

An Act

Legislative Act 33-05

ACT RELATING TO

PROVIDING PROVISIONS FOR CIVIL PROTECTIVE ORDERS; AND AMENDING TITLE 12 OF THE CHEROKEE NATION CODE ANNOTATED

BE IT ENACTED BY THE CHEROKEE NATION:

Section 1. Title and Codification

This act shall be known as the "Civil Protective Order Act" and codified as Title 12, Chapter 5 of the Cherokee Nation Code Annotated.

Section 2. Purpose

Civil Protective Orders are desirable as a method of precluding future instances of interpersonal violence against specific victims. The purpose of this chapter is to provide an expansive procedure for swift, early intervention which integrates the convenience of civil procedures with the unique needs of family and household domestic partners, children and elders. It is an elective and alternative remedy to criminal protective orders, at the discretion of the petitioner.

Section 3. Legislative History

None.

Section 4. Substantive Provisions of Law

Title 12 Civil Procedure of the Cherokee Nation Code Annotated is hereby amended to include a new Chapter 5. Civil Protective Orders which shall read as follows:

TITLE 12 CIVIL PROCEDURE

CHAPTER 5. CIVIL PROTECTIVE ORDERS

SECTION 5-1.1 SHORT TITLE

This act shall be known and may be cited as the "Civil Protective Order Act."

SECTION 5-1.2 DEFINITIONS

(reserved)

SECTION 5-1.3 JURISDICTION FOR CIVIL PROTECTIVE ORDERS

A. Exclusive Jurisdiction

The Cherokee Nation Tribal Court shall exercise exclusive jurisdiction:

1. ~~Upon an individual Indian allotment where the owner is a Cherokee Indian, a Cherokee Citizen or a Cherokee Tribal Member and the incident occurs on land which is restricted against alienation.~~ Upon any restricted individual Indian allotment within the Cherokee Nation Tribal Jurisdiction Service Area.

2. Under any other established theory of exclusive jurisdiction.

B. Concurrent Jurisdiction

The Cherokee Nation Tribal Court may exercise concurrent jurisdiction:

1. When the Respondent is a citizen or member of a Federally-recognized tribe and is domiciled or found within the exterior reservation boundaries of the original patent to the Cherokee Nation; and
2. Over Indian Country within the exterior boundaries of the Cherokee Nation tribal jurisdiction service area.
3. When any act of domestic violence occurs either:
 - a. ~~Upon an individual Indian allotment where the owner is a citizen or member of a federally recognized tribe, regardless of whether the land is held in restricted or unrestricted status.~~
 - b. Upon lands owned by the Cherokee Nation.
 - c. Upon lands within a dependent Indian community or developed by the Housing Authority of the Cherokee Nation;
 - d. Upon lands within the exterior reservation boundaries of the original patent of the Cherokee Nation.
4. When the Court is being asked to recognize and enforce a valid Protective Order of another court of competent jurisdiction; and
5. Over any proceedings for Protective Orders under this Domestic Violence Code until such time as an alternative choice of forum shall have been decided.

C. Courts shall construe this Section liberally to exercise maximum jurisdiction.

D. This Section is not exclusive of the situations in which the Court may exercise jurisdiction.

Legislative History: Exclusive jurisdiction over Civil Protective Order proceedings at Section A is based upon exercise of exclusive tribal jurisdiction over crimes and civil matters on Indian lands which are not embodied in the Assimilative Major Crimes Act. Exclusive jurisdiction may alternatively be based upon case law based upon the individual facts in the case. Concurrent jurisdiction provisions at Section B state the alternative grounds for jurisdiction: subject matter jurisdiction over a Cherokee respondent or Indian Country; subject matter jurisdiction over Cherokee lands where the exercise of police power is desirable for the health and safety of Cherokee citizens and the orderly administration of justice; enforcement of foreign protective orders; and interstitial jurisdiction pending the determination of the proper forum or forums. Section C mandates the Court to exercise jurisdiction where it can be liberally interpreted, under the sovereign power of the Cherokee Nation to protect its citizens and the non-citizens within the Cherokee Nation, against harm. Section D describes the Courts' authorization to utilize jurisdictional theory to respond appropriately in light of many complex factual considerations which have been addressed by evolving case law, for example.

SECTION 5-1.10 CHANGE OF JUDGE FOR CIVIL PROTECTIVE ORDERS

- A. Motions for a change of Judge must be filed within five days of service upon the perpetrator.
- B. Relationship by blood or marriage is not sole cause for a change of Judge.

SECTION 5-1.20 AVAILABILITY OF CIVIL PROTECTIVE ORDERS

A. Any of the following persons may seek relief under this Chapter by filing a Civil Petition with the Court alleging that interpersonal or domestic violence has been committed by the Respondent. The person may petition for relief on behalf of any victim including minors within the family or household members:

1. Any person claiming to be the victim of recent domestic violence;
2. Any family member or household member of a person claimed to be the victim of domestic violence on behalf of the alleged victim;
3. A Police Officer;
4. A Victim Advocate; and/or
5. The Tribal Prosecutor.

B. There is no minimum requirement of residency to petition for a Protective Order.

SECTION 5-1.30 PROCEDURES FOR FILING CIVIL PETITIONS FOR PROTECTIVE ORDERS

A. No filing fees shall be required for filing a petition nor shall a bond be required to obtain relief under this Chapter.

B. Petitioner, or the victim on whose behalf a petition has been filed, is not required to file for annulment, separation or divorce as a prerequisite to obtaining a Protective Order.

C. Standard petition forms with instructions for completion shall be available upon request from the Court Clerk or investigating Marshal.

D. A Protective Order does not preclude the rights of any party or child that are to be adjudicated at subsequent hearings in the proceeding.

SECTION 5-1.40 PROCEDURES FOR ISSUANCE OF TEMPORARY AND PERMANENT PROTECTIVE ORDERS

A. If the Court has a reasonable belief that the Petitioner or the person on whose behalf the petition is filed is the victim of an act of interpersonal or domestic violence committed by the Respondent, the Court shall immediately grant a Temporary *Ex Parte* Protective Order based upon the facts contained within the verified statement or Affidavit.

B. Within fourteen (14) days of the issuance of a Temporary *Ex Parte* Protective Order, excluding holidays and weekends, unless by agreement, a hearing shall be held to determine whether the Order should extend for an additional period of time, made permanent or modified in any respect.

C. Service must be made upon the Respondent at least five days prior to the hearing. If service cannot be made, the Court may set a new date.

D. Service shall be pursuant to the procedure set forth in the Cherokee Nation Code Annotated and the District Court Rules.

E. The Court may issue protection to both parties only if each party has completed a petition pursuant to the provisions of this Code and the Court, after a hearing, has made specific written findings of fact that both parties committed acts of domestic violence and that neither party acted in self-defense. The Order must clearly define the responsibilities and restrictions placed upon each party so that a law enforcement officer may readily determine which party has violated the Order if a violation is alleged to have occurred.

F. Any Protective Order granted pursuant to this Chapter shall be forwarded by the Court to the Cherokee Nation Marshal Service Dispatcher within 24 hours of issuance. In the case of a Temporary Emergency *Ex-Parte* Protective Order issued in accordance with Section 80 or a Temporary *Ex-Parte* Protective Order, it shall be filed immediately upon issuance. The Marshal's Office shall make information available to each officer as to the existence and status of every Protective Order issued under this Chapter.

SECTION 5-1.50 CONTENTS OF A PROTECTIVE ORDER IN GENERAL

A. A Petition shall briefly describe the incident(s) of domestic violence and shall be a verified petition or supported by an affidavit made under oath stating the facts and circumstances justifying the requested order.

B. In addition to any other required information, the petition for a Protective Order must contain a statement listing each civil or criminal action involving both parties.

C. Protective Orders shall include provisions:

1. Restraining the Respondent from committing any acts of domestic violence;
2. Restraining the Respondent from harassing, stalking, threatening telephoning or otherwise contacting the Petitioner directly or indirectly, personally or through another person, or engaging in any other conduct that would place any named family or household members in reasonable fear of bodily injury;
3. Prohibiting the use, attempted use or threatened use of physical force that would reasonably be expected to cause bodily injury;
4. Requiring the respondent to surrender for safekeeping any firearm or other specified dangerous weapon in the Respondent's immediate possession or control or subject to the respondent's immediate control, so that the Respondent will not use, display or threaten to use the firearm or other dangerous weapon in any acts of violence. If so ordered, the Respondent shall surrender the firearm or other dangerous weapon to Law Enforcement;
5. Requiring that an accounting be made to the Court for all authorized transfers, encumbrances, dispositions and expenditures; and
6. Notifying the parties involved that the knowing violation of any provision of the order may constitute contempt of court punishable by fines, imprisonment or both.

D. Where the Court in its Protective Order makes findings of any of the following behaviors, it shall order counseling, which shall include the development of behavior-specific relationship skills.

_____ Using coercion and threats, such as

- making and/or carrying out threats to do something to hurt another person
- threatening to leave a spouse, to commit suicide, to report a spouse to welfare
- threatening to file false domestic violence, restraining order or child sexual abuse charges
- making a spouse to drop charges
- making a spouse do illegal things
- Denying or refusing to access to needed medical care or refusing to take prescribed medications

Counseling should include development in skills of negotiation and fairness.

- seeking mutually satisfying resolutions to conflict
- accepting change
- being willing to compromise

_____ Using intimidation, such as

- making a spouse afraid by using looks, actions, gestures
- smashing things

- destroying the property belonging to a spouse, relative or family member
- displaying weapons (such as knives)

Counseling should include developing skills in non-threatening behavior, such as

- talking and acting so that family members feel safe and comfortable expressing themselves and doing things

_____ Using economic abuse, such as

- refusing to contribute income to basic expenses
- making a spouse or family member ask for money
- giving the victim(s) an allowance to limit their economic participation
- taking a spouse's money
- not letting a spouse or family member know about or have access to family income
- Forcing a spouse to take higher-paying, more hazardous, less satisfying job
- preventing a spouse from getting or keeping a job

Counseling should include developing skills in economic partnership

- making money decisions together
- making sure both partners benefit from financial arrangements
- expecting all family members to contribute in good faith to the financial success of the family.

_____ Using emotional abuse, such as

- putting someone down
- making someone feel bad about herself or himself
- using sex as a weapon
- calling someone names
- making someone think they are crazy
- playing mind-games
- humiliating someone
- making someone feel guilty

Counseling should include building skill in respect

- listening to others non-judgmentally
- being emotionally affirming and understanding
- sharing responsibility for mutually-satisfying intimacy
- valuing opinions
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_____ Using gender privilege, such as

- treating someone like a servant
- treating someone as just a wallet

- making all the big decisions
- acting like the 'master or mistress of the house'
- being the only one who defines the male and female roles

Counseling should include the development of skills in shared responsibility

- mutually agreeing on a fair distribution of work
- making family decisions together

_____ Using isolation, such as

- controlling what someone does, who that person sees and talks to, what that person reads, where someone goes
- limiting a spouse's or family member's outside involvement
- using jealousy to justify actions

Counseling should include the development of skills in trust and support

- supporting your partner's goals in life
- respecting your partner's right to his own feelings, friends, activities and opinions

_____ Using children, such as

- making a spouse feel guilty about the children
- using the children to relay messages
- alienating children from a parent
- using visitation to harass a parent
- threatening to take the children away

Counseling should include developing skills in responsible parenting

- sharing parental responsibilities
- being a positive non-violent role model for the children

_____ Minimizing, denying and blaming, such as

- making light of the abuse and not taking the other person's concerns about it seriously
- saying the abuse didn't happen
- shifting responsibility for abusive behavior
- saying that the victim deserved it
- saying that the victim caused it
- saying it was the only way the victim would pay attention

Counseling should include developing skills in honesty and accountability

- accepting responsibility for self
- acknowledging past use of violence
- admitting being wrong
- communicating openly and truthfully

E. A Protective Order may include any other relief the Court deems appropriate, including but not limited to:

1. Excluding the Respondent from the residence of the victim (whether or not the Respondent and the victim share the residence), school, place of employment or a specified place frequented by the Petitioner and/or any named family or household member;
2. Awarding temporary child custody and/or establishing temporary visitation rights or restrictions with regard to the minor children of the parties;
3. If visitation is granted there shall be set rules for the exchange of the children for visitation. These rules may include, but are not limited to times, places and persons allowed to visit;
4. Ordering temporary use and possession of personal property, including motor vehicles, to either party;
5. Ordering the Respondent to make timely payments on existing debts of the Respondent or of the parties, including but not limited to mortgage or rental payments and necessary utilities in order to maintain the Petitioner in their residence;
6. Ordering the Respondent to pay child support in accordance with Cherokee Nation Child Support laws and guidelines;
7. Ordering the Respondent to pay such support as may be necessary for the support of a party and any minor children of the parties and/or reasonable attorney's fees and costs.
8. Ordering the Respondent to surrender all firearms and weapons to the custody of Law Enforcement while the Protective Order is in effect;
9. When appropriate, restraining one or both parties from transferring, removing, encumbering, mortgaging, concealing, disposing or altering property except as authorized by the Court; and
10. Ordering other lawful relief as the Court deems necessary for the protection of the victim of domestic violence, including orders or directives to Law Enforcement or other appropriate departments and programs; and

F. No order or agreement under this section affects title to any real property in any manner.

SECTION 5-1.60 DURATION AND AMENDMENTS TO PERMANENT PROTECTIVE ORDERS IN GENERAL

A. A Protective Order shall be enforced until further order of the Court but not to exceed three hundred sixty five (365) days and may be subject to amendment for extension at the discretion of the Court or at the request of one of the parties.

B. After thirty (30) days, the Court may, in its discretion, revoke, modify, extend or amend a Protective Order upon subsequent petition filed by either party.

SECTION 5-1.70 TEMPORARY EMERGENCY *EX PARTE* PROTECTIVE ORDERS

A. During the hours that the Court is closed, the Court shall provide for the availability of a Judge, Marshals or other authorized personnel who shall authorize the issuance of Temporary Emergency *Ex Parte* Protective Orders by any appropriate and effective method. The following conditions apply:

1. Temporary Emergency *Ex Parte* Orders will be issued upon a good cause showing that it is necessary to protect the applicant or others from interpersonal or domestic violence;

2. Immediate and present danger of interpersonal or domestic violence to the applicant or others constitutes good cause for purposes of this section;

3. Any Order issued under this section expires seventy-two hours after its issuance unless it is continued by the judge or authorized personnel in the event of continuing unavailability of the Court. At any time, the applicant may seek a Temporary *Ex Parte* Protective Order from the Court; and

4. Any Order issued under this section and any documentation in support of the Order must be immediately certified to the Court.

B. If an officer cannot make an arrest, but there is probable cause to believe a person is in immediate and present danger of domestic violence, the Judge or other person authorized to issue Temporary Emergency *Ex Parte* Protective Orders may issue a Temporary Emergency *Ex Parte* Protective Order.

SECTION 5-1.80 FALSE ALLEGATIONS OF DOMESTIC VIOLENCE - EFFECT

If, after investigation, the Court finds that a party's allegations of domestic violence in a domestic violence protective order proceeding, divorce proceeding, child custody proceeding, child visitation proceeding, separation proceeding or termination of parental rights proceeding are false and not made in good faith, the Court shall order the party making the false allegations to pay court costs and reasonable attorney's fees incurred by the other party in responding to the allegation.

SECTION 5-1.90 FOREIGN DOMESTIC VIOLENCE PROTECTIVE ORDERS - FULL FAITH AND CREDIT RECOGNITION AND ENFORCEMENT

A. Subject to registration, a domestic violence Protective Order issued by a court of competent jurisdiction of another state, Indian tribe, the District of Columbia or a commonwealth, territory or possession of the United States must be accorded full faith and credit by the Cherokee Nation Court and enforced as if the Order was issued by the Cherokee Nation Court.

1. A foreign domestic violence Protective Order is enforceable in the Cherokee Nation's jurisdiction, and as extended by cross-deputization or cooperative enforcement agreements, if all of the following are satisfied:

a. The Respondent received notice of the Protective Order in compliance with requirements of the issuing jurisdiction;

b. The Protective Order is in effect in the issuing jurisdiction;

c. The issuing court had jurisdiction over the parties and the subject matter;

d. The Respondent was afforded reasonable notice and opportunity to be heard sufficient to protect that person's right to due process. In the case of *Ex Parte* Protective Orders, notice and opportunity to be heard must have been provided within the time required by the law of the issuing jurisdiction and in any event within a reasonable time after the Protective Order was issued, sufficient to protect the Respondent's due process rights. Failure to provide reasonable notice and opportunity to be heard is an affirmative defense to any prosecution for violation of the foreign Protective Order or any process filed seeking enforcement of the Protective Order; and

e. If the Protective Order also provides protection for the Respondent, a petition, application or other written pleading must have been filed with the issuing court seeking such a Protective Order and the issuing court must have made specific findings that the Respondent was entitled to the Protective Order.

B. A person entitled to protection under a foreign domestic violence Protective Order may file the foreign Protective Order in the Tribal Clerk of Court's Office. The person filing the Protective Order shall also file an affidavit with the Clerk of Court certifying the validity and status of the foreign Protective Order and attesting to the person's belief that the Protective Order has not been amended, rescinded or superseded by any other Orders from a court of competent jurisdiction. If a foreign Protective Order is filed under this Section, the Clerk of Court shall transmit a copy of the Protective Order to the Cherokee Marshal Service. Filing of a foreign Protective Order under this Section is not a prerequisite to the Order's enforcement by this Tribe. A fee for filing the foreign Protective Order shall not be assessed.

C. A law enforcement officer may rely upon any foreign domestic violence Protective Order that has been provided to the officer by any source. The officer may make arrests for violation of the Protective Order in the same manner as for violation of a Protective Order issued by this Tribe. A law enforcement officer may rely on the statement of the person protected by the Protective Order that the Protective Order is in effect and that the Respondent was personally served with a copy of the Protective Order. A law enforcement officer acting in good faith and without malice in enforcing a foreign Protective Order under this section is immune from civil or criminal liability for any action arising in connection with the enforcement of the Protective Order.

D. Any person who intentionally provides a law enforcement officer with a copy of a foreign domestic violence Protective Order known by that person to be false or invalid or who denies having been served with a Protective Order when that person has been served with such an Order is guilty of a crime.

SECTION 5-1.100 TRIBAL REGISTRY FOR PROTECTIVE ORDERS

A. The Court shall maintain a registry of all orders for protective orders issued by the Court. The Clerk of Court shall provide the Cherokee Nation Marshal's Office with certified Protective Orders within 24 hours after issuance.

B. The Clerk of Court shall also provide the Cherokee Nation Marshal's Office with any modifications of, revocations of, withdrawal of and/or expiration of Protective Orders.

C. The information contained in the registry is available at all times to the Court, law enforcement agencies and domestic violence shelters.

D. Facsimile copies shall be recognized.

Section 5. Provisions as cumulative

The provisions of this act shall be cumulative to existing law.

Section 6. Severability

The provisions of this act are severable and if any part of provision hereof shall be held void the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this act.

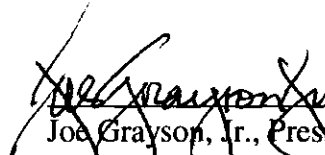
Section 7. Effective date

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


Section 8. Self-Help Contributions

To the extent that this Act involves programs or services to citizens of the Nation or others, self-help contributions shall be required, unless specifically prohibited by the funding agency, or a waiver is granted due to physical or mental incapacity of the participant to contribute.


Enacted by the Council of the Cherokee Nation on the 10 day of October, 2005.


Joe Grayson, Jr., President
Cherokee Nation Tribal Council


ATTEST:


Don Garvin, Secretary
Cherokee Nation Tribal Council

Approved and signed by the Principal Chief this 13th day of OCTOBER, 2005.


Chad Smith, Principal Chief
Cherokee Nation

ATTEST:


Callie Catcher, Secretary/Treasurer
Cherokee Nation

YEAS AND NAYS AS RECORDED:

Audra Smoke-Conner	<u>Yea</u>	Melvina Shotpouch	<u>Yea</u>
Bill John Baker	<u>Yea</u>	Meredith A. Frailey	<u>Yea</u>
Joe Crittenden	<u>Yea</u>	John F. Keener	<u>Yea</u>
Jackie Bob Martin	<u>Yea</u>	Cara Cowan	<u>Yea</u>
Phyllis Yargee	<u>Yea</u>	Buel Anglen	<u>Yea</u>
David W. Thornton, Sr.	<u>Yea</u>	William G. Johnson	<u>Yea</u>
Don Garvin	<u>Yea</u>	Charles "Chuck" Hoskin	<u>Yea</u>
Linda Hughes-O'Leary	<u>Yea</u>		