



SAC AND FOX NATION

920963 S Hwy. 99 • Stroud, Oklahoma 74079 • (918) 968-1141 • FAX (918) 968-1142

FILED

DATE 11/8/2023

SECRETARY
SAC & FOX NATION

Lana J. Butler

RESOLUTION SF-23-10

SAC AND FOX NATION
REGULAR BUSINESS COMMITTEE MEETING
SAC AND FOX RESERVATION
STROUD, OKLAHOMA

OCTOBER 18, 2022

A RESOLUTION ENACTING CERTAIN AMENDMENTS TO TITLE 13 FAMILY CHAPTER 9 DOMESTIC VIOLENCE ACT GENERAL PROVISIONS OF THE SAC AND FOX NATION CODE OF LAWS ENHANCING AND ESTABLISHING RIGHTS FOR VICTIMS OF CRIME.

WHEREAS, the Business Committee of the Sac and Fox Nation met in Regular meeting on the 18th day of October 2022, there being a quorum present, and

WHEREAS, the Business Committee is authorized to transact business and act on behalf of the Nation pursuant to the Constitution and Laws of the Sac and Fox Nation, and

WHEREAS, the Sac and Fox Nation supports the amendments to Title 13 Family Chapter 9 Domestic Violence Act General Provisions of the Sac and Fox Nation Code of Laws.

NOW, THEREFORE BE IT RESOLVED THAT the Business Committee of the Sac and Fox Nation does hereby amend the Sac and Fox Nation Code of Laws Title 13 Family Chapter 9 Domestic Violence Act General Provisions, as attached hereto:

FURTHER, THEREFORE BE IT RESOLVED THAT this resolution and amendment shall be effective upon the filing of the resolution with the Office of the Secretary and the Office of the Court Clerks of the Sac and Fox Nation.

CERTIFICATION

WE, Angela D. Gasper, Principal Chief, and Lana J. Butler, Secretary of the Sac and Fox Nation, do hereby certify that Resolution SF-23-10 to be a true and exact resolution as approved by the Business Committee in a Regular meeting at the Sac and Fox Reservation, Stroud, Oklahoma on the 18th day of October 2022, by a vote of: Angela-Yes, Lana-Yes, Carla-Yes, Robert-Absent.

Angela D. Gasper

Angela D. Gasper, Acting Principal Chief
Sac and Fox Nation

Lana J. Butler

Lana J. Butler, Secretary
Sac and Fox Nation



TITLE 13 - FAMILY
CHAPTER 9 – DOMESTIC VIOLENCE ACT
GENERAL PROVISIONS

Section 9-00. Short Title

This Title shall be entitled “The Domestic Violence Act.”

Section 9-01. Purpose

Domestic violence is a serious offense against the victim, society, the Sac and Fox Nation, and the family. This Act is to provide victims of domestic violence the maximum possible protection from further abuse. The Sac and Fox Nation declares that the official response to cases of domestic violence shall be that violent behavior is not to be tolerated or excused. The goal of the Domestic Violence Act is to provide victims of domestic violence with safety and protection through utilization of the criminal justice system in setting standards of behavior within the family that are consistent with traditional Sac and Fox Nation values and impose consequences upon offenders for behaviors that violate traditional Sac and Fox Nation values. The strength of the Sac and Fox Nation is founded on healthy families. Families including children damaged by domestic violence must be healed by immediate intervention of law enforcement, prosecution, education, treatment for perpetrators, and other appropriate services.

Section 9-02. Specific Applicability and Authority of the Tribe to Regulate Domestic Violence Within its Jurisdictional Boundaries

The chapter herein applies specifically to the Domestic Violence Act and takes precedence over any general laws of applicability. Domestic violence is also being perpetrated by persons who are not members of the Sac and Fox Nation. These activities of non-member and non-Indians, who have entered into consensual relations with Sac and Fox Nation members, will be regulated under this Act just as the activities of tribal members. The Sac and Fox Nation 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 9-03. Definitions

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

(a) **Advocate** or “Victims Advocate” means an employee or volunteer for the Sac and Fox Nation Division for Victims of Crime who:

(1) has a primary function of rendering advice, counseling, or assistance to victims of crime, including domestic violence; supervising the employees or volunteers of the program; or administering the program; and

(2) has undergone a minimum level of training as set by the Sac and Fox Nation Division for Victims of Crime or its successor.

(b) **Department** or Division for Victims of Crime means the Sac and Fox Nation's department, division, agency, or program primarily responsible for oversight of crime victim services, including domestic violence, and recognized as such by the Business Committee of the Sac and Fox Nation.

(c) **Dating relationship** means a social relationship of a romantic or intimate nature as determined by the length of the relationship, the type of relationship, and the frequency of the interaction between the persons involved in the relationship.

(d) **Domestic Violence** shall mean any act of physical harm, threatened imminent physical harm, 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. 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.

(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. Emotional Abuse also includes the harm done to minors by domestic violence committed in the presence of those minors.

(f) **Family or Household Members** means spouses, ex-spouses, former spouses, parents, including grandparents, stepparents, adoptive parents, and foster parents, children, including grandchildren, stepchildren, adopted children, and foster children, and persons otherwise related by blood or marriage living in the same household or who formerly lived in the same household, including the elderly and the handicapped and persons otherwise related by blood or marriage.

(g) **Foreign protective order** means any valid order of protection issued by a court of another state or a tribal court.

(h) **Harassment** means 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. Harassment can occur via social media or other electronic communications that are untrue or invade one's privacy and 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 phone calls as prohibited by Section 215 of Title 10 and fear of death or bodily injury.

(i) **Intimate Partner** shall mean current or former spouses; persons who are or were in a dating relationship; persons who are the biological parents of the same child, regardless of their marital status or whether they have lived together at any time, and persons who currently or formerly lived together in an intimate way, primarily characterized by affectionate or sexual

involvement. A sexual relationship may be an indicator that a person is an intimate partner, but it is never a necessary condition.

(j) **Law enforcement officer** means any person employed or commissioned as a peace officer or law enforcement officer by a government entity or law enforcement agency with the authority to make arrests in the Sac and Fox Nation.

(k) **Primary Aggressor** shall mean the person involved in a domestic violence 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; and/or

(6) who initiates the domestic violence.

(l) **Program for Abusers** means a specialized program, recognized by the Sac and Fox Nation's program for victims of domestic violence or courts as based on an effective model, which provides education and treatment for perpetrators of domestic violence. These services hold a batterer accountable for abusive behavior, provide consequences for engaging in ongoing violent or abusive behavior, provide monitoring of a batterer's behavior, and require the batterer to change battering behavior and attitudes. A program for abusers shall keep victim's safety in the forefront. The court shall establish criteria for determination of a perpetrator's successful completion of the conditions imposed by the court and penalties for a violation of the conditions imposed by the court.

(m) **Program for Victims** means that program which the Sac and Fox Nation acknowledges as serving victims of domestic violence, their children, and families by providing advocacy, shelter, crisis intervention, counseling, education, or other appropriate services.

(n) **Protected Person** shall mean persons who are or were related to the perpetrator as spouses or those situated similarly to a spouse, family members including parents, grandparents, stepparents, adoptive parents, and foster parents, children, including grandchildren, adopted children and foster children and persons otherwise related by blood or marriage living in the same household, persons who are or were intimate partners, 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 Sac and Fox Nation are viewed as creating domestic or kinship relationships.

ii. the testimonial privilege of spouses.

(2) A victim of domestic violence 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 person who was the advocate at the time of the confidential communication may also claim the privilege, except the advocate may not claim the privilege if the victim is deceased or if the privilege has been waived by the victim. 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 treatises or other reliable materials which describe and explain the "battered women's syndrome" or otherwise examine the impact of violence upon victims.

(c) **Expert Testimony.** Notwithstanding the provisions of any other evidentiary rules, in a civil or criminal action in the District Court, if a party offers evidence of domestic violence, the testimony of an expert witness concerning the effects of such domestic violence on beliefs, behavior, and perception of the person being abused shall be admissible as evidence.

(d) **Victim Testimony.** The intent of this paragraph is to provide the court with discretion to employ unusual court procedures to protect the rights of victims of domestic violence, while ensuring the rights of a criminal defendant and the integrity of the judicial process. This paragraph shall apply only to a proceeding brought under the Sac and Fox Domestic Violence Act and shall apply only to the testimony of that victim.

(1) When appropriate facilities are reasonably available, the court may, on the motion of a party to the proceeding, order that the testimony of the victim be taken by virtual means from the victims safety room located within the courthouse in the Office of the Division for Victims of Crime.

(2) Only an attorney for each party, victims advocate, or other person whose presence would contribute to the welfare and well-being of the victim, and persons necessary to operate the equipment may be present in the room with the victim during the testimony of the victim.

(3) Only the court and attorneys for the parties may question the victim.

(4) If the testimony of a victim is taken as provided herein, the victim shall not be compelled to testify in the courtroom during the proceeding.

(5) A victim shall have the right to be accompanied by a victims advocate while giving testimony in the proceeding, but the victims advocate shall not discuss the testimony of the victim with any other witnesses or attempt to prompt or influence the testimony of the victim in any way. The victim advocate may offer support to calm the victim during testimony, and, if warranted due to the victim's emotional state, may request a brief recess so the victim can be calmed.

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

(p) **Stalking** means the willful, malicious, and repeated following or harassment of a person by an adult, emancipated minor, or minor thirteen (13) years of age or older, in a manner that would cause a reasonable person to feel frightened, intimidated, threatened, harassed, or molested and actually causes the person being followed or harassed to feel terrorized, frightened, intimidated, threatened, harassed, or molested. "Stalking" also means a course of conduct composed of a series of two or more separate acts over a period of time, however short, evidencing a continuity of purpose or unconsented contact with a person that is initiated or continued without the consent of the individual or in disregard of the expressed desire of the individual that the contact be avoided or discontinued. Unconsented contact or course of conduct includes, but is not limited to:

- (A) following or appearing within the sight of that individual,
- (B) approaching or confronting that individual in a public place or on private property,
- (C) appearing at the workplace or residence of that individual,
- (D) entering onto or remaining on property owned, leased or occupied by that individual,
- (E) contacting that individual by telephone,
- (F) sending mail or electronic communications to that individual, or
- (G) placing an object on, or delivering an object to, property owned, leased, or occupied by that individual; and
- (H) harming, threatening, or unconsented taking of that individual's pets.

(q) **Sexual Abuse** means those acts and outlawed in Title 10 Crimes, Sub-chapter 2a. Sexual Abuse.

Section 9-04. Evidentiary Standards - Conduct of Hearings - Testimony of Victim Taken in Room Other than Courtroom - Court Order

(a) Testimonial Privileges

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

- i. the privilege of confidential communication between spouses, and

Section 9-05. Duties of Law Enforcement Officer

(a) **Assistance by officers.** A law enforcement official who responds to an allegation of domestic violence shall use all reasonable means to protect the victim and others present from abuse.

(b) **Verbal notice to victim(s).** Law enforcement officials shall give immediate and adequate notice of the rights of victims and/or the remedies and services available to victims of domestic violence.

(c) **Notice to Victims Advocate.** The Victims Advocate shall be notified whenever an officer responds to a domestic violence situation.

(d) **Liability.** A law enforcement officer shall not be held liable in any civil action for an arrest based upon probable cause, enforcement in good faith of a court order, or any other action or omission in good faith under this Act arising from an alleged incident of domestic violence brought by any party to the incident.

Section 9-06. Duty of Prosecutor

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

(b) The victims advocate shall notify the victim of the rights for victims of domestic violence and as set forth in the Sac and Fox Nation Victim's Rights Act in writing . For notice to be meaningful, it should be actual, timely, and written in language which the victim understands.

(c) The Attorney General shall develop or adopt and put into effect written procedures for attorneys who prosecute domestic violence concerning effective prosecution of such crimes and the protection and safety of victims of domestic violence.

Section 9-07. Reporting Requirements

(a) Any tribal official or employee, nurse, schoolteacher, social worker, probation officer, or community health representative including a physician, surgeon, osteopathic physician, resident, intern, or physician's assistant knowing or suspecting that domestic violence is occurring or has occurred upon the person of an adult who is over the age of eighteen (18) years and the person is not an incapacitated adult shall report the matter promptly by telephone or otherwise to the Sac and Fox Police Department if requested to do so either orally or in writing by the victim. There is no requirement to report any incident of what appears to be or is reported to be domestic violence if the incident is committed upon the person of an adult who is over the age of eighteen (18) years; and the person is not an incapacitated adult.

(b) In all cases of what appears to be or is reported to be domestic abuse, the physician, surgeon, resident, intern, physician assistant, nurse, or any other health care professional examining, attending, or treating the victim of what appears to be domestic abuse shall clearly and legibly document the incident and injuries observed and reported, as well as any treatment provided or prescribed.

(c) In all cases of what appears to be or is reported to be domestic abuse, the physician, surgeon, resident, intern, physician assistant, nurse, or any other health care professional examining, attending or treating the victim of what appears to be domestic abuse shall refer the victim to the Sac and Fox Nation Division for Victims of Crime, including providing the victim with the twenty-four-hour statewide telephone communication service established by Section 18p-5 of Title 74 of the Oklahoma Statutes.

(d) Every physician, surgeon, resident, intern, physician assistant, nurse, or any other health care professional making a report of domestic abuse pursuant to this section or examining a victim of domestic abuse to determine the likelihood of domestic abuse, and every hospital or related institution in which the victim of domestic abuse was examined or treated shall, upon the request of a law enforcement officer conducting a criminal investigation into the case, provide copies of the results of the examination or copies of the examination on which the report was based, and any other clinical notes, x-rays, photographs, and other previous or current records relevant to the case to the investigating law enforcement officer.

(e) 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. For purposes of this Section, good faith shall be presumed.

Section 9-08. Failure to Report Domestic Violence

Any person who has a duty to report and fails, neglects, or refuses to report acts of domestic violence known to him/her may, after notice and hearing and a finding of clear and convincing duty before the District Court, be assessed a civil penalty in an amount not to exceed \$500 and/or community service or domestic violence education hours not to exceed 40 hours.

Section 9-09. Standard of Proof, Defenses

(a) The civil standard of proof shall apply to proceedings under this Act, except as otherwise specified in this Act. 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 violence has occurred or is about to occur. The order's purpose shall be to prevent the occurrence or recurrence of violence.

(b) A petitioner shall not be denied relief under this Act 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 a divorce; or
- (4) the petitioner or the respondent is a minor.

(c) Neither intoxication nor spousal immunity shall be considered a defense in a proceeding for the issuance or enforcement of a protection order under this Act.

Section 9-10. Severability

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

Section 9-11. Criminal Sanctions

Nothing contained in this Act shall prevent the filing of criminal sanctions as defined in Title 10 of the Sac and Fox Nation Tribal Code in addition to consequences imposed for violation of provisions in the Domestic Violence Act. As such, 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 and to acknowledge that when an underlying crime as set forth in Title 10 Chapter 2 or 2a is committed against a Protected Person as defined in this Act, a finding of such shall trigger the application of this Act.

Section 9-12. Non-Waiver of Sovereign Immunity

Nothing in this Act shall be deemed to constitute a waiver by the Sac and Fox Nation of its sovereign immunity for any reason whatsoever.

Section 9-13. Savings

This chapter takes effect on the date approved by the Business Committee and does not extinguish or modify any civil or criminal liability or enforcement of such penalty or forfeiture that existed on or prior to the effective date of this chapter and such Code shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such civil or criminal action, enforcement of any penalty therefrom, forfeiture, or liability.

Section 9-14. Effective Date

The provisions of this Act shall become effective thirty (30) days from and after the date of its passage and approval.

SUB-CHAPTER 1 - DOMESTIC VIOLENCE SERVICES

Section 9-101. Domestic Violence Services

The Sac and Fox Nation Division for Victims of Crime shall be designated to provide oversight of domestic violence services. The Division for Victims of Crime shall arrange and supervise agreements to contract for shelter and such other services with a private agency or organization that has a record of service as are needed for victims of domestic violence or sexual abuse and coordinate those services.

Section 9-102. 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 violence or sexual abuse program certified by the Sac and Fox Nation’s Division for Victims of Crime 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 violence or sexual abuse 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 violence and sexual abuse 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, 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 violence shelter.

Section 9-103. Service to Minor Domestic Violence Victims

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

(b) A domestic violence shelter facility may provide such shelter or care only during an emergency constituting an imminent 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 violence 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 or legal guardian.

(d) The show-cause hearing shall be provided for the minor parent who is seeking relief from domestic violence for themselves or on behalf of any of the children.

(e) (1) For purposes of the Domestic Violence Act, any minor, that is not a minor parent, shall be treated as a juvenile within the jurisdiction of the Juvenile Court pursuant to Title 20, Juvenile Procedure.

(2) Notwithstanding subsection (e)(1), a minor thirteen (13) years of age or older may, pursuant to this Act, either on their own or through a third party apply for a any relief available under this Act, including protection orders, emergency protection orders, and *ex parte* orders. **Section 9-104. Law Enforcement Reporting of Domestic Violence Incidents**

(a) **Records and reports.** Every law enforcement agency shall keep a record of each reported incident of domestic violence 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 violence shall consist of:

- (1) who was involved in the domestic violence;
- (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.

However, the Sac and Fox Police Department is not required to provide records of police contacts alleging incidents of domestic violence or related offenses to an alleged perpetrator. Such records may be obtained by the Sac and Fox Nation Tribal Court order after notice to the prosecutor and a hearing. In ordering disclosure, the Sac and Fox Nation Tribal Court may order that the victim's identity and location be redacted and make other orders as necessary to protect the confidentiality and/or any information regarding a witness.

(c) **Monthly report.** A monthly report of the recorded incidents, minus any personally identifying information of the victims, of domestic violence shall be submitted to the Chief of Police for the Sac and Fox Nation, who shall forward the report to the Sac and Fox Nation's Division for Victims of Crime.

Section 9-105. Domestic Violence, Substance Abuse, Addiction and Mental Health Educational Training for Judiciary

- (a) Subject to available funding, all judges with juvenile, domestic or domestic violence docket responsibility shall attend annual educational training pertinent to issues relating to juvenile law, child abuse and neglect, domestic violence, substance abuse, addiction, and mental health issues. Curriculum for training required under this section shall include, but not be limited to: Dynamics of domestic violence;
- (b) The impact of domestic violence on victims and their children including trauma and the neurobiology of trauma;
- (c) Identifying dominant aggressor;
- (d) Tactics and behavior of batterers;
- (e) Victim protection orders and full faith and credit under the Violence Against Women Act of 1994;
- (f) Rights of victims; and
- (g) Evidence-based practices regarding behavioral health and treatment of those with substance abuse or mental health needs.

SUB-CHAPTER 2 - CIVIL ORDERS FOR PROTECTION

Section 9-201. Jurisdiction

The Sac and Fox Nation District Court shall have jurisdiction over acts of stalking, assault, battery, harassment, or domestic violence and associated causes of action:

- (a) committed by any person over whom the court has jurisdiction; or
- (b) that are planned, initiated, transpire, occur, touch upon or are completed, within the tribal jurisdiction; or
- (c) that are threatened against or committed by any person over whom the court has jurisdiction, and
- (d) specifically includes all such civil enforcement actions arising anywhere in the Indian Country of the Sac and Fox Nation or otherwise within the authority of the Sac and Fox Nation.

The filing of a petition for a protective order shall not require jurisdiction or venue of the criminal offense if either the plaintiff or defendant resides within the Sac and Fox Nation. If a petition has been filed in an action for divorce or separate maintenance within the Sac and Fox Nation and either party to the action files a petition for a protective order within the Sac and Fox Nation, the petition for the protective order may be heard by the court hearing the divorce or separate maintenance action if:

- (1) there is no established protective order docket in such court, or
- (2) the court finds that, in the interest of judicial economy, both actions may be heard together; provided, however, the petition for a protective order, including, but not limited to, a petition in which children are named as petitioners, shall remain a separate action and a separate order shall be entered in the protective order action. Protective orders may be dismissed in favor of restraining orders in the divorce or separate maintenance action if the court specifically finds, upon hearing, that such dismissal is in the best interests of the parties and does not compromise the safety of any petitioner.

Section 9-202. Eligible Petitioners

- (a) Any person who is or has been a victim of:
 - (1) sexual abuse;
 - (2) violent or threatening acts of harassment, contact, communication with, or physical proximity to another person; or
 - (3) stalking, assault, battery, or domestic violence,

may seek protection by filing a Motion for or a Petition for Protection Order, whether in an independent action or as a pendent lite order in another proceeding. Provided, such Protection Order is issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection and/or seeking criminal charges. Provided further, such motion may be made orally in court if memorialized by written motion within twenty-four (24) hours.

(b) A victim of domestic violence, a victim of stalking, a victim of harassment, a victim of illicit sexual conduct or any form of sexual abuse, 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 Domestic Violence Act.

(c) If a petition is filed by or on behalf of a minor child, the court may appoint a guardian ad litem to represent the child's interests. Additionally, if the petition involves the child's parent or legal guardian, the court shall refer the matter to the Sac and Fox Nation's Indian Child Welfare Department.

Section 9-203. 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.

An adult person, a parent or guardian acting on behalf of a minor, or a guardian acting on behalf of an incapacitated person, as defined in Title 13 Chapter 8 of the Tribal Code, may apply to the Oklahoma Attorney General to have an address designated by the Oklahoma Attorney General serve as the address of the person or the address of the minor or incapacitated person pursuant to the Address Confidentiality Program established in Section 60.14 of Title 22 of the Oklahoma Statutes.

Section 9-204. Orders for the Protection of Victims

The court shall consider the safety of any and all alleged victims of domestic violence, stalking, harassment, or sexual abuse where the defendant is alleged to have violated a protection order, committed domestic assault and battery, stalked, or sexually abused the alleged victim or victims prior to the release of the alleged defendant from custody on bond.

The court, after consideration and to ensure the safety of the alleged victim or victims, may issue an emergency protection order pursuant to the Domestic Violence Act. The court may also issue to the alleged victim or victims an order restraining the alleged defendant from any activity or action from which they may be restrained under the Domestic Violence Act.

The court shall not consider a "no contact order as condition of bond" as a factor when determining whether the petitioner is eligible for relief.

The protection order shall remain in effect until either a plea has been accepted, sentencing has occurred in the case, the case has been dismissed, or until further order of the court dismissing the protection order.

Section 9-205. Protection of Animal

The person seeking a protective order may further request the exclusive care, possession, or control of any animal owned, possessed, leased, kept, or held by either the petitioner, defendant or minor child residing in the residence of the petitioner or defendant. The court may order the

defendant to make no contact with the animal and forbid the defendant from taking, transferring, encumbering, concealing, molesting, attacking, striking, threatening, harming, or otherwise disposing of the animal.

Section 9-206. Forms of Petitions; Fee Waived

(a) No fee will be charged for filing or service of process or any other fee or costs 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 Act to pay court costs. The court shall have the authority to waive the costs and fees if the court finds that the party does not have the ability to pay the costs and fees.

(b) The petition forms shall be provided by the Court Clerk. The petitioner shall prepare the petition or, at the request of the petitioner, the Court Clerk, the victims advocate, or other persons properly delegated shall assist the petitioner in preparing the same.

(c) A qualified application may be on a form created and provided by the Sac and Fox Nation Tribal Court or in another form. At a minimum, to be qualified, the form must identify the alleged perpetrator, allege that the petitioner is in danger of abuse from the respondent and/or has been the victim of abuse committed by the respondent, and describe the nature of the abuse, the approximate dates of the abuse, and the desired relief. The petition shall state whether any other action is pending between the petitioner or victim and the respondent.

Section 9-207. Service of process -- Hearings

(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 Sac and Fox Nation Civil Procedure Code, upon the respondent in the same manner as a summons. Emergency temporary orders, emergency *ex parte* orders, and notice of hearings shall be given priority for service by the Sac and Fox Police Department and can be served twenty-four (24) hours a day. (b) When the defendant is a minor child who is ordered removed from the residence of the victim, in addition to those documents served upon the defendant, 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 the Sac and Fox Juvenile Code.

(c) When service cannot be made upon the defendant by the police, the police may contact another law enforcement officer or a private investigator or process server to effect service upon the defendant. An emergency *ex parte* order, a petition for protection order, and a notice of hearing may be transferred to any law enforcement jurisdiction to effect service upon the defendant. The Sac and Fox law enforcement officer may transmit the document by electronic means. The return of service shall be submitted to the Sac and Fox Police Department or Court Clerk. If service cannot be completed, the court shall notify the respondent by regular mail, postage paid, of the date and time of the hearing. The court shall also notify the petitioner by mail in the event personal contact has not been made.

(d) Within fourteen (14) 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. Provided, however, when the defendant is a minor child who has been removed from the residence pursuant to the Sac and Fox Juvenile Code, the court shall schedule a full hearing on the petition within seventy-two (72) hours, regardless of whether an emergency temporary order or *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* Protection Order, the court may continue the hearing and/or the respondent may request a continuance.

Section 9-208. Availability of Judge or Court Officer for Emergency Protection Orders

(a) If a plaintiff requests an emergency *ex parte* order pursuant to this Act, the court shall hold an *ex parte* hearing on the same day the petition is filed, or as soon thereafter as possible. The court's *ex parte* hearing may be by telephone or other electronic or digital means. The District Court of the Sac and Fox Nation may issue a written or oral emergency protection order *ex parte* when:

(1) based upon a statement of the Petitioner or a law enforcement official to the court, whether in person, by telephone or other electronic or digital means, the court finds reasonable grounds to believe that the petitioner is in immediate danger of domestic violence, stalking, or harassment; 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 violence.

(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 direction;

(2) Serve a copy on the respondent.

(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* protection order, must be available 24 hours a day to hear petitions for emergency *ex parte* protection orders.

(d) The emergency temporary *ex parte* order shall be in effect until the court date that was assigned by the court during the approval of the order. Emergency temporary *ex parte* orders shall be heard within fourteen (14) days after issuance.

(e) A victim of sexual abuse, kidnapping, assault and battery with a deadly weapon, or member of the immediate family of a victim of first-degree

murder, as such terms are defined in this Act, may petition for an emergency temporary order or emergency *ex parte* order regardless of any relationship or scenario pursuant to the provisions of this section. Court Clerk shall modify the petition forms as necessary to effectuate the provisions of this subsection.

Section 9-209. Emergency Protection Orders or Modifications of Emergency Protection Orders

Emergency Protection Orders or Modifications of Emergency Protection Orders may, without notice and hearing, 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 physical, 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, regardless of ownership of the residence;
- (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 Sac and Fox Juvenile Code.
- (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 violence 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) prohibiting the destruction, liquidation, or disposal of any and all joint assets or property or specific assets or property of the petitioner;

(l) granting temporary custody of a minor child(ren) to the petitioner or suspending child visitation due to physical violence or threat of abuse by the respondent or a threat to violate a custody order by the defendant or an order requiring supervised visitation with the child in a neutral setting.

(m) directing the respondent to continue to meet all existing insurance obligations (i.e. medical, dental) for victim and/or any minor children; and

(n) 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.

An emergency *ex parte* protection 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 protection order.

Section 9-210. Protection Orders or Modifications of Protection Orders

A Protection Order or a Modified Protection Order after notice and hearing, may, whether or not the respondent appears, grant any relief available in accordance with Section 9-209 and order:

(a) 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 borne by the respondent. Indian Child Welfare shall not be required to provide supervised visitation under this Act. Visitation arrangements shall consider the respondent's overall lifestyle, especially as it pertains to alcohol, other drug or chemical use and history of violence.

(b) 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 Sac and Fox Nation in detaining the respondent in response to the domestic violence incident;

(3) Reimburse the petitioner or other person for any expenses associated with the domestic violence incident, including but not limited to medical expenses, counseling, shelter, lost wages, and repair or replacement of damaged property;

(4) Continue to meet all existing insurance obligations (i.e., medical, dental) for the victim and/or any minor children;

(5) Pay rent or make payment on a mortgage on the petitioner's residence and pay for the support of the petitioner and minor child(ren) if the respondent is found to have a duty to support the petitioner or minor child(ren);

Section 9-211. Duration of Orders

(a) **EPO's and Modified EPO's.** An Emergency *Ex Parte* Protection Order or Modified Emergency *Ex Parte* Protection Order is effective until a full hearing with notice is conducted. Provided, if the defendant, after having been served, does not appear at the hearing, the emergency ex parte order shall remain in effect until the defendant 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, APERMANENT ORDER MAY BE ISSUED WITHOUT FURTHER NOTICETO YOU."

(b) **Protection Orders and Modified Protection Orders.** Protection Orders and Modified Protection 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 Protection Order or Modified Protection Order expires, may upon a showing of good cause extend the Protection Order or Modified Protection Order for another period of four (4) years, or until further order of the court, whichever comes first.

Section 9-212. Transmittal of Protection Orders

The court shall:

(a) Deliver the order to the Sac and Fox Nation's Division for Victims of Crime or other appropriate person or agency;

(b) Make reasonable efforts to ensure that the Protection 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 Protection Order to local law enforcement agencies designated by the petitioner; and

(d) Transmit a copy of the order to the appropriate entity for placement in the tribal registry.

Section 9-213. 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 9-214. Certification of Protection Orders

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

Section 9-215. Effect of Action by Petitioner or Respondent on Order

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

Section 9-216. 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 Act because of a reasonable time lapse between an act of domestic violence and the filing of the petition.
- (c) inform the victim of domestic violence about local services and advocacy available through the Sac and Fox Nation's program for victims of domestic violence.

A court may not require the victim to seek legal sanctions against the defendant including, but not limited to, divorce, separation, paternity, or criminal proceedings prior to hearing a petition for protective order.

Section 9-217 Mutual Order for Protection Discouraged

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

- (a) the defendant 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 defendant and determines that each party is entitled to such an order.

Section 9-218. Court Ordered or Referred Mediation, Marriage Counseling, or Reconciliation of Domestic Violence 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 protection order, even if the petitioner is given the option to refuse to participate in a mediation or similar process.

Section 9-219. 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 merely 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, or existence of other court proceedings.

Section 9-220. 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 Code of the Sac and Fox Nation.

(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 Code.

Section 9-221. Tribal Registry for Orders of Protection

(a) The District Court of the Sac and Fox Nation shall maintain a registry of all Protection Orders issued by the Sac and Fox Nation District Court. The Court Clerk shall provide Sac and Fox Nation Police Department and the Division for Victims of Crime with certified protection orders within 24 hours after issuance.

(b) The Court Clerk shall also provide the Police and the Division for Victims of Crime with any modifications, revocations, withdrawals, and/or expiration of protection orders.

(c) The Sac and Fox Police Department shall enter Protection Orders into the National Crime Information Center (NCIC) or other national or regional law enforcement database that the Police Department utilizes

Section 9-222. Vacating of Protection Orders

- (a) A party who wishes to have a protection order vacated must move the court for such an order.
- (b) A protection 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 the respondent has attended a program for abusers and what type of program, if required by the order, and for how long and reports from the program for abusers as to the attendance, success, and any recommendations of the program regarding the respondent;
 - (2) whether the respondent has complied with the terms of the protection order or modified protection order;
 - (3) whether the circumstances have changed so as to remove the danger to the petitioner from the respondent; and
 - (4) 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 protection order was delivered under Sections 212 and 221.
- (e) All Sac and Fox law enforcement agencies shall enforce any protection order that has neither expired nor been vacated, regardless of the current status of the parties' relationship.

Section 9-223. Civil Penalties for Violating Protection Orders

In addition to any criminal penalties for failure to comply with the requirements of this Act, except where otherwise stated, failure to comply with the provisions of this Act shall subject the non-complying offender to a civil penalty of not more than \$2500 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 shall be authorized to assist in enforcement of this section.

Section 9-224. Civil Seizure of Property used in Furtherance of Violating a Protection Order

(a) All property, used in violating a Protection Order or Modified Protection Order (whether permanent or temporary), or Emergency Protection 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 Act, 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 Protection Order or Modified Protection Order (whether permanent or temporary), or Emergency Protection Order,

found on or in the control of the perpetrator or any person assisting in knowing violation of this Act, may be seized by any authorized law enforcement officer, without process. The same shall be, from the time of such seizure, forfeited to the Sac and Fox Nation, 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 9-222(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, 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 shall within thirty (30) days of seizure file in the District Court forfeiture proceedings in the name of the Sac and Fox Nation, 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 Court Clerk 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 Act, the property shall be declared forfeited by the court and ordered sold for the benefit of the victim, or if the property is of a de minimis value it shall be donated to the Domestic Violence Program for their use or disposal.

(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 Act and that the property will not likely be used in further violation of this Act, 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 the sale shall be posted in three public places in the Nation not less than ten (10) days before the date of sale.

(2) The proceeds of the sale shall be deposited with the Court Clerk who shall, after reimbursing any costs to the Nation of seizure and sale, remit any amount due the victim from the respondent for restitution for violating this Act, including penalties and interest due. The Nation shall deposit any remaining balance to the Victim's Fund.

(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 9-225. Criminal Penalties for Violating Protection Orders

Criminal penalties for violating Protection Orders issued under this Act, or by other jurisdictions that comply with the Violence Against Women Act or where such foreign Protection Order otherwise complied with the requirements of Due Process shall be as set in the Nation's Criminal Code at Title 10 §207.8 Violation of a Protection Order.

SUB-CHAPTER THREE - FULL FAITH AND CREDIT

Section 9-301. 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 Sac and Fox Nation and enforced as if it were issued in this Nation.

Section 9-302. 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) **Defenses.** 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 9-303. Exclusion from Full Faith and Credit

A protection order from a foreign jurisdiction entered against both the plaintiff and defendant is presumptively not 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 9-304. 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 Sac and Fox Nation District Court.

(b) Filing shall be without fee or cost.

(c) A Court Clerk shall forward a copy of the foreign protection order to the Sac and Fox Nation 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 Nation's protection order registry shall not be prerequisites for enforcement of a foreign protection order.

Section 9-305. 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.

SUB-CHAPTER FOUR - CRIMINAL PROCEDURES

Section 9-401. Mandatory Detention for Incidents Involving Domestic Violence; Determination of Primary Aggressor; Required Report

(a) A law enforcement official shall have up to 24 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 violence, whether the offense was committed in or out of the presence of the official.

(b) If a law enforcement official receives complaints of domestic violence 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 primary aggressor, the official need not detain the second person if the second person is primarily the victim of domestic violence.

(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 violence, self-defense actions and the definition of primary aggressor.

(d) The use or abuse of alcohol by either party shall not be a factor as to whether or not domestic violence 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 9-402. 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 violence or who detains two or more persons for a violation of the domestic violence Code 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 Attorney General's office within 72 hours of domestic violence incidents, regardless of whether or not a detainment was made.

Section 9-403. Warrantless Arrests for Certain Violations of Protection Orders

(a) When a law enforcement official has probable cause to believe that a respondent has violated a Protection Order, either:

(1) issued by the Sac and Fox Nation Court; or

(2) valid under the Sac and Fox Domestic Violence Act 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 Sac and Fox Domestic Violence Act.

(b) A copy of a protection 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 defendant has violated or is then acting in violation of the order without justifiable 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 protection order to any law enforcement officer to effect an arrest of any person shall, upon conviction, be guilty of a Class III Misdemeanor, and shall, in addition, be liable for any civil damages to the person sought to be harmed by such alteration.

Section 9-404. Authority of Law Enforcement to Seize Weapons

Incident to a detainment for a violation of the Domestic Violence Act, a law enforcement official:

(a) Shall seize all weapons or instruments that the official has probable cause to believe have been involved or threatened to be used in the commission of a domestic violence violation.

(b) Shall seize a weapon or instrument 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 such weapons or instruments is without regard to ownership of the weapons or instruments; weapons or instruments owned by a third party are subject to confiscation when officials conclude that the weapon or instrument poses a safety threat through the intentional use against law enforcement, victims of domestic violence, or others.

(c) The provisions of Section 9-222 of this Act shall be followed for any seizure and forfeiture of property. Provided, third party owners of seized weapons may have them returned if it is shown the weapons will not pose an ongoing threat to the protected person(s). No weapon or instrument forfeited 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 Section 9-222 of this Act.

Section 9-405. 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. 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 9-406. 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 violence, 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 violence, 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 violence or violation of an order for protection the court may impose conditions to assure the safety of the victim and family, and

unwilling to testify unless no other means of prosecution exists. The court shall neither dismiss nor grant dismissal of a criminal charge under this Act for the sole reason that a civil case has or will be filed or resolved.

Section 9-409. Conditions of Probation for Perpetrator Convicted of Crime Involving Domestic Violence; Required Reports by Probation Department; Conditions of Probation

(a) Before placing a perpetrator who is convicted of a crime involving domestic violence or violation of a Protection 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 Act.

(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 violence. The court shall consider the pre-sentence investigation report and the recommendations contained therein. Domestic violence 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 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.

Section 9-410. Probation Violations, Process for Revocation, Consequences

(a) The court shall recognize the signed report of the probation department and accompanying documentation outlining any violation of probation conditions as probable cause to issue a warrant for the perpetrator's arrest.

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 violence against the victim or other family or household member;

(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 websites 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.

(b) The court shall issue a written order for condition of release and distribute copies to the defendant, to the police department, to the domestic violence 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 9-407. Mandatory Arrest for Violation of Conditions 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 9-406, the officer shall, without a warrant, arrest the alleged violator whether the violation was committed in or outside the presence of the officer even though the arrest may be against the expressed wishes of the victim.

The defendant shall be held without bail pending the first hearing at which time bail and conditions of release shall be established.

Section 9-408. Criminal Case May Not Be Dismissed Because Civil Compromise is Reached

A court shall not dismiss a criminal complaint charging domestic violence for the sole reason that a civil compromise or settlement is reached between the alleged perpetrator and respondent. When the court dismisses or grants dismissal of a criminal charge of domestic violence, the specific reasons for the dismissal shall appear in the court file.

Prohibited Dispositions: The court shall neither dismiss nor grant dismissal of a criminal charge under this Act for the sole reason that the victim is uncooperative or

(b) Upon arrest for a probation violation, the person on probation shall be held, without bond, until a court appearance regarding the probation violation takes place. The probation department shall make recommendations to the court regarding further sentencing for the probation violation.

(c) The jail shall be requested to notify the probation department and the probation department shall notify the jail of any person on probation who is arrested for any crime pursuant to the procedures outlined in the Law Enforcement Policies and Procedures.

(d) In the event the person on probation is charged with a subsequent offense of domestic violence and/or any other charge, the probation department shall file a report and accompanying documents that shall include recommendations to the court regarding the person's probation.