

**CITIZEN POTAWATOMI NATION
DOMESTIC VIOLENCE AND PREVENTION OF
DOMESTIC ABUSE
TITLE 14**

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**CHAPTER ONE
DOMESTIC VIOLENCE &
PREVENTION OF DOMESTIC ABUSE**

Section 14-1-101 Title of Code

This title shall be known as the code of Domestic Violence and Prevention of Domestic Abuse of the Citizen Potawatomi Nation.

Section 14-1-102 Objective

The Tribal code of Domestic Violence and Prevention is construed to promote the following:

- (A) That violence against family members is not keeping with Citizen Potawatomi Nation traditional values. It is the expectation that the criminal justice system respond to victims of domestic violence with fairness, compassion, and in a prompt and effective manner. The goal of this code is to provide victims of domestic violence, stalking, and harassment with safety and protection.
- (B) It is the goal to utilize the criminal justice system in setting standards of behavior within the family that are consistent with traditional Tribal values, and, as such, the criminal justice system will be utilized to impose consequences upon offenders for behaviors that violate traditional Tribal values that hold woman and children as sacred. The consequences are meant as responses that will allow offenders the opportunity to make positive changes in their behavior while providing protection to the victims of their intentional or negligent actions.
- (C) The Prevention of future violence in all families through prevention and public education programs that promote cultural teachings and traditional Tribal values so as to nurture non-violence within Native families and respect for Native women.

Section 14-1-103 Authority of the Tribe to Regulate Domestic Violence Within its Jurisdictional Boundaries

- (A) The problem of domestic violence within the Tribal boundaries is seriously impacting the ability of the Tribe to provide for the health and wellbeing of its Tribal members and threatens the political integrity of the Tribe.
- (B) Domestic violence is also being perpetrated by persons who are not members of the Tribe. These activities of non-member and non-Indians, who have entered into consensual relations with Tribal members, will be regulated under this code just as

the activities of Tribal members.

- (C) The Tribe has the right to exclude non-members as well as the inherent authority to protect its political integrity and provide for the welfare of its members and others who chose to live or conduct business within its territories.

Section 14-1-104 Definitions

As used in this Title:

- (A) “Abuse” means the infliction of physical harm, bodily injury, threats of bodily harm, financial loss, property damage, criminal trespass, stalking, telephone harassment, mental abuse, or any un-consented to sexual relations between members of the household or family, or persons in/or were in a dating relationship.
- (B) “Domestic Violence” means the occurrence of one or more of the following acts by a family, household member, and/or someone within a dating relationship, but does not include acts of self-defense:
 - (1) Attempting to cause or causing physical harm, or
 - (2) Placing such person in fear of physical harm, or
 - (3) Causing such person to engage in involuntary sexual activity by force, threat of force, or duress.
- (C) “Stalking” means the willful, malicious, and repeated following of a person, by an adult, emancipated minor or minor thirteen years of age or older, with the intent of placing the person in reasonable fear of death or great bodily injury. Stalking also means using intimidating acts against a person or personal property, using substantial intimidation or placing a person at a substantial safety risk; or the use of a third person to carry out acts that if done by the person using such person would result in stalking.
- (D) “Harassment” means unwanted contact and or any of the following:
 - (1) A knowing and willful course or pattern of conduct by a family or household member or an individual who is or has been involved in a dating relationship with the person, directed at a specific person which seriously alarms or annoys the person, and which serves no legitimate purpose.
 - (2) Harassment also means a willful course or pattern of conduct by a person against a public official which based upon that public officials office causes the person to annoy or seriously alarm the public official, and which serves

no legitimate purpose.

- (3) The “course of conduct” must be such as would cause a reasonable person to suffer substantial emotional distress. “Harassment” shall include, but not be limited to telephone calls which are obscene or are threatening in nature.

(E) “Family or Household members” means:

- (1) spouses,
- (2) ex-spouses,
- (3) present spouses of ex-spouses,
- (4) parents, including grandparents, stepparents, adoptive parents and foster parents,
- (5) children, including grandchildren, stepchildren, adopted children and foster children,
- (6) persons otherwise related by blood or marriage,
- (7) persons living in the same household or who formerly lived in the same household,
- (8) persons who are the biological parents of the same child, regardless of their marital status, or whether they have lived together at any time.

(F) “Dating Relationship” means a subjective courtship or engagement relationship.

(G) “Foreign Protective Order” means any valid order of protection issued by a court of another state or a Tribal court.

(H) “Mutual Protective Order” means a final protective order or orders issued to both a plaintiff who had filed a Petition for a Protective Order and a defendant included as the defendant in the plaintiff’s Petition restraining the parties from committing domestic violence, stalking, harassment or sexual assault against one another.

Section 14-1-105 Rights of Victim of Domestic Violence

A victim of domestic violence is entitled to all rights granted to victims of crime, including but not limited to the right to:

- (A) Be informed of all hearing dates and continuances;

- (B) Provide the court with a victim-impact statement, victim-opinion statement, and an assessment of the risk of future harm;
- (C) Be present at sentencing and address the court;
- (D) Advise the court of conditions of probation and parole required to ensure the safety of the victim and other family or household members;
- (E) Restitution for losses sustained as a direct result of any criminal conduct.
- (F) Or any relief the Court deems necessary.

The victim's advocate shall notify any victim of domestic violence of his/her rights set forth in this section, in writing. For notice to be meaningful, it should be actual, timely and written in a language which the victim understands.

Section 14-1-106 Crime Involving Domestic Violence Defined

Regardless of the elements of any crime committed in conjunction with the crime of "domestic violence", the crime of "domestic violence" shall be considered a separate and distinct offense and shall be charged in addition to any other crime. The purpose of this Title is to clarify that domestic violence is a separate crime punishable separate and apart from the underlying offense, and to acknowledge that when the following crimes are committed against a family or household member, as defined in Section 14-1-104 (E), a finding of such shall trigger the application of this Title. The crime of "Domestic Violence" occurs when a family member or household member commits one or more of the following against another family or household or former family or household member:

1. Arson
2. Assault or Battery Offenses
3. Burglary, Breaking and Entering
4. Destruction of Property
5. Homicide
6. Kidnapping, Abduction
7. Sex Offenses
8. Theft

9. Weapons Law Violations
10. Disorderly Conduct
11. Non-violent family offenses
12. Stalking
13. Trespass of Real Property
14. Public Intoxication
15. Habitual offenses
16. Harassment

It is recognized, that the commitment of the preceding offenses should not diminish the seriousness or take precedence over the crime of domestic violence since the intent of this code is to prevent further acts of domestic violence. The commission of one of the preceding offenses shall trigger the application of this Title if committed against a family, household member, or person within a dating relationship or former household, family member, or person within a dating relationship, even if the criminal complaint also charges one of the above offenses.

The use and or presence of drugs and alcohol shall not be used to mitigate the seriousness of the domestic violence offense.

Section 14-1-107 Mandatory Arrest for Crimes Involving Domestic Violence Determination of Predominate Aggressor, Required Report

- (A) A law enforcement officer shall arrest any person, with or without a warrant, whom he has probable cause to believe committed any crime involving domestic violence as defined in this Code, either in the presence of the officer or within forty-eight (48) hours of a report to law enforcement officers of the commission of an offense. The officer shall promptly, within one business day, file a report with the prosecutor's office.
- (B) If a law enforcement officer receives a complaint of domestic violence from two or more opposing persons, the officer shall evaluate each complaint separately to determine who was the predominate aggressor. If the officer determines that one person was the predominate aggressor, the officer need not arrest the opposing person alleged to have committed domestic violence. In determining whether a person is the predominate aggressor, the officer shall cumulatively consider the following factors:

- (1) The history of domestic violence, both documented prior complaints and convictions and the law enforcement officer's own prior knowledge of the family;
 - (2) The relative severity of the injuries inflicted on each person evidenced by who in the relationship poses the most danger to the other person?
 - (3) The likelihood of future injury to each person;
 - (4) Whether one of the person acted in self-defense or defense of another?
 - (5) The degree to which one of the persons has acted with more deliberate intent to control, isolate, intimidate, emotionally demean, cause injury or pain or fear of harm to the person or third person.
- (C) A law enforcement officer shall not threaten, suggest, or otherwise indicate the possibility of arrest of all parties to discourage requests for intervention by any party.
- (D) A law enforcement officer shall not consider the use or abuse of alcohol by either party in making a determination as to whether or not domestic violence has been committed.
- (E) The law enforcement officer is not required to make an arrest based on who hit who first but shall consider the dynamics of domestic violence and the definition of predominate aggressor in determining which party to arrest.

Section 14-1-108 Officials Who Batter, Including Law Enforcement Officers; Procedure

Law enforcement officers and public officials who are suspected of committing the crime of domestic violence shall be subject to all provisions of this code.

Upon receiving a report or notification that a law enforcement officer is a possible perpetrator of domestic violence:

- (A) The responding officer shall immediately notify the on duty supervisor or designate. The supervisor shall respond to the call and will notify the chief or designate.
- (B) Line officers will secure the scene and ensure the safety of all parties.
- (C) Under no circumstances will line officers be responsible for or be assigned to investigate calls regarding other officers of equal rank or superior officers. Someone of higher rank than the alleged perpetrator shall be involved in responding.

- (D) The domestic violence investigator or designate shall be notified of the call.
- (E) Once the preceding has been complete the line officer shall await the response of a superior.

Upon receiving notification that a public official is a possible perpetrator:

- (A) The responding officer shall notify the duty supervisor and domestic violence investigator or designate.
- (B) The responding officer shall proceed with all reasonable means to secure the scene and ensure the safety of all parties, if necessary, and await the response of the supervisor or domestic violence investigator.

Section 14-1-109 Prosecution Responsibility

The Citizen Potawatomi Nation Attorney General or Prosecutor designee shall be responsible for initiating, presenting, and prosecuting any domestic violence criminal case involving any official or law enforcement officer. Domestic violence cases involving prominent persons or other high-profile individuals and or circumstances shall also fall under the direct prosecution responsibility of the Attorney General or Prosecutor designee.

Section 14-1-110 Authority of Law Enforcement Officers to Seize Weapons

Incident to an arrest, or in the course of securing a crime scene involving domestic violence a law enforcement officer:

- (A) Shall seize all weapons that are alleged to have been involved or threatened to be used in the commission of a crime or any weapon in the immediate vicinity of the alleged commission of the offense. The immediate vicinity is not limited to the “wingspan” of the perpetrator and can include additional rooms of the home if weapons are reasonably suspected to be present.
- (B) Shall seize a weapon that is in the plain view or which is located during a search authorized by a person entitled to consent to the search. The seizure of weapons is without regard to ownership of the weapons; weapons owned by a third party are subject to seizure when officers conclude that the weapon must be seized to protect law enforcement, victims of domestic violence or others.

Section 14-1-111 Immunity

Any law enforcement officer shall have immunity from any liability, civil or criminal, in making arrests or exercising any authority granted under this Code, if the law enforcement officer acts in good faith and has probable cause based on the totality of the circumstances upon the best

information so as to provide protection for victims of domestic violence. Law enforcement officers shall have the same immunity with respect to participation in any court proceedings resulting from arrests made for domestic violence or any crimes involving domestic violence.

Section 14-1-112 Conditions for Pre-Trial Release

- (A) No person arrested for a crime of domestic violence or violation of protective order shall be released from detention until after the expiration of seventy-two (72) hours from arrest, notwithstanding the ability to post a cash or surety bond or the failure of the prosecutor to file a criminal complaint. The Court may modify the seventy-two (72) hour requirement at the initial appearance/ arraignment for good cause shown.
- (B) No person arrested for the crime of domestic violence or violation of protective order shall be allowed a temporary release before arraignment except for extreme medical emergency or death of an immediate family member, and provide such release does not represent an imminent danger to the perpetrator's spouse/partner, immediate family or others.
- (C) The use or abuse of alcohol and/or other chemicals by the alleged perpetrator shall be considered, not only in relationship to the alleged assault but as alcohol and/or other chemicals relate to the alleged perpetrator's overall lifestyle, in the likelihood that alcohol and/ or other chemicals greatly increase the likeliness or unlikeliness of a person to appear in court, potential for lethality, or enhances the possibility of further threats or injury to the victim.
- (D) Before releasing a person arrested for a charge with a crime involving domestic violence, or a violation of protective order, the court shall make findings on the record, and may impose conditions to the release or bail on the person to protect the alleged victim of domestic violence and to ensure the appearance of the person at subsequent court proceedings. These conditions may include, but are not limited to the following:
 - (1) An order enjoining the person from threatening to commit or committing acts of domestic violence against the alleged victim or other family or household members.
 - (2) An order prohibiting the person from harassing, annoying, telephoning, contacting, or otherwise communicating with the alleged victim, either directly or indirectly through family, relations by marriage, friends or co-workers.
 - (3) An order directing the person to stay away from the home of the alleged victim and/or child(ren) and to stay away from any location where the victim is likely to be.

- (4) An order prohibiting the person from using or possession of a firearm or other weapons specified by the Court. The Court may order weapons turned into the Citizen Potawatomi Nation Police Department as a requirement of bond.
 - (5) An order prohibiting the person from possession or consumption of alcohol or controlled substances; and
 - (6) Any other order required to protect the safety of the alleged victim and to assure the appearance of the person in court.
- (E) If conditions of release are imposed, the court shall:
- (1) Issue a written order for conditional release;
 - (2) Provide public safety with any available information concerning the location of the perpetrator in a manner that protects the safety of the victim;
 - (3) Inform the person being release that he is to be monitored by a public safety officer/domestic violence officer for compliance with his conditions on release, and that a violation of these conditions may cause his conditional release to be revoked.
- (F) The clerk of courts shall provide a copy of the conditions to the arrested person 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 person has been provided other notice of the conditions.

Section 14-1-113 Mandatory Arrest for Violations of Condition of Release

If a law enforcement officer or domestic violence officer has probable cause to believe that a person on domestic violence probation, parole, or other supervised released has violated a condition of release imposed in accordance with Section 14-1-112 herein, the officer shall, without a warrant, arrest the alleged perpetrator whether the violation was committed in the presence of the officer or not. A domestic violence advocate may, for reasons of dangerousness and safety, direct a law enforcement officer to take physical custody on the authority of the advocate's probable cause.

Section 14-1-114 Role of the Court; Sentencing, Probation Conditions

In responding to the crime of domestic violence the court shall consider;

- (A) The range of punishment for the crime of domestic violence.

- (1) For first time offenders, the defendant can be incarcerated for a period of time not to exceed one (1) year nor less than ten (10) days. The fine for such an offense is to be no more than fifteen hundred dollars and/or banishment. The punishment of Banishment from the Tribe for a period of up to three (3) years in accordance with Tribal law is applicable.
 - (2) For second and subsequent offenses, the defendant can be incarcerated for a period not to exceed one (1) year nor less than twenty (20) days. The fine for such an offense is to be no more than five thousand dollars (\$5,000.00) and no less than one thousand dollars (\$1,000.00). The punishment of lifelong banishment from the Tribe, is also applicable, in accordance with Tribal law.
- (B) Mandatory Service of Jail Time.
- (1) First Offense: If the alleged assailant pleads guilty or is found guilty, the judge shall order a minimum ten (10) days in jail with suspended imposition of the remainder of the sentence available based on the successful completion of a treatment plan provided by the Citizen Potawatomi Nation's Family Violence Program.
 - (2) Second Offense: If the alleged assailant pleads guilty or is found guilty, the judge shall order a minimum of twenty (20) days in jail with suspended imposition of the remainder of the sentence available upon successful completion of the probation plan designed by the Office of Family Violence.
- (C) Noncompliance

In the event that the offender does not comply with the Office of Family Violence program and/or other conditions of probation, the court may, in addition to revoking his suspended sentence, and in addition to civil contempt, recommend criminal contempt be filed which may require any sentence for contempt to be served consecutively to the imposition of the offenders original sentence for the underlying offense.

Section 14-1-115 Probation Violations, Process for Revocation, Consequences

- (A) The court may recognize the signed affidavit of a member of the family violence program and accompanying documentation outlining any violation of probation conditions as probable cause to issue a warrant for the perpetrator's arrest.
- (B) Upon arrest for a violation of probation, the person on probation shall be held without bond.
- (C) The police department shall report to the Office of Domestic Violence and the prosecutor of any person arrested for any crime who is also on probation for a crime

of domestic violence, when they have such knowledge.

Section 14-1-116 Civil Sanctions Sought in the Name of The Citizen Potawatomi Nation

(A) Removal and Exclusion.

- (1) Whenever a non-native is involved in a crime involving instances of domestic violence as the perpetrator upon the Tribal land, the mandatory arrest provision shall apply. The provision will apply to the extent that the non-native perpetrator shall be detained until the appropriate law enforcement agency is contacted. Once contacted, the officer will follow the directions of such agency regarding transport or further detention. The officer shall also ban the individual from Tribal property and escort him off of the same. The duty of law enforcement is to protect the victim, and if necessary turn the perpetrator over to the proper criminal prosecution authority.
- (2) The officer who detains the perpetrator and bans him from the Tribal property shall file a report with the prosecutor's office within the next business day of the incident occurring.
- (3) The prosecutor for the Tribe shall file a civil complaint against the perpetrator for removal and exclusion from the businesses and land of the Citizen Potawatomi Nation. It is necessary to understand that exclusion is a proper remedy to ensure the safety and well being of victims of domestic violence.

(B) Civil Fines

A person found to have committed an act of domestic violence may be liable for a civil fine for domestic violence not to exceed seven thousand five hundred dollars (\$7,500.00). This is in addition to a civil order of restitution that can be sought on behalf of the victim of domestic violence by the Tribal prosecutor.

(C) Civil Forfeitures

- (1) Any weapon, vehicle, or item of personal property used by a native or non-native in the furtherance of an attempt or perpetration of a crime of domestic violence is subject to forfeiture by the Tribal authorities. The requirement for forfeiture is a filing of a civil petition and proof by a preponderance of the evidence that the particular item sought to be forfeited was used in an attempt to commit or in the perpetration of a crime of domestic violence.
- (2) Any third-party lawful owner of such property may petition the court for return of such property. Upon a finding that the third party participated in or

acknowledged that their property would be used for violation of the Citizen Potawatomi Nation's Domestic Violence and Prevention code, the court has the discretionary authority to return the property or order it to be disposed of or sold for the benefit of the Tribe.

(D) Contempt of Court.

All civil remedies can be enforced by Contempt of Court. The punishment for indirect contempt of court is up to a year in jail and or a fine of two thousand five hundred dollars (\$2,500.00). This fine is in addition to any other fines imposed upon the perpetrator of domestic violence.

(E) Appellate Review

Appeals Under this Section shall be pursuant to the Rules of Civil Procedure.

Section 14-1-117 Spousal Privileges Inapplicable to Criminal Proceedings Involving Domestic Violence

The following evidentiary privileges do not apply in criminal proceedings in which a spouse or other family member is the victim of an alleged crime involving domestic violence perpetrated by the other spouse:

- (A) The privilege of confidential communications between spouses.
- (B) The testimonial privilege of spouses.

Section 14-1-118 Advocate-Victim Privilege Applicable in Cases Involving Domestic or Family Violence

- (A) Except as otherwise provided in Subsection (B), confidential oral communications between a victim of domestic violence or family violence and domestic violence/family violence advocate, and written records and reports concerning the victims are privileged. The privilege can be claimed by:
 - (1) The victim; or
 - (2) The person who was the advocate at the time of the confidential communication, except that the advocate may not claim the privilege if the victim is deceased or if the privilege has been waived by the victim.
- (B) The privilege does not relieve a person from a duty imposed under the Tribal code or federal laws requiring the reporting of violence against children.

Section 14-1-119 Appearance or Testimony of Victim Not Required

No judge or prosecutor shall require a victim of domestic violence or related offense addressed by this code to appear or testify as a condition of proceeding with the prosecution of any offense included in the domestic violence code.

Section 14-1-120 Self-Defense, Judicial Safeguards for Victims

In the event of a dual arrest for domestic violence, the presiding judge will take judicial notice of all factors in the case, including evidence determining who is the predominate aggressor, before entering a guilty plea by an alleged perpetrator. Indications of self-defense shall be sufficient reason for a judge to order a hearing to show cause before proceeding with a domestic violence charge against the alleged perpetrator. Such procedure and hearing shall take place to determine the possibility of self-defense, with or without concurrence of the prosecutor.

During such hearing to show cause, the presiding judge will entertain any pertinent information and/or expert testimony of domestic violence advocates pertaining to domestic violence or any other factors relating to the self-defense characteristics displayed in domestic violence cases.

Section 14-1-121 Protective Order Petition, Form, Filing/Fees, Preparation

- (A) A victim of domestic abuse, a victim of stalking, a victim of harassment, a victim of sexual assault, any adult or emancipated minor household member on behalf of any other family or household member who is a minor or incompetent, or any minor age sixteen (16) or seventeen (17) years may seek relief under the provisions of the code of Domestic Violence and Prevention.
 - (1) The person seeking relief may file a Petition for a protective order with the District Court. If the person seeking relief is a victim of stalking but is not a family member or household member or an individual who is or has been in a dating relationship with the defendant, the person seeking relief must file a report against the defendant with the proper law enforcement agency before filing a petition for a protective order with the district court, or provide good cause why the report was not filed.
 - (2) The filing of a petition for protective order shall not require the court to have jurisdiction or venue of the criminal offense.
- (B) The petition forms shall be provided by the clerk of the court. The court clerk shall develop a standard form for the Petition. If the plaintiff has retained counsel for the filing of the protective order, the attorney may substitute his Petition for the standard Petition prepared by the Clerk of the court.

- (C) Except as otherwise provided by this section, no filing fee, service of process fee, attorney fees or any other fee or costs shall be charged the plaintiff or victim at any time for filing a petition for a protective order whether the protective order is granted or not granted. The court may assess court costs, service of process fees, attorneys fees, other fees and filing fees against the defendant at the hearing on the petition, if a protective order is granted against the defendant; provided the court shall have authority to waive the costs and fees if the court finds that the party does not have the ability to pay costs and fees.

If the court makes a specific finding that a petition for protective order has been filed frivolously and no victim exists, the court may assess attorney fees and court costs against the plaintiff.

The person seeking relief shall prepare the petition, or at the request of the plaintiff, the court clerk, victim-witness coordinator, or the court case manager shall prepare or assist the plaintiff in preparing the petition.

Section 14-1-122 Hearing, Service of Process, Emergency Ex Parte Orders, Protective Orders, Period of Relief, Title to Real Property

A copy of the petition, notice of hearing and copy of the ex-parte order issued by the court shall be served upon the defendant in the same manner as a bench warrant. Any fee for service of an emergency ex parte order, petition for protective order, and notice of hearing shall be charged pursuant to Section 4, subsection C of this title, and shall be the same as the Citizen Potawatomi Nation's Police Department's service fee plus mileage expenses.

Emergency ex parte orders shall be given priority for service and can be served twenty-four (24) hours a day when the location of the defendant is known. When the Citizen Potawatomi Nation's Police Department cannot perform service, service may be acquired by another law enforcement officer, private investigator, private process server, or any other means deemed appropriate.

The return of service shall be filed in the court and submitted to the court file prior to the hearing date.

Within twenty (20) days of the filing of the petition for protective order, the court shall schedule a full hearing on the petition, if the court finds sufficient grounds within the scope of this Act to hold a hearing, such hearing shall be scheduled regardless of whether an emergency ex parte order has previously been issued, requested or denied.

The court may, in its discretion, schedule a full hearing on the petition for protective order within seventy-two (72) hours when the court issues an emergency ex parte order suspending child visitation rights due to physical violence or threats of abuse.

If service has not been made on the defendant at the time of the hearing, the court may continue the hearing and the validity of the ex parte order.

A petition for protective order shall automatically renew every twenty (20) days until the defendant is served. A petition for protective order shall not expire and must be dismissed by court order.

Failure to serve the defendant shall not be grounds for dismissal of a petition or an ex parte order, upon the finding that the defendant is eluding service and good faith attempts have been made to serve the defendant, unless the plaintiff or victim requests dismissal.

At the hearing, the court may impose any terms and conditions in the protective order that the court reasonably believes are necessary to bring about the cessation of domestic abuse against the victim or stalking or harassment of the victim or the victim's immediate family and may order the defendant to obtain a domestic violence inventory or to seek domestic violence counseling as well as drug or alcohol treatment.

Final protective orders authorized by this section shall be on a standard form developed by the administrative office of the courts.

After notice and hearing, protective orders authorized by this section may require the plaintiff and defendant or both to undergo treatment or participate in court-approved counseling to bring about the cessation of domestic violence.

Either party or both may be required to pay the costs of such treatment or counseling services. The court shall not be responsible for such costs.

Any protective order issued on or after October 1st, 2005 shall be valid for a period not to exceed three (3) years unless extended, modified, vacated or rescinded upon motion by either party if the court approves any consent agreement entered into by the plaintiff and defendant.

The court shall notify the parties at the time of the issuance of the protective order of the duration of the protective order.

Upon the filing of a motion by either party to modify, extend, or vacate a protective order, a hearing shall be scheduled and notice given to the parties. At the hearing, the issuing court may take such action as is necessary under the circumstances.

Upon extension of a protective order the protective order shall be given a new number reflective of the issuing year. An extended protective order shall be valid for three years.

The court may, in its discretion, and for good cause shown, issue a protective order that does not expire, when, in the opinion of the court, it is unnecessary to review the matter every three years.

It shall be unlawful for any person to knowingly and willingly seek a protective order against a spouse or ex-spouse for purposes of harassment, undue advantage, intimidation or limitation of child visitation rights in any divorce proceedings or separation action without justifiable cause.

The violator shall, upon conviction, be guilty of the crime of abuse of civil process and may be fined the cost of the action as well as a fine of \$1000 and imprisonment in the Tribal jail for a period of six months, or both. Or in the alternative a civil violation for abuse of process, that will apply to non-Native Americans, the burden of proof being by a showing of clear and convincing evidence that the defendant meant to abuse the process and will subject such person to a civil fine and civil forfeiture of any property used to carry out such abuse.

A protective order shall not in any manner affect title of 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 or visitation schedules, child support, or division of property or any other like relief; except child visitation orders may be temporarily suspended or modified to protect from threats of abuse or physical violence by the defendant or a threat to violate a custody order.

When granting a protective order for the protection of a minor child from violence or threats of abuse, the court shall allow visitation only under conditions that provide adequate supervision and protection to the child while maintaining the integrity of a divorce decree or temporary order.

The court shall refrain from issuing any mutual protective orders, as defined in Section 4(G) except in extraordinary circumstances. A finding of such extraordinary circumstances shall be made on the record.

If both parties allege domestic abuse by the other party, the parties shall do so by separate petitions. The court shall review each petition separately, in an individual or a consolidated hearing and grant or deny each petition on its individual merits. If the court finds cause to grant both motions, the court may do so by separate orders and with specific findings justifying the issuance of each order.

The court may consolidate a hearing if:

- (A) The court makes specific findings that:
 - (1) Sufficient evidence exists of domestic abuse, stalking, harassment, or sexual assault against each party, and
 - (2) Each party acted primarily as aggressors, and
- (B) The defendant filed a petition with the court for a protective order no less than three (3) days, not including weekends or holidays, prior to the first scheduled full hearing on the petition filed by the plaintiff, and

- (C) The original plaintiff had not less than forty-eight (48) hours prior notice to the full hearing on the petition filed by the original defendant.

The court may allow a plaintiff or victim to be accompanied by a victim support person at court proceedings and such person may speak on the plaintiff's behalf with leave of court.

Section 14-1-123 Police To Be Sent a Copy of The Protective Order

- (A) Within thirty-six (36) hours of the return of service of any ex parte or final protective order, the clerk of the issuing court shall send certified copies thereof to all appropriate law enforcement agencies designated by the plaintiff or the victim. A certified copy of any extension, modification, vacation, cancellation or consent agreement concerning a final protective order shall be sent within thirty-six (36) hours by the clerk of the court to those law enforcement agencies receiving the original orders pursuant to this section and to any law enforcement agencies designated by the court.
- (B) The Citizen Potawatomi Nation Police Department shall maintain a data base which is accessible twenty-four hours to provide information to any law enforcement agency seeking information regarding the validity of any protective orders issued by the court.

Section 14-1-124 Violation of Protective Order-Punishment

- (A) 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 Violation of the protective order and shall be punished by a fine not exceeding two thousand dollars (\$2,000.00) or by a term of imprisonment in the Tribal jail of not more than one (1) year, or both.
- (B) Any person who has been found guilty of violation of a protective order in Tribal or state court and is found guilty of a subsequent violation shall be guilty of a Violation of protective order second or subsequent offense and shall be punished by a fine not exceeding five thousand dollars (\$5,000.00) or by a term of imprisonment in the Tribal jail of not more than one year, or both. In addition, the crime of violation of protective order second or subsequent violation also carries the punishment of banishment from the Citizen Potawatomi Nation.

Section 14-1-125 Validity of Orders

All orders issued pursuant to this code shall have statewide and nationwide validity, unless specifically modified or terminated by a judge of the district court, or Supreme Court Justice.

Section 14-1-126 Warrantless Arrest-Procedure

- (A) A peace officer, without a warrant, shall arrest and take into custody a person if the peace officer has probable cause to believe that:
 - (1) An emergency ex parte or final protective order has been issued by a Tribal Court or State District Court anywhere in the United States and served upon the person; and
 - (2) A true copy and proof of service of the order has been filed with the law enforcement agency having jurisdiction of the area in which the plaintiff or any family or household member named in the order resides or a certified copy of the order and proof of service is presented to the peace officer by the plaintiff; and
 - (3) The person named in the order has received actual notice of the order and has had a reasonable time to comply with such order.

Section 14-1-127 Foreign Protective Orders

Foreign protective orders shall be enforceable upon Tribal property. Until a foreign protective order is declared invalid by a court of competent jurisdiction it shall be given full faith and credit by all police officers and courts within the Tribe's jurisdiction.

Police Officers need not obtain a Tribal judges approval to enforce a foreign protective order pursuant to Section 14-1-126 of this code. Report enforcement of a foreign protective order to the prosecutor's office within twenty four (24) hours of such enforcement when arrest occurs.

Section 14-1-128 Address Confidentiality Program

- (A) It is a fact that persons attempting to escape from actual or threatened domestic violence, sexual assault, or stalking establish new addresses in order to prevent their assailants or probable assailants from finding them. The purpose of this section is to enable Tribal organizations to respond to requests for public records without disclosing the locations of victims of domestic violence, sexual assault, harassment or stalking, and to enable cooperation with the State of Oklahoma in providing confidentiality for victims of domestic violence, sexual assault, harassment or stalking, and to enable the Tribal office of domestic violence to accept mailings for victims and to act as a substitute address.
- (B) As used in this section:
 - (1) "Address" means a residential street address, school address, or work address of an individual, as specified on the application of an individual to be a

program participant under this section;

- (2) “Program participant” means a person certified as a participant under this section;
 - (3) “Domestic abuse” means any act of domestic violence as defined in Section 4 of this Code.
- (C) The Tribe is authorized to create a address confidentiality program office to be staffed by unclassified employees who have been subjected to a criminal history records search.
- (D) After the address confidentiality program office is created a person may apply to the office to have an address designated by the office to act as the address of the person or victim of a crime. The Office shall provide a form for the application procedure.

Section 14-1-129 Mandatory Training

All employees of the Court Staff, Prosecutors Office, Office of Family Violence and Police Department shall participate in at least sixteen hours of annual training to include but not be limited to:

- (A) The dynamics of domestic violence, the impact of victimization, offenders reeducation programs, coordinated system response in order to facilitate the goals of this Title. In addition, law enforcement training shall include the technical aspects in making a domestic violence arrest including probable cause, self-defense, mutual arrest, evidence gathering, evidence based prosecution and report writing.
- (B) Failure to participate in the required training may result in appropriate court actions.

Section 14-1-130 Severability Clause

If any clause, section or part of this code is declared invalid by the Tribal court, such shall not render invalid the remainder thereof, but shall be confined in its operation to the offending section.