosecutor shall make a reasonable effort to notify the victim when the Prosecutor declines to prosecute or dismisses the domestic abuse charges, or enters into a plea agreement.

(b) The Prosecutor shall notify the victim of the rights for victims of domestic abuse.

SECTION 107. REPORTING REQUIREMENTS

(a) Any Tribal Official or employee, nurse, school teacher, social worker, Probation Officer, or Community Health Representative knowing or suspecting that domestic abuse is occurring or has occurred shall report the matter within 48 hours by telephone to one of the following in order of priority:

Kickapoo Tribal Police Department: (405)964-5941
 Kickapoo Family Violence: (405)964-2081
 OKDHS Abuse & Neglect Hotline: 1-800-522-3511

(a) Any person, including individuals, corporations, governmental entities and their agents, who in good faith makes or participates in the making of a report shall have immunity from any liability, civil or criminal, which might otherwise arise from making that report, and shall have the same immunity with respect to participation in any court proceeding resulting from such a report.

SECTION 108. STANDARD OF PROOF, DEFENSES

(a) The civil standard of proof shall apply to proceedings under this Ordinance, except as otherwise specified in this Ordinance. The Court shall grant a protection order when a preponderance of the evidence shows that it is more likely than not that an act of domestic abuse has occurred or is about to occur. The order's purpose shall be to prevent the occurrence or recurrence of abuse.

(b) A petitioner shall not be denied relief under this Ordinance because:

1. The petitioner used reasonable force in self-defense against the respondent;
2. The petitioner has previously filed for a protection order and subsequently reconciled with the respondent;
3. The petitioner has not filed for divorce; or
4. The petitioner or the respondent is a minor.

(c) That neither intoxication nor spousal immunity shall be considered a defense in proceedings for the issuance or enforcement of a protection order under this Ordinance

SECTION 109. SEVERABILITY

If any provision or portion of the Ordinance is adjudged to be unconstitutional or invalid by a Court of competent jurisdiction, the remainder of the Ordinance shall not be affected.

CHAPTER TWO DOMESTIC ABUSE SERVICES

SECTION 200. DOMESTIC VIOLENCE AND ABUSE SERVICES

The Kickapoo Tribe of Oklahoma shall designate a tribal department or agency for provision and oversight of domestic abuse services. Said department shall arrange and supervise agreements to contract for shelter and such other services as are needed for victims of domestic abuse or sexual assault.

The Tribal Department is hereby authorized to negotiate agreements or contracts for Business Committee approval for shelter and such other services as are needed for victims of domestic abuse or sexual assault.

SECTION 200. DOMESTIC VIOLENCE SERVICES

The Kickapoo Mental Health and Substance Abuse Services is the designated Tribal authority for provision and oversight of domestic violence and sexual assault services.

The Tribal Department of Mental Health and Substance Abuse Services is hereby authorized and directed to enter into agreements to contract for shelter and such other services as are needed for victims of domestic abuse or sexual assault.

SECTION 201. CONFIDENTIALITY OF RECORDS

(a) Except as otherwise provided by subsection (b) of this section, the case records, case files, case notes, client records, or similar records of a domestic abuse or sexual assault program certified by the Kickapoo Tribe of Oklahoma's program for victims of domestic abuse or of any employee or trained volunteer of such program regarding an individual who is residing or has resided in the program or who has otherwise used or is using the services of a domestic abuse or sexual assault program or counselor in such program shall be confidential and shall not be disclosed. For purposes of this paragraph, the term "client records" shall include, but not be limited to, all communications, records, and information regarding clients of domestic abuse and sexual assault programs.

(b) The records, files or notes of programs specified in Subsection (a) of this section shall be confidential and shall not be disclosed except:

1. With the written consent of such individual, or in case of his/her death or disability, to Law Enforcement Officials, Prosecutor/Attorney General's Office, or his/her personal representative or other person authorized to sue on his/her behalf; or
2. By Court order for good cause shown.

(c) The District Court shall not order the disclosure of the address of a domestic abuse shelter.

SECTION 202. SERVICE TO MINOR DOMESTIC ABUSE VICTIMS

(a) A domestic abuse shelter facility may provide shelter and care to a minor parent, who is the victim of domestic abuse or is seeking relief from domestic abuse for themselves or on behalf of any of their children or both themselves and any of their children.

(b) A domestic abuse shelter facility may provide such shelter or care only during an emergency constituting an immediate danger to the physical health or safety of the minor parent or their child or both the minor parent and any of their children. Such shelter or care shall not extend beyond thirty (30) days unless the facility receives an order issued by the Court to continue such services, or the parent or guardian of the minor parent consents to such services.

(c) No punishment for a complaint of contributing to delinquency of minors shall apply to any domestic abuse shelter facility and any person operating such facility who in good faith is providing shelter and care pursuant to the provisions of this section, to a minor parent and any of their children who is a runaway from her parent(s) or legal guardian.

(d) The show cause hearing shall be provided for the minor mother who is seeking relief from domestic abuse for herself or on behalf of any of the children.

(e) 1. For purposes of the Domestic Violence Protection Ordinance, any minor, that is not a minor parent, shall be treated as a juvenile with the jurisdiction of the Juvenile Court pursuant to Article 30, Juvenile Ordinance.

2. Notwithstanding subsection (e) (1.), a minor may, pursuant to this Ordinance, either on their own or through a third party apply for any relief available under this Ordinance, including Protective Orders, Emergency Protective Orders, and *Ex Parte* Orders.

SECTION 203. LAW ENFORCEMENT REPORTING OF DOMESTIC ABUSE INCIDENTS

(a) **Records and Reports.** Every Law Enforcement Agency shall keep a record of each reported incident of domestic abuse as provided in Subsection (b) of this section and to submit a monthly report of such incidents as provided in Subsection (c) of this section.

(b) **Content of Records.** The record of each reported incident of domestic abuse shall consist of:

1. Who was involved in the domestic abuse;
2. What type(s) of crime(s) were involved in the incident;
3. Show the day of the week the incident occurred; and
4. Show the time of day the incident occurred.

(c) **Monthly Report.** A monthly report of the recorded incidents of domestic abuse shall be submitted to the Chief of Police for the Kickapoo Tribe of Oklahoma, who shall forward the report to the Domestic Abuse Program or Kickapoo Behavioral Health Department.

CHAPTER THREE CIVIL ORDERS FOR PROTECTION

SECTION 300. JURISDICTION

The Kickapoo Tribe of Oklahoma District Court shall have jurisdiction over acts of stalking, assault, battery, harassment, or domestic abuse and associated causes of action:

- (a) Committed by any person over whom the Court has jurisdiction; or
- (b) That are planned, initiated, transpire, occur or are completed, within the tribal jurisdiction; or
- (c) That are threatened against any person over whom the Court has jurisdiction.

SECTION 301. ELIGIBLE PETITIONERS

(a) Any person who is or has been an victim of staling, assault, battery, harassment, or domestic abuse, may seek protection by filing a Petition for Protective Order and/or seeking criminal charges.

(b) Any parent, guardian, or other representative may also seek a Protective Order on behalf of a minor, an incapacitated or protected person.

(c) a Protective Order may be requested by a Party in another proceeding by Motion provided the movant and respondent are both parties to the proceeding and provided that if said motion is made orally that it is timely followed by filing such motion in writing.

SECTION 302. CONFIDENTIALITY

A petitioner seeking protection shall not be required to disclose his/her address, place of residence or place of employment except to the Judge, or Judicial designee, under oath, for the purpose of determining jurisdiction.

SECTION 303. FORMS OF PETITIONS; FEE WAIVED

(a) No fee will be charged for filing or service of process for any proceeding seeking only the relief provided in this Chapter. However, the Court may assess charges and order respondent to pay if the petition is granted or order a petitioner who files a false petition or report under this Ordinance to pay court costs.

(b) The petitioner shall prepare the petition, or at the request of the petitioner, the Domestic Abuse Program Coordinator or other persons properly delegated shall assist the petitioner in preparing the same. The Court may require such information as needed to comply with tribal or Federal Laws, but shall be in substantially the following form:

**IN THE DISTRICT COURT OF THE
KICKAPOO TRIBE OF OKLAHOMA**

On Behalf of: _____ (If filed by a Third Party)

_____,)
Petitioner)
Plaintiff)
v.) Case No.: _____
_____,)
Respondent(s).)

PETITION FOR PROTECTIVE ORDER

Petitioner, being sworn, states:

1. (Check one or more)
 Victim is a resident, employee, or is located within the Kickapoo Tribe of Oklahoma wherein this petition is filed.
 Respondent is a resident, employee, or is located within the Kickapoo Tribe of Oklahoma wherein this petition is filed.
 The action complained of occurred, or is threatened to occur within the Kickapoo Tribe of Oklahoma.
 The Victim is Indian. If so, is the Victim Kickapoo Tribe of Oklahoma ____?
Enrolled with what other tribe? _____
 The Respondent is Indian. If so, is he/she Kickapoo Tribe of Oklahoma ____?
Enrolled with what other tribe? _____

2. (Check one or more)
 The Respondent caused or attempted to cause serious physical or emotional harm to Petitioner or _____.
 The Respondent threatened _____ with imminent serious physical harm.
 The Respondent has stalked or harassed _____.

3. The incident(s) causing the filing of this petition occurred on or about _____.
[date(s)]
(Describe what happened.)

4. The victim and the respondent are related as follows: (check one)
 Married
 Divorced. Date & place of divorce: _____

- Parent and child
- Persons related by blood. Relationship: _____
- Persons related by marriage. Relationship: _____
- Present spouse of a former spouse. Current spouse _____
- Persons living in same household.
- Persons formerly living in the same household.
- Biological parents of the same child Child/children's name: _____

In a dating relationship: (please describe for how long, from when to when, the type of relationship, and the frequency of interaction between the persons involved in the relationship.) _____

Other _____

5. (Answer this question only if the petitioner is filing on behalf of someone else, a minor or incapacitated vulnerable person.) The petitioner and the victim are related as follows:

- Married
- Divorced. Place & date of divorce, if known: _____
- Parent and child
- Persons related by blood. Relationship _____
- Persons related by marriage. Relationship _____
- Present spouse of a former spouse. Current spouse _____
- Persons living in same household
- Persons formerly living in the same household
- Persons in a current or previous dating relationship
- Not related
- Biological parents of the same child/children. Name of child(ren) _____

Other _____

6. (Check A or B)

(A) the victim is in immediate and present danger of abuse from the respondent; therefore, an emergency *ex parte* order (without notice or hearing to Respondent) is necessary to protect the victim from serious harm. Please explain why: _____

(B) The petitioner does not request an emergency *ex parte* order.

7. Are there other current or prior court actions between the parties? _____. If so, please give the case name, court/location, when and if still active, and brief nature of case.

RELIEF REQUESTED:

The Petitioner requests the following relief in the emergency *ex parte* order (without notice or hearing to Respondent): (check one or more)

Order the respondent not to threaten the victim, directly or through third parties.

Order the respondent not to abuse or injure the victim.

Order the respondent not to telephone, e-mail, text message or communicate through electronic, computer or digital means, visit, assault, batter, molest, stalk, harass or otherwise interfere with the victim or any designated protected person.

Order the respondent not to harass, stalk or annoy, through direct or indirect methods whether by electronic, digital or other means including posting malicious, threatening, intimidating, personal or embarrassing materials to computer web-sites or blogs regarding the respondent, or otherwise communicating directly or indirectly with the victim;

Order the respondent to leave the residence at _____ (location) on or before _____ (date).

Order suspension of child visitation due to physical violence or threat of abuse by the respondent or a threat to violate a custody order by the respondent. **(If available, please attach a copy of the custody order.)**

Order the respondent, who is a minor child, to leave the residence located at _____

_____ by immediately placing the respondent in any type of care authorized for children taken into custody pursuant to Kickapoo Tribe of Oklahoma Juvenile Ordinance. *Age of Respondent:* _____ years old.

Describe other relief that petitioner requests: _____

Petitioner requests the following order to be made by the Court following notice to the respondent(s) and a hearing: (check one or more)

Order the respondent not to threaten the victim, directly or through third parties.

Order the respondent not to abuse or injure the victim.

Order the respondent not to telephone, e-mail, text message or communicate through electronic, computer or digital means, visit, assault, batter, molest, stalk, harass or otherwise interfere with the victim or any designated protected person.

Order the respondent not to harass, stalk or annoy, through direct or indirect methods whether by electronic, digital or other means, including posting malicious, threatening, intimidating, personal or embarrassing materials to computer web-sites or blogs regarding the respondent, or otherwise communicating directly or indirectly with the victim.

Order the respondent to cease stalking the victim.

Order suspension of child visitation orders due to physical violence or threat of abuse by the defendant or a threat to violate a custody order by the defendant.

Order the respondent to leave the residence at _____ (location) on or before _____ (date).

Order the respondent, a minor child, to leave the residence at _____

_____ by immediately placing the respondent in any type of care authorized for children taken into custody pursuant to Kickapoo Tribe of Oklahoma Juvenile Ordinance.

Describe other relief that petitioner requests: _____

Order the respondent to pay attorney fees of the petitioner in the sum of _____ on or before _____ (date).

[] Order the respondent to pay the court costs, service and police administrative fees of this action, in the sum of _____ on or before _____ (date).

WARNING:

Whoever makes a statement or allegation in this Petition for Protective Order but does not believe that the statement or allegation is true, or know that it is not true, or intends thereby to avoid or obstruct the ascertainment of the truth, may be found guilty of perjury. Pursuant to Article 532 of the Kickapoo Tribal Law Enforcement Code, the penalty for perjury is a crime punishable by imprisonment for not more than three (3) months in jail and/or a fine not to exceed Five Hundred Dollars (\$500.00).

I, _____, Petitioner being of lawful age and duly sworn state that I have read the forgoing Petition and am familiar with its contents and know them to be true upon personal knowledge and observation, I verify the same on behalf of myself and (if appropriate) _____ (name of minor(s) or ward(s)).

Petitioner

Witness my hand and seal,
Affixed on the _____.
(date)

Court Clerk or Notary Public

<end document>

SECTION 304. SERVICE OF PROCESS – HEARINGS – PERIOD OF RELIEF

(a) A copy of the petition, notice of hearing and a copy of any *ex parte* order issued by the Court shall be served, pursuant to the Kickapoo Tribe of Oklahoma Civil Procedure Ordinance, upon the respondent in the same manner as a summons. *Ex parte* orders shall be given priority for service by the Kickapoo Tribal Police Department and can be served twenty-four (24) hours a day.

(b) When the respondent is a minor child who is ordered removed from the residence of the victim, in addition to those documents served upon the respondent, a copy of the petition, notice of hearing and a copy of any *ex parte* order issued by the Court shall be delivered with the child to the caretaker of the place where such child is taken pursuant to the Kickapoo Tribe of Oklahoma Juvenile Ordinance.

(c) When service cannot be made upon the respondent by the police within three (3) days following the filing of a petition for a protective order or the issuance of an emergency *ex parte* order, the police may contact another Law Enforcement Officer or a private investigator to serve the respondent. An emergency *ex parte* order, a petition for protective order, and a notice of hearing may be transferred to any Law Enforcement jurisdiction to effect service upon the

respondent. If service cannot be completed, the Court shall notify the respondent by regular mail, postage paid, of the date and time of hearing. The Court shall also notify the petitioner by mail in the event personal contact has not been made.

(d) Within twenty (20) days of the filing of the petition the Court shall schedule a full hearing on the petition, regardless of whether an emergency *ex parte* order has been previously issued, requested or denied. If the petitioner seeks further relief concerning an issue not outlined by the Emergency *Ex Parte* Protective Order, the Court may continue the hearing and/or the petitioner may request a continuance. However, when a minor child(ren) has been removed from the residence and placed in the temporary custody of the Kickapoo Indian Child Welfare Program the Court shall schedule a full hearing on the petition within seventy-two (72) hours, regardless of whether an emergency *ex parte* order has been previously issued, requested or denied.

(e) At the hearing, the Court may grant any protective order to bring about the cessation of domestic abuse against the victim or stalking or harassment of the victim, including committing any minor child into the custody of the Kickapoo Indian Child Welfare Program.

(f) After the notice and hearing, protective orders authorized by this section may require the plaintiff or the respondent or both to undergo treatment or participate in the counseling services necessary to bring about the cessation of domestic abuse against the victim. Either party or both may be required to pay all or part of the cost of such treatment or counseling services. The Court shall not be responsible for such cost.

(g) When necessary to protect the victim and when authorized by the Court, protective orders granted pursuant to the provisions of this section may be served upon the respondent by a peace officer, sheriff, constable, or policeman or other officer whose duty it is to preserve the peace.

(h) If a child has been removed from the residence of a parent or custodial adult because of repeated domestic abuse committed by the child and is placed in the custody of the Kickapoo Indian Child Welfare Program, the parent or custodial adult may refuse the return of such child to the residence, until the child demonstrates a cessation of abusive behavior.

(i) No order issued under the Domestic Violence Protection Ordinance shall in any manner affect title to real property, purport to grant to the parties a divorce or otherwise purport to determine the issues between the parties as to child custody, visitation, child support or division of property or any other like relief obtainable under the Kickapoo Marriage and Divorce Ordinance.

(j) Within twenty-four (24) hours of the return of service of any *ex parte* or final protective order, the Court Clerk shall send certified copies thereof to all appropriate Law Enforcement agencies designated by the plaintiff. A certified copy of any modification, cancellation or consent agreement concerning a final protective order shall be sent to those Law Enforcement agencies receiving the original orders pursuant to this section.

SECTION 305. AVAILABILITY OF JUDGE FOR EMERGENCY TEMPORARY Ex Parte PROTECTION ORDERS

(a) If a plaintiff requests an emergency temporary *ex parte* order of protection as provided by Section 306 of this Ordinance, the Judge who is notified of the request by a Peace Officer may issue such order verbally to the Officer or in writing when there is reasonable cause to believe that the order is necessary to protect the victim from immediate and present danger of domestic abuse. When the order is issued verbally the Judge shall

direct the officer to complete and sign a statement attesting to the order. The emergency temporary *ex parte* order shall be in effect until the close of business on the next day the court is open for business after the order is issued.

1. Based upon a statement, whether in person, by telephone or other electronic or digital means, of a Law Enforcement Official to the Court, the Court finds reasonable grounds to believe that the petitioner is in immediate danger of domestic abuse; or
2. When the abuse occurs or is threatened to occur when a Judge is not available for a hearing with notice and the petitioner reasonably appears in immediate danger of domestic abuse;
3. Immediately notify, by telephone or other electronic or digital means, a Judge of the District Court of the request for an emergency temporary *ex parte* order of protection and describe the circumstances. The Judge shall inform the peace officer of his decision to approve or disapprove the emergency temporary *ex parte* protection order;
4. Inform the victim whether the Judge has approved or disapproved an emergency temporary *ex parte* protection order. If an emergency temporary *ex parte* protection order has been approved, the officer shall provide the victim with a copy of the emergency temporary *ex parte* protection order, that contains a signature of the officer that verify the approval by the Judge and notify the said victim that the emergency temporary *ex parte* protection order shall be effective only until 5:00 p.m. of the next business day that the Court is open for business.
5. Notify the person subject to the emergency temporary *ex parte* protection order of the issuance and condition of the order. Notification pursuant to this paragraph may be made personally by the officer in writing. A copy of the emergency temporary *ex parte* protection order signed by the officer attesting to the order of the judge shall be given to said person;
6. Provide the original emergency temporary *ex parte* protection order and the statement of the officer with the Kickapoo Tribal District Court immediately upon the opening of the Court on the next day the Court is open for business.

(b) A Law Enforcement Official who receives an oral order for protection from the Court shall:

1. Write and sign the order per the Court's discretion;
2. Serve a copy on the defendant.
3. Immediately provide the petitioner with a copy of the order, and
4. Provide the order to the Court by the end of the next business day.

(c) A Judge or Court Official with authority to issue an emergency *ex parte* protective orders, must be available 24 hours a day to hear petitions for emergency *ex parte* protective orders.

**IN THE TRIBAL DISTRICT COURT
FOR THE KICKAPOO TRIBE OF OKLAHOMA
P.O. BOX 95, MCLLOUD, OKLAHOMA 74851**

EMERGENCY EX PARTE PROTECTIVE ORDER

1. This EMERGENCY EX PARTE PROTECTIVE ORDER will expire at 5:00 p.m. on (insert date of next business day) _____.

2. A more permanent protection order must be requested at the Kickapoo Tribal District Court.

3. Reasonable grounds appear that an immediate danger of domestic abuse exists and that this order should be issued against:

Name(s): _____ D.O.B.: _____ Age: _____

_____ D.O.B.: _____ Age: _____

a. An order removing the defendant, who is a minor child from the residence by immediately placing the child in the temporary custody of the Kickapoo Indian Child Welfare program.

b. (_____) who must not abuse, harass, threaten, or commit any other acts of domestic abuse against (Person to be protected): _____.

c. (_____) who must move out immediately from (residence) _____.

d. (_____) who must stay 100 yards away from the above person and place.

4. (Person to be protected) _____ is given temporary custody of the following minor children:

_____ D.O.B.: _____

hereby certify that (Name of Judge) _____ transmitted the above Emergency Ex Parte Protection Order to me by telephone/facsimile (circle one) this _____ day of _____, 20 _____ at _____: _____ .m.

Printed name of Officer

Signature of Officer

WARNING: THIS IS AN OFFICIAL COURT ORDER. IF YOU VIOLATE THIS ORDER THE COURT MAY FIND YOU IN CONTEMPT OF COURT. YOU MAY ALSO BE ARRESTED AND PROSECUTED FOR THE CRIME OF INTERFERING WITH JUDICIAL PROCEEDINGS AND ANY OTHER CRIME YOU MAY HAVE COMMITTED IN DISOBEYING THIS ORDER.

SECTION 306. PROTECTIVE ORDERS or MODIFICATION of PROTECTIVE ORDERS

A Protective Order or a Modified Protective Order after notice and hearing, may, whether or not the respondent appears, grant and order:

- (a) The respondent not to abuse or injure the victim or any designated protected person;
- (b) The respondent not to telephone, e-mail, text message or communicate through electronic, computer or digital means, visit, assault, batter, molest, stalk, harass or otherwise interfere with the victim or any designated protected person;
- (c) The respondent not to threaten the victim or any designated protected person, whether directly or by means of electronic, digital or computer aided threat, directly or through third parties;
- (d) The respondent not to annoy, telephone, contact or otherwise communicate with the victim or any designated protected person, directly or indirectly through friends, relatives or co-workers, or through direct or indirect methods whether by electronic or digital means including posting malicious, threatening, intimidating, personal or embarrassing materials to computer websites or blogs regarding the respondent, or otherwise communicating directly or indirectly with the victim;
- (e) The respondent to leave the residence of the petitioner, unless the ownership of the residence belongs to the respondent;
- (f) The respondent to stay away from the residence, school, place of employment of the victim, or any specified place frequented by the victim and any other designated person or family member or household or former household member;
- (g) An order removing the respondent who is a minor child from the residence by immediately placing the child in any type of care authorized for children taken into custody pursuant to the Kickapoo Tribe of Oklahoma Juvenile Ordinance.
- (h) Seizing and prohibiting the respondent from using or possessing a firearm or other weapon specified by the Court;
- (i) The victim possession and use of an automobile, if the parties to the domestic abuse incident have shared access to an automobile, and/or other essential personal effects, regardless of the ownership between the victim and respondent;
- (j) The appropriate Law Enforcement Official to accompany the petitioner to the residence of the parties to ensure that the petitioner is safely restored to possession of the residence, automobile, and other essential personal effects, or to supervise the petitioner's or respondent's removal of personal belongings;

- (k) Arrangements for visitation of any minor child(ren) by the respondent and requiring supervision of that visitation by an independent third party or denying visitation if necessary to protect the safety of the petitioner or child(ren). However, all costs of supervised visitation shall be paid by the respondent. Indian Child Welfare shall not be required to provide supervised visitation under this Ordinance. Visitation arrangements shall consider the respondent's overall lifestyle, especially as it pertains to alcohol, other chemical use and history of violence.
- (l) Any relief that the Court deems necessary to protect and provide for the safety of the petitioner and any designated family member or household or former household member.

(m) Respondent to:

1. Pay any attorney's fees, costs or other fees incurred by the petitioner in bringing the action;
2. Pay any costs and fees incurred by the Kickapoo Tribe of Oklahoma in detaining the respondent in response to the domestic abuse incident;
3. Reimburse the petitioner or other person for any expenses associated with the domestic abuse incident, including but not limited to medical expenses, counseling, shelter, loss of wages, and repair or replacement of damaged property;

A Protective Order authorized by this section shall include the name, sex, race, date of birth of the respondent, and the dates of issue and expiration of the protective order.

SECTION 307. DURATION OF ORDERS

(a) An Emergency Temporary Protective Order is effective until a full hearing with notice is conducted. Provided, if the respondent, after having been served, does not appear at the hearing, the emergency *ex parte* order shall remain in effect until the respondent is served with the permanent order. If the terms of the permanent order are the same as those in the emergency order, or are less restrictive, then it is not necessary to serve the defendant with the permanent order. Any emergency *ex parte* order entered shall state: "IF YOU FAIL TO APPEAR AT THE HEARING, A PERMANENT ORDER MAY BE ISSUED WITHOUT FURTHER NOTICE TO YOU."

(b) Protective Orders and Modified Protective Orders issued after notice and hearing shall remain in effect for a period of four (4) years, or until further order of the Court, whichever comes first.

(c) The Court prior to the time a Protective Order or Modified Protective Order expires, may upon a showing of good cause extend the Protective Order or Modified Protective Order for another period of four (4) years, or until further order of the Court, whichever comes first.

SECTION 308. TRANSMITTAL OF PROTECTIVE ORDERS

The Court shall:

- (a) Deliver the order to the Kickapoo Tribe of Oklahoma's program for victims of domestic abuse or other appropriate person or agency;

- (b) Make reasonable efforts to ensure that the Protective Order is understood by the petitioner, and the respondent, if present;
- (c) Transmit, by the end of the next business day after the order is issued, a copy of the Protective Order to Kickapoo Tribal Police Department and local Law Enforcement agencies designated by the petitioner; and
- (d) Transmit a copy of the order in the Kickapoo Tribal District Court registry of all Protective Orders.

SECTION 309. CUSTODY MATTERS TAKE PRECEDENT

In the event the petitioner requests relief or the Court enters a temporary order(s) concerning custody of a minor child(ren), such a hearing determining the above cited relief must be given precedence over all matters, including older matters of the same character, involving the same petitioner and respondent.

SECTION 310. CERTIFICATION OF PROTECTIVE ORDERS

All protective orders shall be certified as true and correct copies of the order(s) entered in the accompanying case.

SECTION 311. EFFECT OF ACTION BY PETITIONER OR RESPONDENT ON ORDER

If the Court orders respondent excluded from the residence of victim or orders respondent to stay away from victim, an invitation by the victim to visit or enter does not waive or nullify a Protective Order. Further, the victim cannot violate or be arrested for a violation of his/her own Protective Order.

SECTION 312. COURT RESPONSIBILITIES

The Court shall:

- (a) Not grant nor deny relief to the petitioner based on the employment, age, economic, educational, social, political, and/or mental and physical status of the petitioner or respondent.
- (b) Not deny a petitioner relief requested pursuant to this Ordinance because of a reasonable time lapse between an act of domestic abuse and the filing of the petition.
- (c) Inform the victim of domestic abuse about local services and advocacy available through the Kickapoo Tribe of Oklahoma's program for victims of domestic abuse.

SECTION 313. MUTUAL ORDER FOR PROTECTION DISCOURAGED

A Protection Order entered against both the plaintiff and respondent shall not be enforceable against the plaintiff unless:

- (a) The respondent files a written pleading, such as a cross or counter complaint, seeking a protection order, and;

(b) The Court makes specific findings of harassment, stalking, assault, or domestic or family violence against both the plaintiff and respondent and determines that each party is entitled to such an order.

SECTION 314. COURT ORDERED OR REFERRED MEDIATION, MARRIAGE COUNSELING, OR RECONCILIATION OF DOMESTIC ABUSE CASES PROHIBITED

The Court shall not order parties into mediation or any type of counseling, alternative justice, restorative justice, or any other mediation type of situation that would put the petitioner in the position of dealing directly with the respondent for resolution of the issues contained in a petition for a protective order, even if the petitioner is given the option to refuse to participate in a mediation or similar process.

SECTION 315. OTHER COURT PROCEEDINGS. EFFECT OF OTHER PROCEEDINGS

(a) At any hearing in a proceeding to obtain or amend an order for protection, each party has a continuing duty to inform the Court of any other civil or criminal proceedings whether in civil, criminal, family, or juvenile Court, involving the parties in any jurisdiction.

(b) An order for protection may be sought in addition to other available civil or criminal proceedings. A petitioner is not barred from applying for an order for protection because of other Court proceedings. The Court shall not delay granting relief because of other pending action between the parties. The Court shall not dismiss or refuse to grant an order for protection because of the possibility, pendency, and existence of other Court proceedings.

SECTION 316. OMISSION OF PETITIONER'S ADDRESS

(a) A petitioner may omit their home address from all court papers. If the petitioner does so, the Court may inquire *in camera* to determine information sufficient to establish jurisdiction over the petition, but shall thereafter maintain the address of petitioner under sealed record, not to be accessible unless authorized by the Court. The petitioner must provide the Court with information to allow proper service to be attainable under the Civil Procedure Ordinance of the Kickapoo Tribe of Oklahoma.

(b) Service upon petitioners with sealed address shall be made by service upon the Court in lieu of petitioner. Any computation of time in which to answer or reply by the petitioner after service by respondent pursuant to this section shall be enlarged by three days. Service shall otherwise comply with the Civil Procedure Ordinance.

SECTION 317. TRIBAL REGISTRY FOR ORDERS OF PROTECTION

(a) The District Court of the Kickapoo Tribe of Oklahoma shall maintain a registry of all protective orders issued by the Kickapoo Tribal District Court. The Court Clerk shall provide the Kickapoo Tribal Police Department and the program for victims of domestic abuse with certified protective orders within 24 hours after issuance.

(b) The Court Clerk shall also provide the police and the program with any modifications, revocations, withdrawals, and/or expiration of protective orders.

SECTION 318. VACATING OF PROTECTIVE ORDERS

(a) A party who wishes to have a protective order vacated must move the Court for such an order.

(b) A Protective Order shall be vacated only by Court Order.

(c) In determining whether or not to vacate a protection order, the Court shall consider the following:

1. Whether either or both of the parties have attended counseling, for how long and reports from the counseling program as to the attendance, success and any recommendations of the program regarding the respondent;
2. Whether the respondent has attended substance abuse counseling, if required by the order, and for how long and reports from the counseling program as to the attendance, success and any recommendations of the program regarding the respondent;
3. Whether the respondent has complied with the terms of the protective order or modified protective order;
4. Whether the circumstances have changed so as to remove the danger to the petitioner from the respondent; and
5. Any other factors the Court deems relevant.

(d) The Court clerk shall provide a copy of any subsequent order to all Law Enforcement Departments to whom a copy of the original protective order was delivered under Section 308 and 317.

(e) The Kickapoo Tribal Police Department shall enforce any protective order that has neither expired nor been vacated, regardless of the current status of the party's relationship.

SECTION 319. CIVIL PENALTIES FOR VIOLATING PROTECTIVE ORDER

In addition to any criminal penalties for failure to comply with the requirements of this Ordinance, except where otherwise stated, failure to comply with the provisions of this Ordinance shall subject the non-complying offender to a civil penalty of not more than Two Thousand Five Hundred Dollars (\$2,500.00), per incident, as assessed by the Court after notice and hearing. Each day wherein the offender fails to come into compliance shall be a separate violation. The Attorney General/Prosecutor shall be authorized to assist in enforcement of this section.

May require that ten percent (10%) of costs and restitution be provided to the Oklahoma Crime Victims Compensation.

SECTION 320. CIVIL SEIZURE OF PROPERTY USED IN FURTHERANCE OF VIOLATING A PROTECTIVE ORDER

(a) All property, used in violating a Protective Order or Modified Protective Order (whether permanent or temporary), or Emergency Protective Order issued, registered or valid under this title, which is:

1. Found in the possession, custody, or control of any person, for the purpose of assisting, furthering violation of this title or transporting the perpetrator, for the purpose of violating the provisions of this title, or with intent to avoid apprehension for violations hereunder, and

2. Any automobile, truck, conveyance, or other vehicle whatsoever used in violating this Ordinance, whether by or for transporting the respondent, harassment of the victim, or other purposes; and

3. All cash weapons, cell phones, computers, paraphernalia, mechanical, electronic or digital equipment or other tangible personal property incident to violating a Protective Order or Modified Protective Order (whether permanent or temporary), or Emergency Protective Order, found on or in the control of the perpetrator or any person assisting in knowing violation of this Ordinance, may be seized by any authorized Law Enforcement Officer, without process. The same shall be, from the time of such seizure, forfeited to the Kickapoo Tribe of Oklahoma, and a proper proceeding filed to maintain such seizure and prosecute the forfeiture as herein provided.

(b) Any and all such vehicles and property seized pursuant to Section 320 (a) shall be listed and appraised by the officer making such seizure and the property turned over to the Police Department and a receipt made. The officer making the seizure shall promptly file a written report to the Court Clerk and Attorney General/Prosecutor, showing the name of the officer making the seizure, the place where and the person from whom the property was seized, and an inventory and appraisal thereof, at the estimated usual and ordinary retail price of such articles received, to the best of the officer's knowledge.

1. Unless the seized property is being held as evidence for an ongoing civil or criminal action, the Attorney General/Prosecutor shall within thirty (30) days of seizure file in the District Court forfeiture proceedings in the name of the Kickapoo Tribe of Oklahoma, as plaintiff, and in the name of the owner or person in possession, as defendant, if known, and if unknown in the name of the property seized. The Clerk of the Court shall issue summons to the owner or person in whose possession such property was found, directing the owner or person to answer within ten (10) days.

A. If by a preponderance of the evidence the property is found to have been used in violation of or assisting in violating this Ordinance, the property shall be declared forfeited by the Court and ordered sold.

B. If the property is shown to belong to a third party not involved in, nor assisting or aware of the property's use in violating this Ordinance and that the property will not likely be used in further violation of this Ordinance, the seized property shall be returned to the third party owner.

C. If the defendant or owner proves at the forfeiture hearing that the conduct giving rise to the seizure was justified, the seized property shall be returned to the owner.

Notice of sale shall be posted in three public places within the Tribe not less than ten (10) days before the date of sale.

(c) The seizure of property shall not be credited to the person from whom it was seized and shall not relieve the person from any prosecution, payment of any fines or penalties, or compliance with other court orders provided for under this title.

SECTION 321. CHILD CUSTODY

(a) In every case involving the custody of guardianship of or visitation with a child, the Court shall consider evidence of ongoing domestic abuse which is properly brought before it. If the occurrence of ongoing domestic abuse is established by clear and convincing evidence, there shall be a rebuttable presumption that it is not in the best interests of the child to have custody, guardianship or unsupervised visitation granted to the abusive person.

(b) In placing a child in the custody of an individual or in the custody of a private agency or institution, the Court shall if at all possible, select a person or an agency or institution governed by persons of the same religious faith as that of the parents of the child, or in case of a difference in religious faith of the parents, then of the religious faith of the child, or if the religious faith of the child is not ascertainable, then the faith of either of the parents. It shall be left to the discretion of the Judge to place children where their total needs will best be served. Under no circumstances shall a child be placed in the custody of an individual who is registered with any Tribal, State or Federal Sex Offender Registration. No individual that has been convicted of any crime involving domestic abuse or is married to or living with a person convicted of a crime involving domestic abuse shall receive custody unless that person is able to show by clear and convincing evidence that the child will not be at risk by such placement.

(c) Prior to placing a child in the custody of an individual, the Court shall inquire as to whether the individual has been previously convicted of a felony or a relevant misdemeanor or has any felony or relevant misdemeanor charges pending. Prior to the custody order being entered, the person shall respond by certified affidavit or through sworn testimony to the Court and shall provide a criminal history record obtained from the Oklahoma State Bureau Investigation (OSBI) upon payment of nineteen dollars (\$19.00) and completion of the Request for Information form to the OSBI office. For purposes of this subsection, "relevant misdemeanor" may include, but shall not be limited to, assault battery, alcohol or drug-related offenses, crimes involving domestic abuse and other offenses deemed relevant by the Court.

SECTION 322. COURT ORDERED COUNSELING FOR PERPETRATORS

(a) In addition to the other sentencing powers of the Court, in the case of person convicted of any crime related to domestic abuse, as defined in Section 103 of this Ordinance, the Court may require the respondent to undergo the treatment or participate in the counseling services necessary to bring about the cessation of domestic abuse against the victim. The defendant may be required to pay all or part of the cost of the treatment or counseling services; or

(b) In addition to the other sentencing powers of the Court, the Court in the case of a sex offender, shall require the person to participate in a treatment program designed specifically for the treatment of sex offenders, if available. The treatment program must be approved by the Probation Officer who has supervisory authority over the defendant if the defendant is placed on probation, or the Court, if the court retains supervisory authority over the defendant. Such treatment shall be at the expense of the defendant based on the defendant's ability to pay.

SECTION 323. EXPERT TESTIMONY IN CASES OF DOMESTIC ABUSE

In an action in a Tribal Court case, if a party offers evidence of domestic abuse, testimony of an expert witness concerning the effects of such domestic abuse on the beliefs, behavior and perception of the person being abused shall be admissible as evidence.

SECTION 324. TRAINING OF JUDGES

All Judges having juvenile or domestic docket responsibility shall attend training pertinent to issues relating to juvenile law and child abuse and neglect and domestic violence issues.

SECTION 325. HEALTH PROFESSIONALS REPORTING OF CRIMINALLY INFLICTED INJURIES

Any physician, surgeon, osteopathic physician, resident, intern, physician's assistant, or registered nurse, examining, attending, or treating the victim of what appears to be criminally injurious conduct shall report orally or by telephone the matter promptly to the nearest appropriate Law Enforcement agency to the jurisdiction wherein the criminally injurious conduct occurred.

CHAPTER FOUR FULL FAITH AND CREDIT

SECTION 400. FULL FAITH AND CREDIT FOR VALID FOREIGN PROTECTION ORDER

Any valid protection order issued by a Court of another tribe, state, or territory shall be accorded full faith and credit by the Courts and Law Enforcement authorities of the Kickapoo Tribe of Oklahoma and enforced as if it were issued by the Kickapoo Tribe of Oklahoma.

SECTION 401. VALID FOREIGN PROTECTION ORDER

(a) **Jurisdiction of issuing Court.** A protection order issued by a state, tribal or territorial Court shall be deemed valid **if** the issuing Court had jurisdiction over the parties and matter under the law of the tribe, state, or territory. There shall be a presumption in favor of validity where an order appears authentic on its face.

(b) **Notice and hearing by Court.** A defendant must have been given reasonable notice and the opportunity to be heard before the order of the foreign tribe, state, or territory was issued. Provided, in the case of *ex parte* orders, notice and opportunity to be heard was given as soon as possible after the order was issued, consistent with due process.

(c) **Defense.** Failure to provide reasonable notice and opportunity to be heard shall be an affirmative defense to any charge or process filed seeking enforcement of a foreign protection order.

SECTION 402. EXCLUSION FROM FULL FAITH AND CREDIT

A protection order from a foreign jurisdiction entered against both the plaintiff and defendant shall not be enforceable against the plaintiff unless:

(a) The defendant filed a written pleading, such as a cross or counter complaint, seeking a protection order, and;

(b) The issuing Court made specific findings of violence, threats of violence, harassment, domestic or family violence against both the plaintiff and defendant and determined that each party was entitled to such an order.

SECTION 403. FILING OF FOREIGN PROTECTION ORDER

(a) A plaintiff who obtains a valid order of protection in another state, tribe or territory may file that order by presenting a certified copy of the foreign order to the Court Clerk in the Kickapoo Tribe of Oklahoma District Court.

(b) Filing shall be without fee or cost.

(c) A Clerk of Court shall forward a copy of the foreign protection order to the Kickapoo Tribal Police Department upon application of a plaintiff seeking enforcement.

(d) The Clerk shall provide the plaintiff with a copy bearing proof of filing with the Court and entry into the tribal protection order registry.

(e) Filing and entry of the foreign order in the Tribe's protection order registry shall not be prerequisites for enforcement of a foreign protection order.

SECTION 404. LAW ENFORCEMENT IMMUNITY

A Law Enforcement Officer may rely upon a copy of any foreign protection order which has been provided to the officer by any source and may also rely upon the statement of any person protected by a foreign order that the order remains in effect. A Law Enforcement Officer acting in good faith shall be immune from civil and criminal liability in any action arising in connection with a Court's finding that the foreign order was not enforceable.

CHAPTER FIVE CRIMINAL PROCEDURES

SECTION 500. PENALTIES FOR VIOLATION

(a) Except as otherwise provided by this section any person who has been served with an ex parte or final protective order and is in violation of such protective order, upon conviction, shall be guilty of a misdemeanor and shall be punished by a fine of not more than Two Thousand Five Hundred Dollars (\$2,500.00), or by a term of imprisonment in the Tribal jail of not more than one (1) year, or both such fine and imprisonment.

(b) Any person who after a previous conviction of a violation of a protective order is convicted of a second or subsequent offense pursuant to the provisions of this section shall, upon conviction, be deemed guilty of a misdemeanor and shall be punished by a term of imprisonment in the Tribal jail of not less than ten (10) days and not more than one (1) year. In addition, to the term of imprisonment, the person may be punished by a fine of not less than One Thousand Dollars (\$1,000.00), and not more than Five Thousand Dollars (\$5,000.00).

(c) 1. Any person who has been served with an ex parte or final protective order who violates said protective order and without justifiable excuse causes physical injury or physical impairment to the plaintiff or to any other person named in said protective order shall, upon conviction, be guilty of a misdemeanor and shall be punished by a term of imprisonment in the Tribal jail for no less than twenty (20) days nor more than one (1) year. In addition, to the term of imprisonment, the person may be punished by a fine not to exceed Ten Thousand Dollars (\$10,000.00).

2. In determining the term of imprisonment required by this section, the jury or sentencing Judge shall consider the degree of physical injury or physical impairment to the victim.
3. The provisions of this subsection shall not affect the applicability of Article 207, 208, 209, and 210, of the Kickapoo Law Enforcement Code.

(d) The minimum sentence of imprisonment issued pursuant to the provisions of subsections B and C of this section shall not be subject to statutory provisions for suspended sentences, deferred sentences or probation, provided the Court may subject any remaining penalty under the jurisdiction of the Court to the statutory provisions for suspended sentences, deferred sentences or probation.

(e) In addition, to any other penalty specified by this section, the Court may require a respondent to undergo treatment or participate in the counseling services necessary to bring about the cessation of domestic abuse against the victim or to bring about the cessation of stalking or harassment of the victim.

(f) When a minor child violates the provisions of any protective order, the Court may, if the violation is to be heard in juvenile proceeding, order the child to participate in counseling services necessary to bring about a cessation of domestic abuse against the victim and order community service hours to be performed in lieu of any fine or imprisonment authorized by this section.

SECTION 501. NOTICE OF RIGHTS TO VICTIMS OF DOMESTIC ABUSE

Upon the preliminary investigation of any crime involving domestic abuse, it shall be the duty of the first Police Officer who interviews the victim of the domestic abuse to inform the victim of the Kickapoo Domestic Abuse Program and to give notice to the victim of certain rights. The notice shall consist of handing such victim the following statement:

“As a victim of domestic abuse, you have certain rights.” These rights are as follows:

1. The right to request that charges be pressed against your assailant;
2. The right to request protection from any harm or threat of harm arising out of your cooperation with Law Enforcement and prosecution efforts as far as facilities are available and to be provided with information on the level of protection available; and
3. The right to be informed of financial assistance and other social services available as a result of being a victim, including information on how to apply for assistance and services; and,
4. The right to file a petition for a protective order or when the domestic abuse occurs when the Court is not open for business, to request for an emergency temporary ex parte protective order.

A Police Officer shall not discourage a victim of rape, forcible sodomy or domestic abuse from pressing charges against the assailant of the victim.

SECTION 502. MANDATORY DETENTION FOR INCIDENTS INVOLVING DOMESTIC ABUSE; DETERMINATION OF PRIMARY AGGRESSOR; REQUIRED REPORT

(a) A Law Enforcement Official shall have up to seventy-two (72) hours after the incident, without a warrant, to detain and charge a person if the official has probable cause to believe the person has committed a violation involving domestic abuse, whether the offense was committed in or out of the presence of the official.

(b) If a Law Enforcement Official receives complaints of domestic abuse from two or more opposing persons, the official shall evaluate each complaint separately to determine if one party was the primary aggressor. If the official determines that one person was the predominate aggressor, the official need not detain the second person if the second person is primarily the victim of domestic abuse.

(c) In determining whom to detain, the Law Enforcement Official is not required to base the decision on who hit whom first, but shall consider the dynamics of domestic abuse, self-defense actions and the definition of primary aggressor.

(d) A Law Enforcement Official shall not consider the use or abuse of alcohol by either party in making a determination as to whether or not domestic abuse has been committed.

(e) The employment, economic, educational, social, political, and/or the mental or physical status of the alleged perpetrator and/or victim shall not be considered in detention of the perpetrator.

(f) A Law Enforcement Official shall not threaten, suggest, or otherwise indicate the possible detention of all parties to discourage requests for intervention by any party.

SECTION 503. RESERVED

SECTION 504. REQUIRED REPORTS

(a) In addition to any other report required, a Law Enforcement Official who does not make a detention after investigating a complaint of domestic abuse or who detains two or more persons for a violation of the Domestic Violence Protection Ordinance must submit a written report setting forth the grounds for not detaining or, in instances where both parties are detained, describe how the determination was made that both parties acted primarily as aggressors and that neither party acted primarily in self-defense.

(b) All reports shall be forwarded to the Prosecutor’s office within seventy-two (72) hours of domestic abuse incidents, regardless of whether or not a detainment was made.

SECTION 505. WARRANTLESS ARRESTS FOR CERTAIN VIOLATIONS OF PROTECTIVE ORDERS

(a) When a Law Enforcement Official has probable cause to believe that a defendant has violated a Protective Order, either;

1. Issued by the Kickapoo Tribal District Court; or
2. Valid under the Kickapoo Tribe’s Domestic Violence Protection Ordinance regardless of issuing jurisdiction, and verifies the existence of the order, the official may, without a warrant, detain the apparent violator whether the violation was committed in or outside the presence of the official, if the orders are in accordance with the Kickapoo Tribe of Oklahoma Domestic Violence Protection Ordinance.

(b) A copy of a protective order shall be *prima facie* evidence that such order is valid when such documentation is presented to a Law Enforcement Officer by the plaintiff, defendant, or another person on behalf of a person named in the order. Any Law Enforcement Officer may rely on such evidence to make an arrest for a violation of such order, if there is reason to believe the respondent has violated or is then acting in violation of the order without jurisdiction excuse. When a Law Enforcement Officer relies upon the evidence specified in this subsection, such officer and the employing agency shall be immune from liability for the arrest of the defendant if it is later proved that the evidence was false.

(c) Any person who knowingly and willfully presents any false or materially altered protective order to any Law Enforcement Officer to effect an arrest of any person shall, upon conviction, be guilty of a crime punishable by imprisonment in the tribal jail for a period not to exceed one (1) year, or by a fine not exceeding Five Thousand Dollars (\$5,000.00), or both, and shall, in addition, be liable for any civil damages to the defendant.

SECTION 506. AUTHORITY OF LAW ENFORCEMENT TO SEIZE WEAPONS

Incident to a detainment for a violation of the Domestic Violence Protection Ordinance, a Law Enforcement Official:

(a) Each official shall seize any weapon or instrument when such official has probable cause to believe such weapon or instrument has been used to commit an act of domestic abuse as defined by this Ordinance, provided an arrest is made, if possible, at the same time.

(b) After such seizure, the Attorney General/Prosecutor shall file a forfeiture action within ten (10) days of such seizure, or any weapon or instrument seized pursuant to this section shall be returned to the owner.

(c) The Attorney General/Prosecutor shall file a forfeiture action within twenty (20) days of determination by the Court of Domestic Violence, or any weapon or instrument seized pursuant to this section shall be returned to the owner.

(d) The seizure and forfeiture provisions as enacted by rules of the Tribal Court shall be followed for any seizure and forfeiture of property pursuant to this section. Provided, however, no weapon or instrument seized pursuant to this section or monies from the sale of any such seized weapon or instrument shall be turned over to the person from whom such property was seized if a forfeiture action has been filed within the time required by subsection B of this section, unless authorized by this section. Provided further the owner may prove at the forfeiture hearing that the conduct giving rise to the seizure was justified, and if the owner proves justification, the seized property shall be returned to the owner. Any proceeds gained from this seizure shall be placed in the Crime Victims Compensation Revolving Fund.

SECTION 507. CONDITIONS OF RELEASE

(a) There shall be a mandatory detainment period of not less than 8 hours prior to the release of any suspect arrested for any crime involving domestic abuse, including violation of an order for protection.

(b) In making a decision as to pretrial release of a person arrested for and/or charged with domestic abuse, or the amount of cash bond for such person, the Court shall review the facts of the arrest and determine whether the person is a threat to the victim or family members, to public safety, and is reasonably likely to appear in Court.

(c) Before releasing a person charged with domestic abuse or violation of an order for protection the Court may impose conditions to assure the safety of the victim and family, and to assure the defendant's appearance at subsequent Court proceedings including, but not limited to:

1. An order directing the defendant to vacate or stay away from the home of the victim and to stay away from any other location where the victim is likely to be;
2. An order enjoining the defendant from threatening to commit or committing acts of domestic abuse against the victim of other family or household members;
3. An order prohibiting the defendant from harassing or annoying, contacting, telephoning, e-mailing, text messaging or otherwise communicating through electronic or digital means with the protected person such as posting malicious, threatening, intimidating, personal or embarrassing materials regarding the victim to computer web-sites or blogs, or otherwise communicating directly or indirectly with the victim;
4. An order prohibiting the defendant from using or possessing a firearm or other weapon specified by the Court;
5. An order prohibiting the defendant from possession or consumption of alcohol or controlled substances;

6. Any other order required to protect the safety of the victim and to ensure the appearance of the defendant in Court.

(d) The Court shall issue a written order for condition of release and distribute copies to the defendant, to the police department, to the Domestic Abuse Program and to the victim. Failure to provide the defendant with a copy of the conditions of release does not invalidate the conditions if the person has notice through oral order or other means.

SECTION 508. MANDATORY ARREST FOR VIOLATION OF CONDITONS OF RELEASE

If a Law Enforcement Officer has probable cause to believe that a person has violated a condition of release imposed in accordance with Section 507, the officer shall, without a warrant, arrest the alleged violator whether the violation was committed in or outside the presence of the officer.

SECTION 509. CRIMINAL CASE MAY NOT BE DISMISSED BECAUSE CIVIL COMPROMISE IS REACHED

A Court shall not dismiss a criminal complaint charging domestic abuse for the sole reason that a civil compromise or settlement is reached between the alleged perpetrator and respondent.

SECTION 510. CONDITIONS OF PROBATION FOR PERPETRATOR CONVICTED OF CRIME INVOLVING DOMESTIC ABUSE; REQUIRED REPORTS BY PROBATION DEPARTMENT; CONDITIONS OF PROBATION

(a) Before placing a perpetrator who is convicted of a crime involving domestic abuse or violation of a Protective Order on probation, the Court shall consider the safety and protection of any victim(s) of the perpetrator.

(b) The Court may condition the granting of probation to a perpetrator in compliance with one or more orders of the Court, including but not limited to remedies provided in this Code.

(c) The Court shall establish policies and procedures for responding to a perpetrators violation of probation conditions imposed pursuant to Subsection (b).

(d) The Court may impose a 1-5 year probation requirement on a perpetrator of domestic abuse. The Court shall consider the pre-sentence investigation report and the recommendations contained therein. Domestic abuse repeat offenses and/or other violent crime shall classify the perpetrator as a repeat offender and shall substantiate the imposition of a minimum of a 3–5 year probation with more stringent requirements including urine analysis testing, alternative treatment therapies, and possible electronic monitoring.

(e) The Probation Department shall set conditions of probation that will give priority to the safety of the victim. In developing the conditions of probation, the probation officer shall consider past history of violence, potential for lethality and history of alcohol and/or substance abuse, whether or not alcohol was involved in the assault that led to being placed on probation. In addition, the victim’s personal impact statement, concerns and perspective shall be considered in the development of conditions for probation.

(f) The Probation Department shall inform the victim, in writing, that the perpetrator has been placed on probation. Such notification shall also include the conditions of probation, the process for notifying the probation officer in the event of further violence, and information regarding on-going victim safety monitoring.

(g) The Probation Department shall immediately report to the Court and the victim any assault by the perpetrator, any threat of harm made by the perpetrator and the perpetrator's failure to comply with conditions imposed by the Court or the Probation Department.

