



Legislation Text

File #: 21-047, Version: 1

AN ACT AMENDING TITLE 12 OF THE CHEROKEE NATION CODE ANNOTATED, ESTABLISHING THE ANTI-HARRASSMENT ACT OF

2021, AND DECLARING AN EMERGENCY

BE IT ENACTED BY THE CHEROKEE NATION:

Section 1. Title and Codification

This act amends Title 12 of the Cherokee Nation Code Annotated and shall be codified at Title 12, Chapter 10 of the Cherokee Nation Code Annotated.

Section 2. Purpose

The purpose of this Act is to expand the civil procedure code to protect against serious personal harassment through repeated invasions of a person's privacy within the Cherokee Nation.

Section 3. Legislative History

L

Section 4. Amendments

Title 12 shall be amended as follows:

CHAPTER 10

HARRASSMENT

§ 1501. Short Title

This act shall be known and may be cited as the "Anti-Harassment Act of 2021".

§ 1502. Definitions

1. "Course of conduct" means a pattern of conduct composed of a series of acts over time, however short, evidencing a continuity of purpose. "Course of conduct" includes, in addition to any other form of communication, contact, or conduct, the sending of an electronic communication, but does not include constitutionally protected free speech. Constitutionally protected activity is not included within the meaning of "course of

conduct.”

2. “Unlawful harassment” includes unlawful violence, a credible threat of violence, or a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, harasses, or is detrimental to such person, and which serves no legitimate or lawful purpose. The course of conduct shall be such as would cause a reasonable person to suffer substantial emotional distress, and shall actually cause substantial emotional distress to the petitioner, or, when the course of conduct would cause a reasonable parent to fear for the well-being of their child.
3. “Credible threat of violence” is a knowing and willful statement or course of conduct that would place a reasonable person in fear for the person's safety or the safety of the person's immediate family, and that serves no legitimate purpose.
4. “Unlawful violence” is any assault or battery, or stalking prohibited in 21 CNCA § 1134, but does not include lawful acts of self-defense or defense of others.

§ 1503. Course of conduct-Determination of Purpose

In determining whether the course of conduct serves any legitimate or lawful purpose, the court should consider whether:

1. Any current contact between the parties was initiated by the respondent only or was initiated by both parties;
2. The respondent has been given clear notice that all further contact with the petitioner is unwanted;
3. The respondent's course of conduct appears designed to alarm, annoy, or harass the petitioner;
4. The respondent is acting pursuant to any statutory authority, including but not limited to acts which are reasonably necessary to:
 - a. Protect property or liberty interests;
 - b. Enforce the law; or
 - c. Meet specific statutory duties or requirements;
5. The respondent's course of conduct has the purpose or effect of unreasonably interfering with the petitioner's privacy or the purpose or effect of creating an intimidating, hostile, or offensive living environment for the petitioner;
6. Contact by the respondent with the petitioner or the petitioner's family has been limited in any manner by any previous court order.

§ 1504. Protection Order-Petition

A person who has suffered harassment as defined in Section 1502 may seek a temporary

restraining order and an order after a hearing prohibiting harassment as provided in this section.

There shall exist an action known as a petition a civil anti-harassment protection order under this chapter.

1. A petition for relief shall allege the existence of harassment, shall allege an appropriate jurisdictional basis for relief under Section 1512 of this chapter, and shall be accompanied by an affidavit made under penalty of perjury stating the specific facts and circumstances from which relief is sought.
2. A petition for relief may be made regardless of whether or not there is a pending lawsuit, complaint, petition, or other action between the parties.
3. No filing fee may be charged for a petition filed in an existing action or under an existing cause number brought under this chapter.
4. A person is not required to post a bond to obtain relief in any proceeding under this section.
5. The parent or guardian of a child under age eighteen may petition for an order of protection to restrain a person age eighteen years or over from contact with that child upon a showing that contact with the person to be enjoined is detrimental to the welfare of the child.
6. The parent or guardian of a child under the age of eighteen may petition the District Court for an order of protection to restrain a person age eighteen years or over.

§ 1505. Anti-harassment protection orders--Ex parte temporary--Hearing--Longer term, renewal--Acts not prohibited

1. Upon filing a petition for a civil anti-harassment protection order under this chapter, the petitioner may obtain an ex parte temporary anti-harassment protection order. An ex parte temporary anti-harassment protection order may be granted with or without notice upon the filing of an affidavit which, to the satisfaction of the court, shows reasonable proof of unlawful harassment of the petitioner by the respondent and that great or irreparable harm will result to the petitioner if the temporary anti-harassment protection order is not granted. If the court declines to issue an ex parte temporary anti-harassment protection order, the court shall state the particular reasons for the court's denial. The court's denial of a motion for an ex parte temporary order shall be filed with the court.
2. An ex parte temporary anti-harassment protection order shall be effective for a fixed period not to exceed fourteen days. The ex parte order may be reissued. A full hearing, as provided in this chapter, shall be set for not later than fourteen days from the issuance of the temporary order. The respondent shall be personally served with a copy of the ex parte order along with a copy of the petition and notice of the date set for the hearing. The ex parte order and notice of hearing shall include at a minimum the date and time of the hearing set by the court to determine if the temporary order should be made effective for a term not to exceed one year, and notice that if the respondent should fail to appear or otherwise not respond, an order for protection will be issued against the respondent pursuant to the provisions of this chapter, for a maximum of one year from the date of the hearing. The notice shall also include a brief statement of the provisions of the ex parte order and notify the respondent that a copy of the ex parte order and notice of hearing has

been filed with the clerk of the court.

3. At the hearing, if the court finds by a preponderance of the evidence that unlawful harassment exists, a civil anti-harassment protection order shall issue prohibiting such unlawful harassment.
4. An order issued under this chapter shall be effective for not more than one year.
5. At any time within the three months before the expiration of the order, the petitioner may apply for a renewal of the order by filing a petition for renewal. The petition for renewal shall state the reasons why the petitioner seeks to renew the protection order. Upon receipt of the petition for renewal, the court shall order a hearing which shall be not later than fourteen days from the date of the order. Personal service shall be made upon the respondent not less than five days before the hearing. If timely service cannot be made the court shall set a new hearing date and shall require additional attempts at obtaining personal service. If the order expires because timely service cannot be made the court shall grant an ex parte order of protection as provided in this section. The court shall grant the petition for renewal unless the respondent proves by a preponderance of the evidence that the respondent will not resume harassment of the petitioner when the order expires. The court may renew the protection order for another fixed time period, not to exceed one year.
6. The court, in granting an ex parte temporary anti-harassment protection order or a civil anti-harassment protection order, shall have broad discretion to grant such relief as the court deems proper, including an order:
 - a. Restraining the respondent from making any attempts to contact the petitioner;
 - b. Restraining the respondent from making any attempts to keep the petitioner under surveillance; and
 - c. Requiring the respondent to stay a stated distance from the petitioner's residence and workplace.
7. In issuing the order, the court shall order the respondent to surrender, and prohibit the respondent from possessing, all firearms and any dangerous weapons.
8. The court in granting an ex parte temporary anti-harassment protection order or a civil anti-harassment protection order shall not prohibit the respondent from exercising constitutionally protected free speech. Nothing in this section prohibits the petitioner from utilizing other civil or criminal remedies to restrain conduct or communications not otherwise constitutionally protected.
9. The court in granting an ex parte temporary anti-harassment protection order or a civil anti-harassment protection order shall not prohibit the respondent from the use or enjoyment of real property to which the respondent has a cognizable claim unless that order is issued under a separate action commenced with a summons and complaint to determine title or possession of real property.
10. The court in granting an ex parte temporary anti-harassment protection order or a civil anti-harassment protection order shall not limit the respondent's right to care, control, or custody of the respondent's minor child.
11. A petitioner may not obtain an ex parte temporary anti-harassment protection order against a respondent if the petitioner has previously obtained two such ex parte orders against the same respondent but has failed to obtain the issuance of a civil anti-harassment

protection order unless good cause for such failure can be shown.

12. The court order shall specify the date an order issued pursuant to subsections (4) and (5) of this section expires if any.

§ 1506. Representation or appearance

1. Nothing in this chapter shall preclude either party from representation by private counsel or from appearing on his or her own behalf.
2. The court may require the respondent to pay the filing fee and court costs, including service fees, and to reimburse the petitioner for costs incurred in bringing the action, including a reasonable attorney's fee. If the petitioner has been granted leave to proceed in forma pauperis, the court may require the respondent to pay the filing fee and costs, including service fees.

§ 1507. Service of Order

1. An order issued under this chapter shall be personally served upon the respondent, except as provided in subsections (5) and (7) of this section.
2. The Cherokee Nation Marshal Service or a cross-deputized law enforcement officer shall serve the respondent personally unless the petitioner elects to have the respondent served by a private party. If the order includes a requirement under [Section <http://www.westlaw.com/Link/Document/FullText?1505](http://www.westlaw.com/Link/Document/FullText?1505) for the immediate surrender of all firearms and any dangerous weapons, the order must be served by a law enforcement officer.
3. If the Cherokee Nation Marshal Service or a cross-deputized law enforcement officer cannot complete service upon the respondent within ten days, the Marshal or law enforcement officer shall notify the petitioner.
4. Returns of service under this chapter shall be made in accordance with the applicable court rules.
5. If an order entered by the court recites that the respondent appeared in person before the court, the necessity for further service is waived and proof of service of that order is not necessary. The court's order, entered after a hearing, need not be served on a respondent who fails to appear before the court, if material terms of the order have not changed from those contained in the temporary order, and it is shown to the court's satisfaction that the respondent has previously been personally served with the temporary order.

§ 1508. Notice to law enforcement agencies--Enforceability

A copy of an anti-harassment protection order granted under this chapter shall be forwarded by

the clerk of the court on or before the next judicial day to the Cherokee Nation Marshal Service.

Upon receipt of the order, the Marshal Service shall forthwith enter the order into any computer-based criminal intelligence information system available in this Nation used by law enforcement agencies to list outstanding warrants. The Marshal Service shall expunge expired orders from the computer system. Entry into the law enforcement information system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable throughout the boundaries of the Cherokee Nation Reservation.

§ 1509. Enforcement of order--Knowledge prerequisite to penalties--Reasonable efforts to serve copy of order

1. When the court issues an order of protection pursuant to this chapter, the court shall advise the petitioner that the respondent may not be subjected to the penalties set forth herein for a violation of the order unless the respondent knows of the order.
2. When the Cherokee Nation Marshal Service or a cross-deputized peace officer investigates a report of an alleged violation of an order for protection issued under this chapter the officer shall attempt to determine whether the respondent knew of the existence of the protection order. If the officer determines that the respondent did not or probably did not know about the protection order, the officer shall make reasonable efforts to obtain a copy of the protection order and serve it on the respondent during the investigation.

§ 1511. Other remedies

Nothing in this chapter shall preclude a petitioner's right to utilize other existing civil remedies.

§ 1512. Jurisdiction

The Cherokee Nation District Court may exercise jurisdiction over any action or proceeding brought under this chapter. Any order issued pursuant to this chapter shall be enforceable only within the boundaries of the Cherokee Nation Reservation.

§ 1513. Criminal penalty

Any respondent age eighteen years or over who willfully disobeys any civil anti-harassment protection order issued pursuant to this chapter shall be guilty of a misdemeanor, punishable by imprisonment for a term not the exceed one (1) year or by a fine in an amount not to exceed Three Thousand Dollars (\$3,000.00), or by both such fine and imprisonment.

§ 1514. Modification of order

Upon application with notice to all parties and after a hearing, the court may modify the terms of an existing order under this chapter. A respondent may file a motion to terminate or modify an order no more than once in every twelve-month period that the order is in effect, starting from the date of the order and continuing through any renewal. In any situation where an order is terminated or modified before its expiration date, the clerk of the court shall forward on or before the next judicial day a true copy of the modified order or the termination order to the Cherokee Nation Marshal Service specified in the modified order or termination order. Upon receipt of the order, the Cherokee Nation Marshal Service shall promptly enter it in the law enforcement

information system.

§ 1515. Constitutional rights

Nothing in this chapter shall be construed to infringe upon any constitutionally protected rights including, but not limited to, freedom of speech and freedom of assembly.

§ 1516. Court appearance after violation

1. A defendant arrested for violating any civil anti-harassment protection order issued pursuant to this chapter is required to appear in person within 48 hours after the arrest. At the time of the appearance, the court shall determine the necessity of imposing a no-contact order or other conditions of pretrial release.
2. A defendant who is charged by citation, complaint, or information with violating any civil anti-harassment protection order issued pursuant to this chapter and not arrested shall appear in court for arraignment in person as soon as practicable, but in no event later than fourteen days after the next day on which court is in session following the charge.
3. Appearances required pursuant to this section are mandatory and cannot be waived.

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/Emergency Declared

It being immediately necessary for the welfare of the Cherokee Nation, the Council hereby declares that an emergency exists, by reason whereof this act shall take effect and be in full force after 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.