



Council of the Cherokee Nation

Cherokee Nation Tribal
Council
17763 S. Muskogee Ave.
Tahlequah, OK 74464

Legislation Details (With Text)

File #:	18-026	Version:	2	Name:	VIOLENCE AGAINST WOMEN ACT (VAWA) OF 2018
Type:	Legislative Act	Status:	Passed		
File created:	3/15/2018	In control:	TRIBAL COUNCIL		
On agenda:	3/29/2018	Final action:	5/17/2018		
Enactment date:	5/14/2018	Enactment #:	LA-12-18		
Title:	AN ACT AMENDING TITLE 21 AND TITLE 22 OF THE CHEROKEE CODE ANNOTATED RELATING TO THE SAFETY FOR NATIVE AMERICAN WOMEN AND CREATING SPECIAL DOMESTIC VIOLENCE CRIMINAL JURISDICTION OVER NON-INDIAN DEFENDANTS				
Sponsors:	Joe Byrd, Frankie Hargis, Rex Jordan, Buel Anglen, Keith Austin, Harley Buzzard, Shawn Crittenden, Mike Dobbins, Dick Lay, Mike Shambaugh, Mary Baker Shaw, E. O. "JR." Smith, Janees Taylor, David Walkingstick, Victoria Vazquez, Bryan Warner				
Indexes:	Violence Against Women Act				
Code sections:	Title 21 - Crimes and Punishments, Title 22 - Criminal Procedure				
Attachments:	1. LA-12-18.PDF				

Date	Ver.	Action By	Action	Result
5/17/2018	2	OFFICE OF THE CHIEF	Signed	
5/14/2018	2	TRIBAL COUNCIL	Approved	Pass
4/26/2018	2	RULES COMMITTEE	Approved and Forwarded to Council	Pass
3/29/2018	1	RULES COMMITTEE	Tabled	Pass

AN ACT AMENDING TITLE 21 AND TITLE 22 OF THE CHEROKEE CODE ANNOTATED RELATING TO THE SAFETY FOR NATIVE AMERICAN WOMEN AND CREATING SPECIAL DOMESTIC VIOLENCE CRIMINAL JURISDICTION OVER NON-INDIAN DEFENDANTS BE IT ENACTED BY THE CHEROKEE NATION:

Section 1. Title and Codification

This act shall be known as the Violence Against Women Act (VAWA) of 2018 and codified as _____
(Title) _____ (Section) _____ of the Cherokee Nation Code Annotated.

Section 2. Purpose

The purpose of this Act is to recognize domestic violence as serious crime against society and the Cherokee Nation and to provide victims of domestic violence the maximum protection from further violence. It is the intent of the Council of the Cherokee Nation that the official response to domestic violence shall be that the Nation will not tolerate or excuse violent behavior under any circumstances. All people, whether they are elders, male, female, or children of our Nation and communities are to be cherished and treated with respect. Domestic violence is not acceptable and is contrary to traditional Cherokee culture and values honoring the family and is contrary to the interest of our Nation and sense of well-being. Domestic violence will not be tolerated.

The Tribal Council recognizes that according to a recent United States Department of Justice study, that more than half (55%) of Native women have experienced physical violence by an intimate partner in their lifetimes and 90% of these victims report being victimized by a non-Indian perpetrator. Overall, Native women are five times as likely as non-Hispanic white women to have experienced

physical violence by an inter-racial intimate partner. In Oklahoma, according to statistics from the U.S. Census Bureau, the average percentage of non-Indians living within the jurisdiction of the Cherokee Nation is approximately 82%.

A community response to domestic violence is necessary because domestic violence crimes impact the community as a whole. These crimes redirect tribal resources - whether personnel, financial, public safety or other resources - elsewhere and require an immediate response. As a result of this impact on the Nation's resources, the Tribal Council deems it necessary to address domestic violence and family violence to the fullest extent permitted by existing law or as may be adopted or amended in the future.

This Act the Cherokee Nation Code Annotated to conform to the requirements of the Violence Against Women Act (VAWA) of 2013 as authorized by Congress and codified at 25 U.S.C. 1304. This act authorizes special domestic violence criminal jurisdiction over non-Indians who commit domestic violence, dating violence, or a violation of a protection order. This act shall amend portions of Titles 21 and 22 of the Cherokee Nation Code Annotated.

Section 3. Legislative History

Title 21 Chapter 46 Domestic Abuse
Title 22 Criminal Procedure §40.1-§40.5
Title 22 Criminal Procedure §60.1 -§60.7

Section 4. Definitions

For purposes of this Title:

Section 5.

Title 21§1130, shall be amended as follows:

§ 1130. Domestic ~~abuse~~ violence assault and battery-Definition

Any person who commits any assault and battery against a current or former spouse, a present spouse of a former spouse, parents, a foster parent, a child, a person otherwise related by blood or marriage, a person with whom the defendant is or who has been in a dating relationship, an individual with whom the defendant has had a child, a person who formerly lived in the same household as the defendant, or a person living in the same household as the defendant shall be guilty of the crime of domestic ~~abuse~~ violence assault and battery.

Title 21 § 1131, shall be amended as follows:

§ 1131. Domestic ~~abuse~~ violence assault and battery-Punishment

A. Domestic ~~abuse~~ violence assault and battery shall be punishable by imprisonment in a penal institution not exceeding one (1) year, or by a fine of not more than Five Thousand Dollars (\$5,000.00), or both, at the discretion of the Court.

B. Any person convicted of domestic ~~abuse~~ violence as defined in this provision, that was committed in the presence of a child shall be punished by imprisonment in a penal institution not less than six (6) months nor more than one (1) year, or by a fine not exceeding Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment.

C. Any person who is convicted of a second or subsequent domestic violence assault and battery offense shall be punished by imprisonment in a penal institution not exceeding three (3) years, or by fine of not more than ~~Five Thousand Dollars (\$5000.00)~~ Fifteen Thousand Dollars (\$15,000.00), or both such fine and imprisonment at the discretion of the

Court.

D. For every conviction of domestic abuse violence, the Court shall:

1. specifically order as a condition of a deferred or suspended sentence or probation that a defendant participate in batterer's treatment; or

2. require the defendant to participate in counseling or undergo treatment for domestic abuse by an individual licensed practitioner or a domestic abuse-counseling program approved by the Court. If the defendant is ordered to participate in a domestic abuse counseling or treatment program, the order shall require the defendant to attend and complete the program and be evaluated before and after attendance of the program by a program counselor or a private counselor.

E. A program for anger management, couples counseling, or family and marital counseling shall not solely qualify for the counseling or treatment requirement for domestic abuse pursuant to this section. The counseling may be ordered in addition to counseling specifically for the treatment of domestic abuse or per evaluation as set forth below. If, after sufficient evaluation and attendance at required counseling sessions, the domestic violence treatment program or licensed professional determines that the defendant (whether or not defendant evaluates as a perpetrator of domestic violence) should complete other programs of treatment simultaneously or prior to domestic violence treatment, including but not limited to programs related to the mental health, apparent substance or alcohol abuse or inability or refusal to manage anger, the defendant shall be ordered to complete the counseling as per the recommendations of the domestic violence treatment program or licensed professional.

F. The Court shall set review hearings within one hundred twenty (120) days to ensure that the defendant attends and fully complies with the provisions of this section and the domestic abuse counseling or treatment requirements. The defendant shall be required to be present at the review hearing. Defendant may be required to pay all or part of the cost of the counseling or treatment, in the discretion of the Court. The victim may attend but is not required to do so.

G. The Court shall set a final review hearing after the completion of the counseling or treatment to assure the attendance and compliance of the defendant with the provisions of Cherokee law. The Court shall retain continuing jurisdiction over the defendant during the course of ordered counseling through the final review hearing.

H. The Court may set interim review, follow-up post-completion review, or other review hearings as the Court determines necessary to assure the defendant attends and fully complies with the provisions of this section and the domestic abuse counseling or treatment requirements. After the initial review hearing referenced in subsection (F), the Court may waive Defendant's appearance at reviews or compel Defendant's attendance at reviews. The Court may review progress reports on the defendant from individual counseling, domestic abuse counseling, or the treatment program without appearances.

I. At any review hearing, if the defendant is not satisfactorily attending individual counseling or a domestic abuse counseling or treatment program or is not in compliance with any domestic abuse counseling or treatment requirements, or is not making progress in treatment, the Court may:

1. order the defendant to further or continue counseling, treatment, or other necessary services; and

2. revoke all or any part of a suspended sentence, deferred sentence, or probation; and

3. subject the defendant to any or all remaining portions of the original sentence.

J. Nothing in this provision shall prohibit the Presiding Judge of the District Court from appointing and compensating a Special Master to hear all or designated cases set for review under this section.

K. The defendant may be required to pay all or part of the cost of the counseling or treatment, in the discretion of the Court.

L. Penalty enhancement-For the purposes of this section, any former conviction in any jurisdiction for assault and battery against any current or former spouse, any present spouse of a former spouse, parents, any foster parent, any child, any person otherwise related by blood or marriage, any person with whom the defendant is in a dating relationship, any

individual with whom the defendant has had a child, any person who formerly lived in the same household as the defendant, or any person living in the same household as the defendant, shall constitute a sufficient basis for an enhanced penalty under subsection (C) of this section as a second or subsequent offense.

Title 21 §1131(M) shall be added as follows:

M. In addition to any other civil or criminal penalty that may be sentenced, the court may order the defendant to pay the victim resitution the full amount of the victim's losses as determined by the court to include:

1. Medical services relating to the physical, psychiatric, or psychological care;
2. Physical and occupational therapy or rehabilitation;
3. Necessary transportation, temporary housing, and child care expenses;
4. Lost income;
5. Attorneys' fees, plus any costs incurred in obtaining a civil protection order; and
6. Any other losses suffered by the victim as approximate result of the offense.

Title 21 § 1132, shall be amended as follows:

§ 1132. Assault and battery domestic ~~abuse~~ violence by strangulation-Definition

Any person who commits any assault or assault and battery with intent to cause great bodily harm by strangulation or attempted strangulation against a current or former spouse, a present spouse of a former spouse, parent, a foster parent, child, person otherwise related by blood or marriage, a person with whom the defendant is or who has been in a dating relationship, an individual with whom the defendant has had a child, a person who formerly lived in the same household as the defendant, or a person living in the same household as the defendant, by means of a form of asphyxia characterized by closure of the blood vessels or air passages of the neck as a result of external pressure on the neck, shall be guilty of the crime of domestic ~~abuse~~ violence by strangulation.

Title 22 § 40, Vicitm of Rape, Forcible Sodomy, or Domestic Abuse, shall be amdended as follows:

§ 40. Definitions

1. **"Domestic ~~abuse~~violence"** means the occurrence of one or more of the following acts between family or household members or persons involved in a dating relationship:

a. causing or attempting to cause physical harm; ~~or~~

b. threatening another with physical harm-; or

c. violation of any other domestic violence laws of the Cherokee Nation.

2. **"Family or household members"** means spouses, ex-spouses, parents, children, persons otherwise related by blood, ~~or~~ marriage, or adoption, or persons living in the same household or who formerly shared the same residence. This shall include the elderly and ~~handicapped~~ disabled;

3. **"Dating relationship"** means a person who is or has been in a social relationship of a romantic or intimate nature with another as determined by:

- a. the length of the relationship;
- b. the type of relationship; and
- c. the frequency of interaction between the persons involved in the relationship.

4. **"Protection Order"** means:

a. any injunction, restraining order or other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person; and

b. 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.

§ 40.2. Victim of domestic ~~abuse~~violence-Notice of rights

Upon the preliminary investigation of any crime involving domestic ~~abuse~~, violence, it shall be the duty of the first peace officer who interviews the victim of the domestic ~~abuse~~,violence, to inform the victim of the twenty-four-hour statewide telephone communication service established by the State of Oklahoma and to give notice to the victim of certain rights. The notice shall consist of handing such victim the following statement:

"As a victim of domestic ~~abuse~~violence, you have certain rights. These rights are as follows:

"1. The right to request that charges be pressed against your assailant;

"2. The right to request protection from any harm or threat of harm arising out of your cooperation with law enforcement and prosecution efforts as far as facilities are available and to be provided with information on the level of protection available; and

"3. The right to be informed of financial assistance and other social services available as a result of being a victim, including information on how to apply for the assistance and services."

§ 40.3. Victims not to be discouraged from pressing charges-Warrantless arrest of certain persons

A. A peace officer shall not discourage a victim of rape, forcible sodomy or domestic ~~abuse~~ violence from pressing charges against the assailant of the victim.

B. A peace officer may arrest without a warrant a person anywhere, including his place of residence, if the peace officer has probable cause to believe the person within the preceding seventy-two (72) hours has committed an act of domestic ~~abuse~~ violence as defined in Chapter 46 of Title 21, although the assault did not take place in the presence of the peace officer. A peace officer may not arrest a person pursuant to this section without first observing a recent physical injury to, or an impairment of the physical condition of, the alleged victim.

Title 22 Protection from Domestic Abuse Act §60 shall be amended as follows:

§ 60.1. Definitions

As used in this act and in the Domestic Abuse Reporting Act:

1. **"Domestic ~~abuse~~ violence"** means the occurrence of one or more of the following acts between family or household members or persons involved in a dating relationship:

a. causing or attempting to cause serious physical harm; or

b. threatening another with imminent serious physical harm; and

c. includes but is not limited to: Assault, as defined by 21 CNCA § 641; battery, as defined by 21 CNCA § 642; rape, as defined by 21 CNCA § 1111; and aggravated assault and battery, pursuant to 21 CNCA § 646.

2. **"Family or household members"** means spouses, former spouses, parents, children, persons otherwise related by blood, ~~or~~ marriage, or adoption, or persons living in the same household or who formerly lived in the same household. This shall include the elderly and handicapped.

3. "Dating relationship" means a person who is or has been in a social relationship of a romantic or intimate nature with another as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

§ 60.2. Protective order-Petition: form; filing fee; preparation

A. A victim of domestic abuse, or any adult household member on behalf of any other family or household member who is a minor or incompetent, may seek relief under the provisions of this act by filing a petition for protective order with the District Court.

B. The petition forms shall be provided by the Clerk of the Court and shall be in substantially the following form:

IN THE DISTRICT COURT IN AND FOR THE CHEROKEE NATION

_____)	
Plaintiff)	
)
vs.)	Case No. _____
)
_____)	
Defendant)	

PETITION FOR PROTECTIVE ORDER

Plaintiff, being sworn, states: (Check one or more)

___ The defendant caused or attempted to cause serious physical harm to _____.

___ The defendant threatened _____ with imminent serious physical harm.

2. The incident causing the filing of this petition occurred on or about _____.

(date)

(Describe what happened:)

3. The victim and the defendant are related as follows:

(check one)

___ married

___ divorced

___ parent and child

___ persons related by blood

___ persons related by marriage

___ persons living in the same household

___ persons formerly living in the same household

___ persons in a dating relationship or formerly in a dating relationship

4. (Answer this question only if the plaintiff is filing on behalf of someone else, minor or incompetent)

The plaintiff and the victim are related as follows:

___ married

___ divorced

___ parent and child

___ persons related by blood

___ persons related by marriage

___ persons living in the same household

___ persons formerly living in the same household

___ persons in a dating relationship or formerly in a dating relationship

5. (Check A or B)

(A) ____ The victim is in immediate and present danger of abuse from the defendant and an emergency ex parte order is necessary to protect the victim from serious harm. The plaintiff requests the following relief in the emergency ex parte order: (check one or more)

- ____ order the defendant not to abuse or injure the victim.
- ____ order the defendant not to visit, assault, molest, harass or otherwise interfere with the victim.
- ____ order the defendant not to threaten the victim.
- ____ order the defendant to leave the residence located at ____ on or before ____.
- ____ (describe other relief that plaintiff requests)

(B) ____ The plaintiff does not request an emergency ex parte order.

6. Plaintiff requests the following order to be made by the court following notice to the defendant and a hearing: (check one or more)

- ____ order the defendant not to abuse or injure the victim.
- ____ order the defendant not to visit, assault, molest, harass or otherwise interfere with the victim.
- ____ order the defendant not to threaten the victim.
- ____ order the defendant to leave the residence located at ____ on or before ____.
- ____ (describe other relief that plaintiff requests)
- ____ order the defendant to pay attorney fees of the plaintiff in the sum of ____ on or before ____.
- ____ order the defendant to pay the court costs of this action in the sum of ____ on or before ____.

7. Victim is a resident of the county wherein this petition is filed.

8. Plaintiff has stated the truth, the whole truth and nothing but the truth in this petition.

This court has jurisdiction over the parties and subject matter and meets all full faith and credit requirements of the Violence Against Women Act, 18 U.S.C. 2265. The defendant was afforded notice or this order has been issued ex parte due to immedicate danger and the defendant has been given a timely opportunity to be heard or will be given an opportunity to be heard in a timely manner as provided by the law of this jurisdiction. The filing or nonfiling of criminal charges and the prosecution of the case shall not be determined by a person who is protected by this order, but shall be determined by the Prosecutor. No person, including a person who is protected by this order, may give permission to anyone to ignore or violate any provision of this order. During the time in which this order is valid, every provision of this order is in full force and effect unless a Court changes the order. This order shall be in effect for three (3) years unless extended, modified, vacated or rescinded by the Court. A violation of this order is punishable by a fine of up to Five Thousand Dollars (\$5,000.00) or imprisonment of not more than one (1) year, or both such fine and imprisonment. Possession of a firearm or ammunition by a defendant while this order is in effect may subject the defendant to further prosecution for violation of Cherokee Nation law even if this order does not elsewhere specifically prohibit the defendant from possessing a firearm or ammunition.

Plaintiff

Witness my hand and seal,
affixed on the ____ day of _____, 20 ____.

Court Clerk, Deputy Court Clerk, or Notary Public

C. No filing fee shall be charged the plaintiff at the time the petition is filed. The Court may assess court costs and filing fees to either party at the hearing on the petition.

D. The plaintiff shall prepare the petition as set forth above or, at the request of the plaintiff, the Clerk of the Court or the victim-witness coordinator shall prepare or assist the plaintiff in preparing the same.

§ 60.3. Emergency ex parte order-Hearing

If a plaintiff requests an emergency ex parte order pursuant to 22 CNCA § 60.2, the Court shall hold an ex parte hearing on the same day the petition is filed. The Court may, for good cause shown at the hearing, issue any emergency ex parte order that it finds necessary to protect the victim from immediate and present danger of domestic abuse. The emergency

ex parte order shall be in effect until after the full hearing is conducted. An emergency ex parte order authorized by this section may include the following:

1. An order to the defendant not to abuse or injure the victim;
2. An order to the defendant not to visit, assault, molest, harass or otherwise interfere with the victim;
3. An order to the defendant not to threaten the victim; or
4. An order to the defendant to leave the residence.

§ 60.4. Service of process-Ex parte orders-Hearing-Protective orders-Period of relief

A. A copy of the petition, notice of hearing and a copy of any ex parte order issued by the Court shall be served upon the defendant in the same manner as a summons. Ex parte orders shall be given priority for service by the sheriff's office and can be served twenty-four (24) hours a day.

B. Within ten (10) 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.

C. At the hearing, the Court may grant any protective order to bring about the cessation of domestic abuse against the victim.

D. Protective orders authorized by this section may include the following:

1. An order to the defendant not to abuse or injure the victim;
2. An order to the defendant not to visit, assault, molest, harass or otherwise interfere with the victim;
3. An order to the defendant not to threaten the victim;
4. An order to the defendant to leave the residence;
5. An order awarding attorney fees; and
6. An order awarding court costs.

E. When necessary to protect the victim and when authorized by the Court, protective orders granted pursuant to the provisions of this section may be served upon the defendant by a peace officer, marshal, sheriff, constable, or policeman or other officer whose duty it is to preserve the peace, as defined by 21 CNCA § 99.

F. Any protective order issued pursuant to subsection (C) of this section shall not be for a fixed period but shall be continuous until modified or rescinded upon motion by either party or if the Court approves any consent agreement entered into by the plaintiff and defendant. No order issued under the Protection from Domestic Abuse Act shall in any manner affect title to real property.

§ 60.5. Copies of ex parte or final protective orders to be sent to appropriate law enforcement agencies

Within twenty-four (24) hours of the return of service of any ex parte or final protective order, the Clerk of the issuing court shall send certified copies thereof to all appropriate law enforcement agencies designated by the plaintiff.

§ 60.6. Violation of ex parte or final protective order-Penalty

A. Except as otherwise provided by this section any person who has been served with an ex parte or final protective order and is in violation of such protective order, upon conviction, shall be guilty of a crime and shall be punished by a fine of not more than One Thousand Dollars (\$1,000.00) or by a term of imprisonment in the penal institution of not more than

one (1) year, or both.

B. Any person who after a previous conviction of a violation of a protective order is convicted of a second or subsequent offense pursuant to the provisions of this section shall be deemed guilty of a crime and shall be punished by a term of imprisonment in the penal institution of not ~~less than ten (10) days and not more than one (1) year~~ more than three (3) years. In addition to the term of imprisonment, the person may be punished by a fine of not ~~less than Five Hundred Dollars (\$500.00) and not more than One Thousand Dollars (\$1,000.00)~~ more than Fifteen Thousand Dollars (\$15,000).

C. 1. Any person who has been served with an ex parte or final protective order who violates said protective order and without justifiable excuse causes physical injury or physical impairment to the plaintiff or to any other person named in said protective order shall upon conviction be guilty of a crime and shall be punished by a term of imprisonment in the county jail for not less than ten (10) days nor more than one (1) year. In addition to the term of imprisonment, the person may be punished by a fine not to exceed Five Thousand Dollars (\$5,000.00).

2. In determining the term of imprisonment required by this section, the jury or Sentencing Judge shall consider the degree of physical injury or physical impairment to the victim.

3. The provisions of this subsection shall not affect the applicability of 21 CNCA § 644, 21 CNCA § 645, 21 CNCA § 647 and 21 CNCA § 652.

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

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

F. Ex parte and final protective orders shall include notice of these penalties.

§ 60.7. Statewide validity of orders

All orders issued pursuant to the provisions of the Domestic Abuse Act shall have statewide validity, unless specifically modified or terminated by a Judge of the District Court.

Title 22 Sections § 70 shall be added as follows:

§ 70. Special Domestic Violence Criminal Jurisdiction

A. The Cherokee Nation hereby exerices "Special Domestic Violence Criminal Jurisdiction" as defined within 25 U.S.C. 1304, subject to applicable exceptions defined below.

B. Special domestic violence criminal jurisdiction shall apply to a non-Indian offender for criminal conduct in violation of the laws of the Cherokee Nation in one or more of the following categories:

1. Domestic violence when violence is committed by:
 - a. A current or former spouse or intimate partner of the victim;
 - b. A person with whom the victim shares a child in common;
 - c. A person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner; or
 - d. A person similarly situated to a spouse of the vicitim under laws of the Cherokee Nation
2. Dating violence;
3. Violation of a protection order which:
 - a. Prohibits or provides protection against violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person;
 - b. Is enforceable by the Cherokee Nation;

- c. Was issued against the defendant; and
- d. Is consistent with full faith and credit requirements set out in 18 U.S.C. 2264(b).

C. The Cherokee Nation hereby declares its special domestic violence criminal jurisdiction over a non-Indian if the offender:

- 1. Resides within the jurisdiction of the Cherokee Nation; or
- 2. Is employed within the jurisdiction of the Cherokee Nation; or
- 3. Is a spouse, intimate partner, or dating partner of:
 - a. A citizen of the Cherokee Nation; or
 - b. An Indian who resides within the jurisdiction of the Cherokee Nation

D. The Cherokee Nation may not exercise special domestic violence criminal jurisdiction over an alleged offence when the victim is non-Indian or the crime takes place outside the jurisdictional boundaries of the tribe.

§ 70.1 Special Domestic Violence Court

There is hereby created within the Cherokee Nation District Court a Special Domestic Violence Court for the prosecution of defendants, non-Indian and Indian, accused of crimes of domestic violence, dating violation and/or violation of a protection order within the jurisdiction boundaries of the Cherokee Nation. This Court shall be subject to all criminal procedures of the Cherokee Nation to the extent they do not conflict with the provisions contained within this chapter. All proceedings under this chapter shall be recorded.

§70.2 Rights Applicable to Defendants

- A. In all proceedings in which the Tribal Court is exercising Special Domestic Violence Criminal Jurisdiction, the rights enumerated in the Cherokee Nation Code Annotated shall be provided to all defendants.
- B. In proceedings in which the Special Domestic Violence Criminal Jurisdiction is being exercised, a defendant charged under Special Domestic Violence Jurisdiction has a right to a trial by jury of six fair and impartial jurors drawn from the community.
 - 1. Jury Pool. A list of eligible jurors shall be prepared by the Court. The eligible juror list shall be updated to reflect a fair cross-section of the community, and not systematically exclude any distinctive group in the community, including non-Indians. Jurors shall be 18 years of age or older and, notwithstanding any other law of the Cherokee Nation or any of its agencies, shall be chosen from the following persons:
 - a. Tribal members living within the jurisdiction of the Cherokee Nation;
 - b. Residents living within the jurisdiction of the Cherokee Nation;
 - c. Employees of the Cherokee Nation or any of its entities, corporations, or agencies who have been employed by the Cherokee Nation for at least one continuous year prior to being called as a juror.
- C. Notice - Any defendant detained under the provisions of this subsection, shall be notified of their right to file a petition for a writ of habeas corpus in a court of the United States.

Section 6. Provisions as cumulative

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

Section 7. 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 8. Effective Date

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

Section 9. 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.