



Council of the Cherokee Nation

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

Legislation Details (With Text)

File #:	22-076	Version:	1	Name:	CN FAMILY PROTECTION AND VAWA ACT OF 2022 or SPECIAL CRIMINAL JURISDICTION ACT OF 2022
Type:	Legislative Act	Status:	Passed		
File created:	9/15/2022	In control:	TRIBAL COUNCIL		
On agenda:	9/29/2022	Final action:	10/4/2022		
Enactment date:	9/29/2022	Enactment #:	LA-31-22		
Title:	AN ACT AMENDING TITLE 22 OF THE CHEROKEE NATION CODE ANNOTATED RELATING TO THE SAFETY OF NATIVE WOMEN, CHILDREN, AND JUSTICE PERSONNEL AND EXPANDING SPECIAL TRIBAL CRIMINAL JURISDICTION				
Sponsors:	Candessa Tehee, Dora Patzkowski, Mike Shambaugh, Victoria Vazquez, Joe Deere, Shawn Crittenden, Joshua Sam, Rex Jordan, Daryl Legg, E. O. "JR." Smith, Melvina Shotpouch, Julia Coates, Mike Dobbins, Keith Austin, Danny Callison				
Indexes:	Crimes and Punishments, Criminal Law, Criminal Procedure, Violence Against Women Act				
Code sections:	Title 21 - Crimes and Punishments, Title 22 - Criminal Procedure				
Attachments:	1. LA-31-22				

Date	Ver.	Action By	Action	Result
10/4/2022	1	OFFICE OF THE CHIEF	Signed	
9/29/2022	1	TRIBAL COUNCIL	Approved	Pass
9/29/2022	1	RULES COMMITTEE	Approved and Forwarded to Council	Pass

AN ACT AMENDING TITLE 22 OF THE CHEROKEE NATION CODE ANNOTATED RELATING TO THE SAFETY OF NATIVE WOMEN, CHILDREN, AND JUSTICE PERSONNEL AND EXPANDING SPECIAL TRIBAL CRIMINAL JURISDICTION

BE IT ENACTED BY THE CHEROKEE NATION:

Section 1. Title and Codification

This act shall be known as the ["Cherokee Nation Family Protection and Violence Against Women Act of 2022,"](#) [alternatively known as the](#) Special Criminal Jurisdiction Act of 2022, and shall amend Title 22 of the Cherokee Nation Code.

Section 2. Purpose

This Act amends the Cherokee Nation Code Annotated to provide expanded jurisdiction over non-Indians pursuant to the amended Violence Against Women Act (VAWA) of 2022 as authorized by Congress and codified at 25 U.S.C. 1304. This act expanded special tribal criminal jurisdiction over certain crimes. This act shall amend portions of Titles 21 and 22 of the Cherokee Nation Code Annotated.

Section 3. Legislative History

Section 4.

§ 40. Definitions

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. 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, marriage, or adoption, or persons living in the same household or who formerly shared the same residence. This shall include the elderly and disabled;

3. **"Dating relationship"** means a person who is or has been in a social ~~relationship~~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 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 the 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 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 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.~~ A peace officer shall not discourage a victim of rape, forcible sodomy or domestic violence from pressing charges against the assailant of the victim.

~~b. 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 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.

§ 40.3. A. Emergency Temporary Order of Protection

A. When the court is not open for business, the victim of domestic violence, stalking, harassment, rape, forcible sodomy, a sex offense, kidnapping or assault and battery with a deadly weapon or member of the immediate family of a victim of first-degree murder may request a petition for an emergency temporary order of protection. The peace officer making the preliminary investigation shall:

1. Provide the victim or member of the immediate family of a victim of first-degree murder with a petition for an emergency temporary order of protection and, if necessary, assist the victim or member of the immediate family of a victim of first-degree murder in completing the petition form. The petition shall be in substantially the same form as provided by 22 CNCA § 60.2 for a petition for protective order in domestic abuse cases;

2. Immediately notify, by telephone or otherwise, a judge of the district court of the request for an emergency temporary order of protection and describe the circumstances. The judge shall inform the peace officer of the decision to approve or disapprove the emergency temporary order;

3. Immediately inform the victim or member of the immediate family of a victim of first-degree murder whether the judge has approved or disapproved the emergency temporary order. If an emergency temporary order has been approved, the officer shall provide the victim, or a responsible adult if the victim is a minor child or an incompetent person or member of the immediate family of a victim of first-degree murder, with a copy of the petition and a written statement signed by the officer attesting that the judge has approved the emergency temporary order of protection; and

4. Notify the person subject to the emergency temporary protection order of the issuance and conditions of the order, if known. Notification pursuant to this paragraph may be made personally by the officer upon arrest or, upon identification of the assailant, notice shall be given by any law enforcement officer. A copy of the petition and the statement of the officer attesting to the order of the judge shall be made available to the person.

B. The forms utilized by law enforcement agencies in carrying out the provisions of this section may be substantially similar to those used under 22 CNCA § 60.2.

§ 60.1. Definitions

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

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 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.

4. "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. 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 telephone calls and fear of death or bodily injury;

5. "Intimate partner" means:

- a. current or former spouses,
- b. persons who are or were in a dating relationship,
- c. 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
- d. 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 is never a necessary condition;

6. "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

7. "Victim support person" means a person affiliated with a domestic violence, sexual assault or adult human sex trafficking program, certified by the Attorney General or operating under a tribal government, who provides support and assistance for a person who files a petition under the Protection from Domestic Abuse Reporting Act.

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

a. 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.

Any of the following persons may seek relief under this chapter by filing a petition with the Court alleging that 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, harassment or stalking as defined in this Act;
2. Any family member or household member of a person claimed to be the victim of domestic violence, harassment, or stalking as defined in this Act, on behalf of the alleged victim;
3. A police officer;
4. A victim advocate or Victim Support Person; and/or
5. The Attorney General or any Assistant Attorneys General

b. 1. There is no minimum requirement of residency to petition for a protective order.

2. The District Court shall have jurisdiction over a petition for protective order in any case where either the plaintiff or defendant resides within the boundaries of the Cherokee Nation or the act(s) constituting domestic violence, harassment, or stalking have occurred within the boundaries of the Cherokee Nation.

3. If a petition has been filed in an action for divorce or separate maintenance in the Cherokee Nation District Court and either party to the action files a petition for a protective order in the District Court, the petition for the protective order may be heard together if the court finds that hearing the actions together would further the interest of judicial economy; 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.

a. If the defendant is a minor child, the petition shall be filed with the court having jurisdiction over juvenile matters.

b. When the abuse occurs when the court is not open for business, such person may request an immediate emergency temporary order of protection as authorized by this title.

c. The petition forms shall be provided by the Clerk of the Court. The District Court shall develop a standard form for the petition, and shall be in substantially the following form:

IN THE DISTRICT COURT IN AND FOR THE CHEROKEE NATION

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

~~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 immediate 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. c.~~ The plaintiff shall prepare the petition as ~~set forth above or provided by the Court~~, or at the request of the plaintiff, the Clerk of the Court or the ~~victim support person may victim-witness coordinator shall~~ prepare or assist the plaintiff in preparing the same.

~~d. 1. Except as otherwise provided by this section, no filing fee, service of process fee, attorney fees or any other fee or costs shall be charged the plaintiff or victim at any time for filing a petition for a protective order whether a protective order is granted or not granted. The court may assess court costs, service of process fees, attorney fees, other fees and filing fees against the defendant at the hearing on the petition, if a protective order is granted against the defendant; provided, the court shall have 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.~~

~~2. If the court makes specific findings that a petition for a protective order has been filed frivolously and no victim exists, the court may assess attorney fees and court costs against the plaintiff.~~

~~3. 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 fees incurred by the other party in responding to the allegation.

e. 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.

f. 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.

g. A victim of rape, forcible sodomy, a sex offense, 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 the Cherokee Nation Code Annotated, 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. The District Court shall modify the petition forms as necessary to effectuate the provisions of this subsection.

§ 60.3. Emergency ex parte order-Hearing

a. 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, if the court finds sufficient grounds within the scope of the Protection from Domestic Abuse Act stated in the petition to hold such a hearing. 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, stalking, or harassment. The emergency ex parte order shall be in effect until after the full hearing 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. The District Court shall develop a standard form for emergency ex parte protective orders.. 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.

b. An emergency ex parte protective order authorized by this section shall include the name, sex, race, date of birth of the defendant, and the dates of issue and expiration of the protective order.

c. If a plaintiff requests an emergency temporary ex parte order of protection as provided by 22 CNCA § 40.3.A, the judge who is notified of the request by a peace officer may issue such order verbally to the officer or in writing when there is reasonable cause to believe that the order is necessary to protect the victim from immediate and present danger of domestic abuse. When the order is issued verbally the judge shall direct the officer to complete and sign a statement attesting to the order. The emergency temporary ex parte order shall be in effect until noon on the next day

the court is open for business or 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.

d. If an action for divorce, separate maintenance, guardianship, adoption or any other proceeding involving custody or visitation has been filed and is pending in the district court, the hearing on the petition for a final protective order shall be transferred and held in the same county in which the action for divorce, separate maintenance, guardianship, adoption or any other proceeding involving custody or visitation is pending.

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

A. 1. 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 Marshal office and can be served twenty-four (24) hours a day.

2. Emergency temporary orders, emergency ex parte orders and notice of hearings shall be given priority for service and can be served twenty-four (24) hours a day when the location of the defendant is known. When service cannot be made upon the defendant by the Marshal, the Marshal may contact another law enforcement officer or a private investigator or private process server to serve the defendant.

3. If service has not been made on the defendant at the time of the hearing, the court shall, at the request of the petitioner, issue a new emergency order reflecting a new hearing date and direct service to issue.

4. A petition for a protective order shall not expire unless the petitioner fails to appear at the hearing or fails to request a new order. A petitioner may move to dismiss the petition and emergency or final order at any time; however, a protective order must be dismissed by court order.

5. Failure to serve the defendant shall not be grounds for dismissal of a petition or an ex parte order unless the victim requests dismissal or fails to appear for the hearing thereon.

6. A final protective order shall be granted or denied within six (6) months of service on the defendant unless all parties agree that a temporary protective order remain in effect; provided, a victim shall have the right to request a final protective order hearing at any time after the passage of six (6) months.

B. Within ~~ten (10)~~ 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.

C. 1. At the hearing, the Court may grant any protective order to bring about the cessation of domestic abuse against the victim. At the hearing, the court may impose any terms and conditions in the protective order that the court reasonably believes are necessary to bring about the cessation of domestic abuse against the victim or stalking or harassment of the victim or the immediate family of the victim but shall not impose any term and condition that may compromise the safety of the victim including, but not limited to, mediation, couples counseling, family counseling, parenting classes or joint victim-offender counseling sessions. The court may order the defendant to obtain domestic abuse counseling or treatment in a program approved by the Court at the expense of the defendant.

2. If the court grants a protective order and the defendant is a minor child, the court shall order a preliminary inquiry in a juvenile proceeding to determine whether further court action pursuant to the Cherokee Nation Juvenile Code should be taken against a juvenile defendant.

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.~~

3. Final protective orders authorized by this section shall be on a standard form developed by the District Court.

D. 1. After notice and hearing, protective orders authorized by this section may require the defendant to undergo treatment or participate in the court-approved counseling services necessary to bring about cessation of domestic abuse against the victim, but shall not order any treatment or counseling that may compromise the safety of the victim including, but not limited to, mediation, couples counseling, family counseling, parenting classes or joint victim-offender counseling sessions.

2. The defendant may be required to pay all or any part of the cost of such treatment or counseling services. The court shall not be responsible for such cost.

3. Should the plaintiff choose to undergo treatment or participate in court-approved counseling services for victims of domestic abuse, the court may order the defendant to pay all or any part of the cost of such treatment or counseling services if the court determines that payment by the defendant is appropriate.

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.

G. 1. Any protective order issued on or after the effective date of this Act, pursuant to subsection C of this section shall be:

a. for a fixed period not to exceed a period of five (5) years unless extended, modified, vacated or rescinded upon motion by either party or if the court approves any consent agreement entered into by the plaintiff and defendant; provided, if the defendant is incarcerated, the protective order shall remain in full force and effect during the period of incarceration. The period of incarceration, in any jurisdiction, shall not be included in the calculation of the five-year time limitation, or

b. continuous upon a specific finding by the court of one of the following:

(1) the person has a history of violating the orders of any court or governmental entity,

(2) the person has previously been convicted of a violent felony offense,

(3) the person has a previous felony conviction for stalking under this Code or the laws of a tribe, state, or territory of

the United States,

(4) a court order for a final Victim Protection Order has previously been issued against the person in the Nation, a state, or other tribe, or

(5) the victim provides proof that a continuous protective order is necessary for his or her protection.

Further, the court may take into consideration whether the person has a history of domestic violence or a history of other violent acts. The protective order shall remain in effect until modified, vacated or rescinded upon motion by either party or if the court approves any consent agreement entered into by the plaintiff and defendant. If the defendant is incarcerated, the protective order shall remain in full force and effect during the period of incarceration.

2. The court shall notify the parties at the time of the issuance of the protective order of the duration of the protective order.

3. Upon the filing of a motion by either party to modify, extend, or vacate a protective order, a hearing shall be scheduled and notice given to the parties. At the hearing, the issuing court may take such action as is necessary under the circumstances. Notice of the motion and hearing date shall be served upon the opposing party by regular mail to the party's last known address, unless the Court determines personal service of the motion and hearing date is appropriate under the facts of the case.

H. 1. It shall be unlawful for any person to knowingly and willfully seek a protective order against a spouse or ex-spouse pursuant to the Protection from Domestic Abuse Act for purposes of harassment, undue advantage, intimidation, or limitation of child visitation rights in any divorce proceeding or separation action without justifiable cause.

2. The violator shall, upon conviction thereof, be guilty of a misdemeanor 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.

3. A second or subsequent conviction under this subsection shall be a felony punishable by imprisonment in a penal institution for a period not to exceed three (3) years, or by a fine not to exceed Ten Thousand Dollars (\$15,000.00), or by both such fine and imprisonment.

I. 1. A protective order issued under the Protection from Domestic Abuse Act shall not in any manner affect title to real property, purport to grant to the parties a divorce or otherwise purport to determine the issues between the parties as to child custody, visitation or visitation schedules, child support or division of property or any other like relief, except child visitation orders may be temporarily suspended or modified to protect from threats of abuse or physical violence by the defendant or a threat to violate a custody order. Orders not affecting title may be entered for good cause found to protect an animal owned by either of the parties or any child living in the household.

2. When granting any protective order for the protection of a minor child from violence or threats of abuse, the court shall allow visitation only under conditions that provide adequate supervision and protection to the child while maintaining the integrity of a temporary or permanent order or decree related to custody and visitation.

J. 1. In order to ensure that a petitioner can maintain an existing wireless telephone number or household utility account, the court, after providing notice and a hearing, may issue an order directing a wireless service provider or public utility provider to transfer the billing responsibility for and rights to the wireless telephone number or numbers of any minor children in the care of the petitioning party or household utility account to the petitioner if the petitioner is not the wireless service or public utility account holder.

2. The order transferring billing responsibility for and rights to the wireless telephone number or numbers or household utility account to the petitioner shall list the name and billing telephone number of the account holder, the name and contact information of the person to whom the telephone number or numbers or household utility account will be transferred and each telephone number or household utility to be transferred to that person. The court shall ensure that the contact information of the petitioner is not provided to the account holder in proceedings held under this

subsection.

3. Upon issuance, a copy of the final order of protection shall be transmitted, either electronically or by certified mail, to the registered agent of the wireless service provider or public utility provider listed with the Secretary of State or Corporation Commission of Cherokee Nation and/or Oklahoma or electronically to the email address provided by the wireless service provider or public utility provider. Such transmittal shall constitute adequate notice for the wireless service provider or public utility provider.

4. If the wireless service provider or public utility provider cannot operationally or technically effectuate the order due to certain circumstances, the wireless service provider or public utility provider shall notify the petitioner. Such circumstances shall include, but not be limited to, the following:

a. the account holder has already terminated the account,

b. the differences in network technology prevent the functionality of a mobile device on the network, or

c. there are geographic or other limitations on network or service availability.

5. Upon transfer of billing responsibility for and rights to a wireless telephone number or numbers or household utility account to the petitioner under the provisions of this subsection by a wireless service provider or public utility provider, the petitioner shall assume all financial responsibility for the transferred wireless telephone number or numbers or household utility account, monthly service and utility billing costs and costs for any mobile device associated with the wireless telephone number or numbers. The wireless service provider or public utility provider shall have the right to pursue the original account holder for purposes of collecting any past due amounts owed to the wireless service provider or public utility provider.

6. The provisions of this subsection shall not preclude a wireless service provider or public utility provider from applying any routine and customary requirements for account establishment to the petitioner as part of this transfer of billing responsibility for a household utility account or for a wireless telephone number or numbers and any mobile devices attached to that number including, but not limited to, identification, financial information and customer preferences.

7. The provisions of this subsection shall not affect the ability of the court to apportion the assets and debts of the parties as provided for in law or the ability to determine the temporary use, possession and control of personal property.

8. No cause of action shall lie against any wireless service provider or public utility provider, its officers, employees or agents for actions taken in accordance with the terms of a court order issued under the provisions of this subsection.

9. As used in this subsection:

a. "wireless service provider" means a provider of commercial mobile service under Section 332(d) of the federal Telecommunications Act of 1996,

b. "public utility provider" means every corporation organized or doing business in this state that owns, operates or manages any plant or equipment for the manufacture, production, transmission, transportation, delivery or furnishing of water, heat or light with gas or electric current for heat, light or power, for public use in this state, and

c. "household utility account" shall include utility services for water, heat, light, power or gas that are provided by a public utility provider.

K. 1. A court shall not issue any mutual protective orders.

2. If both parties allege domestic abuse by the other party, the parties shall do so by separate petitions. The court shall review each petition separately in an individual or a consolidated hearing and grant or deny each petition on its individual merits. If the court finds cause to grant both motions, the court shall do so by separate orders and with specific findings justifying the issuance of each order.

3. The court may only consolidate a hearing if:

a. the court makes specific findings that:

(1) sufficient evidence exists of domestic abuse, stalking, harassment or rape against each party, and

(2) each party acted primarily as aggressors,

b. the defendant filed a petition with the court for a protective order no less than three (3) days, not including weekends or holidays, prior to the first scheduled full hearing on the petition filed by the plaintiff, and

c. the defendant had no less than forty-eight (48) hours of notice prior to the full hearing on the petition filed by the plaintiff.

L. The court may allow a plaintiff or victim to be accompanied by a victim support person at court proceedings. A victim support person shall not make legal arguments; however, a victim support person who is not a licensed attorney may offer the plaintiff or victim comfort or support and may remain in close proximity to the plaintiff or victim.

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

a. 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.

b. Any law enforcement agency receiving copies of the documents listed in subsection (a) of this section shall be required to ensure that other law enforcement agencies have access twenty-four (24) hours a day to the information contained in the documents which may include entry of information about the emergency temporary, ex parte or final protective order in the National Crime Information Center database.

§ 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 more than three (3) years. In addition to the term of imprisonment, the person may be punished by a fine of not 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. 1.~~ 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. 2.~~ 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.

In addition to any other penalty specified by this section, the court shall 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 or to bring about the cessation of stalking or harassment of the victim. For every conviction of violation of a protective order:

1. The court shall specifically order as a condition of a suspended sentence or probation that a defendant participate in counseling or undergo treatment to bring about the cessation of domestic abuse as specified in paragraph 2 of this subsection;

2. a. The court shall require the defendant to participate in counseling or undergo treatment for domestic abuse by an individual licensed practitioner or a domestic abuse treatment program approved by the District Court. If the defendant is ordered to participate in a domestic abuse counseling or treatment program, the order shall require the defendant to attend the program for a minimum of fifty-two (52) weeks, complete the program, and be evaluated before and after attendance of the program by a program counselor or a private counselor.

b. 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 subsection. 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 does not evaluate as a perpetrator of domestic violence or does evaluate as a perpetrator of domestic violence and 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;

3. a. The court shall set a review hearing no more than one hundred twenty (120) days after the defendant is ordered to participate in a domestic abuse counseling program or undergo treatment for domestic abuse to assure the attendance and compliance of the defendant with the provisions of this subsection and the domestic abuse counseling or treatment requirements.

b. The court shall set a second review hearing after the completion of the counseling or treatment to assure the attendance and compliance of the defendant with the provisions of this subsection and the domestic abuse counseling or treatment requirements. The court may suspend sentencing of the defendant until the defendant has presented proof to the court of enrollment in a program of treatment for domestic abuse by an individual licensed practitioner or a domestic abuse treatment program approved by the District Court and attendance at weekly sessions of such program. Such proof shall be presented to the court by the defendant no later than one hundred twenty (120) days after the defendant is ordered to such counseling or treatment. At such time, the court may complete sentencing, beginning the period of the sentence from the date that proof of enrollment is presented to the court, and schedule reviews as required by subparagraphs a and b of this paragraph and paragraphs 4 and 5 of this subsection. The court shall retain continuing jurisdiction over the defendant during the course of ordered counseling through the final review hearing;

4. The court may set subsequent or other review hearings as the court determines necessary to assure the defendant attends and fully complies with the provisions of this subsection and the domestic abuse counseling or treatment requirements;

5. 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, the court may order the defendant to further or continue counseling, treatment, or other necessary

services. The court may revoke all or any part of a suspended sentence, deferred sentence, or probation and subject the defendant to any or all remaining portions of the original sentence;

6. At the first review hearing, the court shall require the defendant to appear in court. Thereafter, for any subsequent review hearings, the court may accept a report on the progress of the defendant from individual counseling, domestic abuse counseling, or the treatment program. There shall be no requirement for the victim to attend review hearings.

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.

G. The district court and any judge thereof shall be immune from any liability or prosecution for issuing an order that requires a defendant to:

1. Attend a treatment program for domestic abusers approved by the District Court;

2. Attend counseling or treatment services ordered as part of any final protective order or for any violation of a protective order; and

3. Attend, complete, and be evaluated before and after attendance by a treatment program for domestic abusers certified by the Attorney General.

H. At no time, under any proceeding, may a person protected by a protective order be held to be in violation of that protective order. Only a defendant against whom a protective order has been issued may be held to have violated the order.

I. In addition to any other penalty specified by this section, the court may order a defendant to use an active, real-time, twenty-four-hour Global Positioning System (GPS) monitoring device as a condition of a sentence. The court may further order the defendant to pay costs and expenses related to the GPS device and monitoring.

§ 60.7. ~~Statewide~~ Validity of orders

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

§ 60.8 - Seizure and Forfeiture of Weapons and Instruments

A. Any authorized peace officer of the Nation shall seize any weapon or instrument when such officer has probable cause to believe such weapon or instrument has been used to commit an act of domestic abuse as defined by 22 CNCA § 60.1, provided an arrest is made, if possible, at the same time.

B. After any such seizure, the Office of the Attorney General shall file a notice of seizure and forfeiture as provided in this section within ten (10) days of such seizure, or any weapon or instrument seized pursuant to this section shall be returned to the owner.

C. The seizure and forfeiture provisions of the <<https://www.oscn.net/applications/oscn/DeliverDocument.asp?citeid=104354>> Nation shall be followed for any seizure and forfeiture of property pursuant to this section. No weapon or instrument seized 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 subsection B of this section, unless authorized by this section. Provided further, the owner may prove at the forfeiture hearing that the conduct giving rise to the seizure was justified, and if the owner proves justification, the seized property shall be returned to the owner. Any proceeds gained from this seizure shall be placed in the Crime Victims Compensation Revolving Fund.

§ 60.9 Statement Required on All Ex Parte or Final Protective Order

1. The filing or nonfiling of criminal charges and the prosecution of the case shall not be determined by a person who is protected by the protective order, but shall be determined by the prosecutor;
2. No person, including a person who is protected by the order, may give permission to anyone to ignore or violate any provision of the order. During the time in which the order is valid, every provision of the order shall be in full force and effect unless a court changes the order;
3. The order shall be in effect for a fixed period of five (5) years unless extended, modified, vacated or rescinded by the court or shall be continuous upon a specific finding by the court as provided in subparagraph b of paragraph 1 of subsection G of 22 CNCA § 60.4 unless modified, vacated or rescinded by the court;
4. The order shall be entered into the National Crime Information Center (NCIC) database;
5. A violation of the order is punishable by a fine of up to One Thousand Dollars (\$1,000.00) or imprisonment for up to one (1) year in a penal institution, or by both such fine and imprisonment. A violation of the order which causes injury is punishable by imprisonment for twenty (20) days to one (1) year in a penal institution or a fine of up to Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment;
6. Possession of a firearm or ammunition by a defendant while an order is in effect may subject the defendant to prosecution for a violation of federal law even if the order does not specifically prohibit the defendant from possession of a firearm or ammunition;
7. The defendant must avoid the residence of the petitioner or any premises temporarily occupied by the petitioner;
8. The defendant must avoid contact that harasses or intimidates the petitioner. Contact includes, but is not limited to, contact at the home, work, or school of the petitioner, public places, in person, by phone, in writing, by electronic communication or device, or in any other manner;
9. The defendant shall not impersonate or adopt the personification of the petitioner by pretending to be the petitioner, ordering items, posting information or making inquiries, or publishing photographs of the petitioner, by use of social media, or by use of computer, telephone, texting, emailing, or by use of any electronic means;
10. The defendant must refrain from removing, hiding, damaging, harming, mistreating, or disposing of a household pet;
11. The defendant must allow the petitioner or a family member or household member of the petitioner acting on his or her behalf to retrieve a household pet;
12. The defendant must avoid contacting the petitioner or causing any person other than an attorney for the petitioner or law enforcement officer to contact the petitioner unless the petitioner consents in writing; and
13. A peace officer will accompany the petitioner and assist in placing the petitioner in physical possession of his or her residence, if requested.

60.10 Expungement of Victim Protective Orders

- A. Persons authorized to file a motion for expungement of victim protective orders (VPOs) issued pursuant to the

Protection from Domestic Abuse Act in the District Court must be within one of the following categories:

1. An ex parte order was issued to the plaintiff but later terminated due to dismissal of the petition before the full hearing, or denial of the petition upon full hearing, or failure of the plaintiff to appear for full hearing, and at least ninety (90) days have passed since the date set for full hearing;
2. The plaintiff filed an application for a victim protective order and failed to appear for the full hearing and at least ninety (90) days have passed since the date last set by the court for the full hearing, including the last date set for any continuance, postponement or rescheduling of the hearing;
3. The plaintiff or defendant has had the order vacated and three (3) years have passed since the order to vacate was entered; or
4. The plaintiff or defendant is deceased.

B. For purposes of this section:

1. "Expungement" means the sealing of victim protective order (VPO) court records from public inspection, but not from law enforcement agencies, the court or the Office of the Attorney General;
2. "Plaintiff" means the person or persons who sought the original victim protective order (VPO) for cause; and
3. "Defendant" means the person or persons to whom the victim protective order (VPO) was directed.

C. 1. Any person qualified under subsection A of this section may petition the District Court for the expungement and sealing of the court records from public inspection. The face of the petition shall state whether the defendant in the protective order has been convicted of any violation of the protective order and whether any prosecution or complaint is pending in this state or any other state for a violation or alleged violation of the protective order that is sought to be expunged. The petition shall further state the authority pursuant to subsection A of this section for eligibility for requesting the expungement. The other party to the protective order shall be mailed a copy of the petition by regular mail within ten (10) days of filing the petition. A written answer or objection may be filed within thirty (30) days of receiving the notice and petition.

2. Upon the filing of a petition, the court shall set a date for a hearing and shall provide at least a thirty-day notice of the hearing to all parties to the protective order, the Office of Attorney General and any other person or agency whom the court has reason to believe may have relevant information related to the sealing of the victim protective order (VPO) court record.

3. Without objection from the other party to the victim protective order (VPO) or upon a finding that the harm to the privacy of the person in interest or dangers of unwarranted adverse consequences outweigh the public and safety interests of the parties to the protective order in retaining the records, the court may order the court record, or any part thereof, to be sealed from public inspection. Any order entered pursuant to this section shall not limit or restrict any law enforcement agency, the Office of the Attorney General or the court from accessing said records without the necessity of a court order. Any order entered pursuant to this subsection may be appealed by any party to the protective order or by the Office of the Attorney General to the Supreme Court in accordance with the rules of the Supreme Court.

4. Upon the entry of an order to expunge and seal from public inspection a victim protective order (VPO) court record, or any part thereof, the subject official actions shall be deemed never to have occurred, and the persons in interest and the public may properly reply, upon any inquiry in the matter, that no such action ever occurred and that no such record exists with respect to the persons.

5. Inspection of the protective order court records included in the expungement order issued pursuant to this section may thereafter be permitted only upon petition by the persons in interest who are the subjects of the records, or without petition by the district attorney or a law enforcement agency in the due course of investigation of a crime.

6. Employers, educational institutions, state and local government agencies, officials, and employees shall not require, in

any application or interview or otherwise, an applicant to disclose any information contained in sealed protective order court records. An applicant need not, in answer to any question concerning the records, provide information that has been sealed, including any reference to or information concerning the sealed information and may state that no such action has ever occurred. The application may not be denied solely because of the refusal of the applicant to disclose protective order court records information that has been sealed.

7. The provisions of this section shall apply to all protective order court records existing in the District Court on, before and after the effective date of this section.

8. Nothing in this section shall be construed to authorize the physical destruction of any court records, except as otherwise provided by law for records no longer required to be maintained by the court.

9. For the purposes of this section, sealed materials which are recorded in the same document as unsealed material may be recorded in a separate document, and sealed, then obliterated in the original document.

10. For the purposes of this act, district court index reference of sealed material shall be destroyed, removed or obliterated.

11. Any record ordered to be sealed pursuant to this section may be obliterated or destroyed at the end of the ten-year period.

12. Nothing herein shall prohibit the introduction of evidence regarding actions sealed pursuant to the provisions of this section at any hearing or trial for purposes of impeaching the credibility of a witness or as evidence of character testimony pursuant to the Cherokee Nation Rules of Civil Procedure.

§ 60.11 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 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 Cherokee Nation. 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 Cherokee Nation. 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.

§ 60.12 Tribal registry for protective orders

A. The Court shall maintain a registry of all orders for protective orders issued by the Court. The
228

Clerk of Court shall provide the Cherokee Nation Marshal with certified protective orders within twenty-four (24) hours after issuance.

B. The Clerk of Court shall also provide the Cherokee Nation Marshal 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 and electronic copies shall be recognized.

§ 70. Special ~~Domestic Violence~~Tribal Criminal Jurisdiction

A. The Cherokee Nation hereby ~~exercis~~exercises “Special ~~Domestic Violence~~Tribal Criminal Jurisdiction” as defined within 25 U.S.C. 1304, subject to applicable exceptions defined below.

1. Notice - habeas corpus. The Cherokee Nation has a duty to timely notify, in writing, any person or defendant detained under such authority of their rights and privileges under this section and under 25 USC § 1303.

B. Special ~~domestic violence~~tribal 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 covered crimes:~~categories~~:

(1) Assault of Tribal justice personnel. The term “assault of Tribal justice personnel” means any violation of any provision of the Criminal Code of the Cherokee Nation when the violation occurs within their jurisdiction where the violation occurs that involves the use, attempted use, or threatened use of physical force against an individual authorized to act for, or on behalf of, the Cherokee Nation during, or because of, the performance or duties of that individual in-

(A) preventing, detecting, investigating, making arrests relating to, making apprehensions for, or prosecuting a covered crime;

(B) adjudicating, participating in the adjudication of, or supporting the adjudication of a covered crime;

(C) detaining, providing supervision for, or providing services for persons charged with a covered crime; or

(D) incarcerating, supervising, providing treatment for, providing rehabilitation services for, or providing reentry

services for persons convicted of a covered crime.

Protected individuals under this section include, but are not limited to police officers, peace officers, or other duly appointed persons charged with the responsibility of maintaining public order, safety, and health on behalf of the Cherokee Nation as referenced in 21 CNCA § 648 and § 649 and any other applicable provision reasonably construed. Protected individuals further include employees of the Cherokee Nation Court, Office of the Attorney General, Marshal Service, and other Cherokee Nation employees or individuals authorized to provide services contained in section A, B, C, and D above.

(2) Child violence. The term “child violence” means any action which constitutes the use, threatened use, or attempted use of violence against a child, including but not limited to those outlined within 21 CNCA § 843 or other applicable statute.

(3) Dating violence. The term “dating violence” means any violation of the Criminal Code of the Cherokee Nation where the violation occurs that is committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

(4) Domestic violence. The term “domestic violence” means any violation of the Criminal Code of the Cherokee Nation when the violation occurs within their jurisdiction that 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 who has cohabitated with the victim as a spouse or intimate partner; or

(D) a person similarly situated to a spouse of the victim, or relevant person under 21 CNCA § 1130 or any other applicable provision.

(5) Obstruction of justice. The term “obstruction of justice” means violation of the Criminal Code of the Cherokee Nation when the violation occurs within their jurisdiction where the violation occurs that involves interfering with the administration or due process of the laws of the Indian tribe, including any Tribal criminal proceeding or investigation of a crime; including but not limited to 21 CNCA § 540.

(6) Sex trafficking. The term “sex trafficking” means conduct within the meaning of section 1591(a) of title 18, United States Code.

(7) Sexual violence. The term “sexual violence” means any nonconsensual sexual act or contact proscribed by the Criminal Code of the Cherokee Nation when the violation occurs within their jurisdiction, including in any case in which the victim lacks the capacity to consent to the act. Such acts include but are not limited to those defined as: Rape, 21 CNCA §§ 1111; 1111.1; 1114; Lewd or indecent proposals or act as to child, 21 CNCA § 1123; Sexual Battery, 21 CN § 1123.1; or any other applicable provision reasonably construed.

(8) Stalking. The term “stalking” means engaging in a course of conduct directed at a specific person proscribed by the Criminal Code of the Cherokee Nation when the violation occurs within their jurisdiction that would:

(A) cause a reasonable person to fear for the person’s safety or the safety of others or suffer substantial emotional distress; or

(B) otherwise fall within the provisions of Stalking, 21 CNCA § 1134.

(9) Protection order. In addition to Chapter 5 of the Cherokee Nation Tribal Code - “Civil Protective Orders”, 22 CNCA § 60.4 “Service of Process - Ex Parte Orders - Hearing - Protective Orders - Period of Relief”, and 21 CNCA § 1132 -

“Protection from Domestic Abuse Act”, the term “protection order”-

(A) 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 harassment against, sexual violence against, contact or communication with, or physical proximity to, another person; and

(B) includes any temporary or final order issued by a civil or criminal court, whether obtained by filing an independent action or as a pendent lite order in another proceeding, if the civil or criminal order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection.

(10) Violation of a protection order. In addition to the provisions of 22 CNCA § 60.6 - “Violation of Ex Parte or Final Protective Order”, the term “violation of a protection order” means an act that-

(A) occurs within the jurisdiction of the Cherokee Nation; and

(B) violates a provision of a protection order that-

(i) 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;

(ii) was issued against the defendant;

(iii) is enforceable by the Cherokee Nation or another jurisdiction; and

(iv) is consistent with section 2265(b) of title 18, United States Code.

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 victim 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~~tribal criminal jurisdiction over a non-Indian if the offender:

1. Resides within the ~~jurisdiction~~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~~tribal criminal jurisdiction over an alleged offence other than obstruction of justice or assault of Tribal justice personnel if neither the defendant nor the alleged victim is an Indian~~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~~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~~Applicable to Defendants

- A. In all proceedings in which the Tribal Court is exercising Special ~~Tribal 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~~Special Tribal Domestic Violence Criminal ~~Jurisdiction~~Jurisdiction is being exercised, a defendant charged under Special ~~Tribal Domestic Violence Jurisdiction~~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 Court will ensure that 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 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 immediately upon 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.

