Legislation Details (With Text)

File #:	21-114	**Version:**	2	**Name:**	CN DOMESTIC VIOLENCE LETHALITY REPORTING ACT OF 2021
Type:	Legislative Act			**Status:**	Passed
File created:	11/2/2021			**In control:**	TRIBAL COUNCIL
On agenda:	11/15/2021			**Final action:**	12/16/2021
Enactment date:	12/13/2021			**Enactment #:**	LA-52-21
Title:	CHEROKEE NATION DOMESTIC VIOLENCE PREVENTION ACT				
Sponsors:	Candessa Tehee, Victoria Vazquez				
Indexes:	domestic violence, Lethality Reporting, Prevention				
Code sections:	Title 22 - Criminal Procedure				
Attachments:	1. LA-52-21.PDF				

Date	Ver.	Action By	Action	Result
12/16/2021	2	OFFICE OF THE CHIEF	Signed	
12/13/2021	2	TRIBAL COUNCIL	Approved	Pass
11/15/2021	2	RULES COMMITTEE	Approved and Forwarded to Council	Pass

CHEROKEE NATION DOMESTIC VIOLENCE PREVENTION ACT

BE IT ENACTED BY THE CHEROKEE NATION:

Section 1. Title and Codification

This Act shall be known as the **"Cherokee Nation Domestic Violence Lethality Reporting Act of 2021."** This Act shall amend Chapter 2 of Title 22 of the Cherokee Nation Code entitled "The Domestic Abuse Reporting Act" dealing with the Protection from Domestic Violence.

Section 2. Findings

The Cherokee Nation Tribal Council finds that 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, is contrary to traditional Cherokee culture, values honoring the family, and is contrary to the interest of our Nation and sense of well-being.

Section 3. Legislative History

LA-10-90

LA-04-91

LA-24-02

LA-33-03

LA-28-06

LA-31-06

LA-12-18

LA-29-20

LA-08-21

Section 4. Purpose

The purpose of this Act is to expand the Cherokee Nation Domestic Abuse Reporting Act to require a lethality assessment during the preliminary investigation of any domestic violence crime. Such assessments shall be collected into a database for use by law enforcement and prosecutors to prevent future acts of domestic violence within the Cherokee Reservation.

Section 5. Substantive Provisions

VICTIM OF RAPE, FORCIBLE SODOMY, OR DOMESTIC ABUSE

§ 40. Definitions

As used in 22 CNCA §§ 40.1 through ~~40.5~~ 40.6H:

1. "Domestic 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;
   b. Threatening another with physical harm; or
   c. Violating 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, 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;

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3. “Forcible sodomy” means the act of forcing another person to engage in the detestable and abominable crime against nature pursuant to 21 CNCA §§ 886 and 887;

4. “Rape” means an act of sexual intercourse accomplished with a person pursuant to 21 CNCA §§ 111, 111.1 and 1114.

5. “~~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.~~

5. "Dating relationship" means an intimate association, a courtship, or an engagement relationship. Such relationships may be commonly characterized by affectionate or sexual involvement. For purposes of this act, a casual acquaintance or ordinary fraternization between persons in a business or social context shall not constitute a dating relationship;

6. “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.

7. "Domestic abuse" means any act of physical harm, or the threat of imminent physical harm which is committed 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 currently or was previously an intimate partner or family or household member; the occurrence of one or more of the following acts between family or household members:

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.

8. "Foreign protective order" means any valid order of protection issued by a court of another state or a tribal court;

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§ 40.1. Victim of rape or forcible sodomy - Notice of rights

Upon the preliminary investigation of any rape or forcible sodomy, it shall be the duty of the officer who interviews the victim of the rape or forcible sodomy 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 the crime of rape or forcible sodomy, 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;

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

"4. The right to a free medical examination for the procurement of evidence to aid in the prosecution of your assailant."

The written notice shall also include the telephone number of the twenty-four-hour telephone communication service established by the State of Oklahoma.

§ 40.2. Victim of domestic violence - Notice of rights

Upon the preliminary investigation of any crime involving domestic violence, it shall be the duty of the first peace officer who interviews the victim of domestic 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 the crime of domestic 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 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 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 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.

§ 40.5 Short title

Sections 40.2 through 40.6 of this Title shall be known and may be cited as the Domestic Abuse Reporting Act.

§ 40.6 Record of reported incidents of domestic abuse-Reports

A. It shall be the duty of every law enforcement agency to keep a record of each reported incident of domestic abuse 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. The record of each reported incident of domestic abuse shall:

1. Show the type of crime involved in the domestic abuse;
2. Show the day of the week the incident occurred; ~~and~~
3. Show the time of day the incident occurred~~;~~ and

4. Shall include a Lethality Assessment conducted upon a preliminary investigation of domestic violence. This assessment shall include, but not be limited to, the following information:

1. Has the accused ever used a weapon against the victim or threatened the victim with a weapon?

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2. Has the person threatened to kill the victim or the children of the victim?
3. Does the victim believe the accused will try to kill the victim?
4. Has the accused ever tried to choke the victim?
5. Is the accused violently or constantly jealous of the victim or does the accused control most of the daily activities of the victim?
6. Does the person have a gun or can get a gun easily?
7. Has the victim left or separated from the person after living together or being married?
8. Is the person unemployed?
9. Has the person ever tried to kill himself or herself?
10. Has the person ever tried to kill the victim or a family member or anyone else?
11. Does the victim have a child that the person knows is not his or her own child?
12. Does the person follow or spy on the victim or leave the victim threatening messages?
13. Is there anything else that worries the victim about his or her safety and if so, what worries the victim?

C. Based upon the results of the lethality assessment, referrals to shelters, domestic violence intervention programs and other social services shall be provided to the victim.

D. If the results of the lethality assessment indicate a referral is suggested, the assessing officer shall implement the protocol referral process to a domestic violence advocate from a certified or tribal program as follows:

1. Advise the victim of the results of the assessment;
2. Advise the victim that based on the results of the assessment the officer will call the domestic violence hotline to allow the victim to speak with an advocate;
3. If the victim does not want to speak with an advocate, the officer shall document the refusal on the form.

E. Regardless of the results of the lethality assessment, referral information for shelters, domestic violence programs and other social services shall be provided to the victim.

F. Regardless of the results of the lethality assessment, the officer shall submit the lethality assessment

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form to the office of the Attorney General and One Fire.

G. The Office of the Attorney General, in conjunction with One Fire, shall maintain a database of all alleged abusers and victim(s) of domestic violence and crimes against children. This database shall be searchable by the alleged abuser's name and victim's name(s) and contain all lethality assessments received by the Attorney General and/or One Fire. The contents of such database shall be exempt from public disclosure pursuant to 67 CNCA § 105(A)(3).

~~H.~~ ~~C.~~ A monthly report of the recorded incidents of domestic abuse shall be submitted to the Cherokee Nation Marshal and the Director of the Oklahoma State Bureau of Investigation on 734 forms provided by the State Bureau of Investigation for such purpose.

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 immediately upon its approval and signatures.

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