



**NCA 16-038**

**CLASSIFICATION: #14. CRIMES AND PUNISHMENTS**

**A LAW OF THE MUSCOGEE (CREEK) NATION AMENDING MCNCA TITLE 6, CHAPTER 3 ENTITLED "PROTECTION FROM DOMESTIC AND FAMILY VIOLENCE ACT" AND AMENDING MCNCA TITLE 27 §1-102 AND §2-111 AND APPENDIX 1 RULE 13 ENTITLED "SELECTION OF JURORS" AND AMENDING MCNCA TITLE 14 CHAPTER 1 AND CHAPTER 2**

**Be it Enacted by the National Council of the Muscogee (Creek) Nation:**

**SECTION ONE. FINDINGS. The National Council finds that:**

- A. The Muscogee (Creek) Nation has taken a strong stand against domestic, dating and family violence.
- B. On March 7, 2013, the President of the United States signed the Violence Against Women Reauthorization Act of 2013 (VAWA) returning to the tribes a portion of their authority over the criminal acts of Non-Native Americans as they pertain to domestic, dating, and family violence.
- C. In preparation for the enactment of VAWA, the Muscogee (Creek) Nation has, for the last two years, participated in the VAWA pilot project working along side of other tribes to address issues that may effect implementation.
- D. By updating these code provisions, the Nation will be able to move forward with the enforcement and prosecution of crimes of domestic, dating and family violence committed by non-Native offenders.

**SECTION TWO. AMENDMENT. This amendment shall be codified in Title 6, Chapter 3 of the Code of Laws of the Muscogee (Creek) Nation; provided that for purposes of codification said amendment and its inclusion in pocket parts of the Code of Laws of the Muscogee (Creek) Nation, the Attorney General is hereby authorized: (1) to approve any changes related to the manner in which sections, articles, chapters and sub-chapters are designated consistent with the format in the Code of Laws published in 2010 by West Publishing Company; (2) to include footnoted references to the legislative history in said pocket parts to the Code of Laws and; (3) to note in said pocket parts any editorial correction of minor clerical or grammatical errors in the following amendment, without further National Council approval:**

**SECTION THREE. AMENDMENT.** The following sub-chapters and sub-sections of MCNCA Title 6, Chapter 3, are hereby amended to read as follows:

**TITLE 6. CHILDREN AND FAMILY RELATIONS**  
**CHAPTER 3. PROTECTION FROM DOMESTIC AND FAMILY VIOLENCE ACT**  
**SUBCHAPTER 1. GENERAL PROVISIONS**

**§ 3-101. Title**

This Chapter shall be entitled the Protection from Domestic and Family Violence Act.

**§ 3-102. Purpose and Findings**

Vhakov hoccvt etvlwv enyekcety cuko humecvlke empvtakv ton kv, momen cuko hvmevlke nak herekvt ocvt, vhakov yvt homv enhuere ton tos. Vhakov roputten momen vhakov yekcen vlatet mvhayet, ton tos. Okhatvlakut, yv vhakov hoccvt nak herekvt eskerretv tonkv. Momen, vhakov yekcet este hvlattepice toye hocce ton tos. Cuko hvmevlke humv enhuervt, mvt etvlwv, momen enhorkv yvt etvlwv vhakov yekcen, hvlattepice taye ton. Yv etvlwv menhorkv nvk herekvt, etvlwv, sewikeko hocce ton tos. Mvskoke etvlwv cuko hvmevlke vcvfeknetv, momen vketecet lapken komet mvnice ton tos.

Mvskoke etvlwv vhakov hocicvt nak herekot, cuko hvmevlke homv huervt, vhakov kacv. Vhaka yekcen vlatet, mon mehoco yvt etvlwv menhockv tos, makes. Mvskoke etvlwv cuko hvmevlke cvfeknet vpoket, nak etvlwv emvyetvt, vnokecet vpoke tyve hocce ton tos.

A. Purpose. The Purpose of this Chapter is to recognize that the strength of the Nation is founded on the healthy families, and that the safety of victims of domestic, dating and family violence must be ensured by the immediate intervention of advocacy, law enforcement, prosecution, education, treatment, and other appropriate services. Furthermore, the purpose of this Chapter is to recognize domestic violence, dating violence and family violence as serious crimes against society, the Nation, and the family, and to offer victims the maximum protection from further violence that the law can provide. It is the expectation that the criminal justice system respond to victims with fairness, compassion, and in a prompt and effective manner.

It is the intent of the Muscogee (Creek) Nation that the official response to domestic, dating and family violence shall stress the enforcement of laws to protect the victim and to hold the perpetrator accountable, which will in turn communicate the Nation's cultural values and belief system that violent behavior against intimate partners or family members is criminal behavior and will not be excused or tolerated. The Nation

promotes safety and healing of families, cultural teachings and traditional tribal values so as to nurture non-violence and respect within families and relationships.

This chapter shall be interpreted and applied to give it to the broadest possible scope to carry out these purposes.

B. Findings. It is the intent of the Muscogee (Creek) Nation that the official response to domestic, dating and family 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 the Nation, are to be cherished and treated with respect.

Domestic, dating and family violence are not acceptable and are contrary to the traditional culture and values of honoring the family and are contrary to the interest of our community and sense of well-being and growth. Domestic, dating and family violence will not be tolerated.

The Nation finds that domestic, dating and family violence imperils the very subsistence of the tribal community. The Nation recognizes the United States Department of Justice finding that approximately 39% of Native women are subjected to domestic violence in their lifetime. Additionally, one in three Native women are sexually assaulted in their lifetime and nearly 86% of reported assaults on Native women are committed by non-Native men. A community response to domestic, dating and family violence is necessary because these crimes impact the health, safety and welfare of the community as a whole. These crimes redirect tribal resources, whether to personnel, financial, public safety or elsewhere and require an immediate response. As a result of this impact on the Nation's resources, the Nation deems it necessary to address domestic, dating and family violence to the fullest extent permitted by laws existing now or as may be adopted or amended in the future.

The Nation recognizes that there is a distinction between domestic or dating violence and family member violence. Domestic or dating violence involves an intimate partner relationship where dynamics of power and control are often overwhelmingly present in the action. Family violence is committed against all other family or household members. Both are reprehensible actions that require specialized recognition with enhanced provisions over what might be otherwise available to victims of crimes, or remedies available in civil actions.

§ 3-103. Definitions

The following words and phrases when used in this chapter shall, for the purposes of this chapter, have the meanings respectively ascribed to them in this section, except where the context otherwise requires:

A. "Alternative method" means a method by which a child witness testifies which does not include all of the following:

1. having the child testify in person in an open forum;
2. having the child testify in the presence and full view of the finder of fact and Judge; and
3. allowing all of the parties to be present, to participate, and to view and be viewed by the child.

B. "Crimes involving domestic or family violence" are as defined in Title 6, §3-301.

C. "Criminal proceeding" means a trial or hearing before a court in the prosecution of a person charged with violating a criminal law of the Nation or in a juvenile delinquency proceeding involving conduct that if engaged in by an adult would constitute a violation of a criminal law of the Nation.

D. "Cross-deputization agreement" means an agreement between the Nation, the Bureau of Indian Affairs (BIA) and/or any city, county or state governmental entity, by which the Lighthorse Police are authorized to act as law enforcement officers to enforce the law of such other governmental entity with regard to crimes arising in the Muscogee (Creek) Nation territorial jurisdiction that are subject to that entity's criminal jurisdiction as described in Title 6, § 3-202, and by which such other governmental entity's law enforcement officers are authorized to enforce the law of the Muscogee (Creek) Nation and/or federal law with regard to crimes arising in the Muscogee (Creek) Nation territorial jurisdiction that are subject to Muscogee (Creek) Nation jurisdiction or federal jurisdiction as described in Title 6, § 3-302.

E. "Dating Violence" means crimes under § 3-301 of this subchapter committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim characterized by the expectation of affectional involvement and shall be adjudged by the District Court upon consideration of factors such as the length of time of the relationship, the type of relationship, the frequency of interaction between the parties and if the relationship has been terminated by either party, and the length of time since the termination of the relationship. This term does not include a casual relationship or an ordinary fraternization between two individuals in a business or social context. Provided that a "first date" shall not automatically be excluded provided that other characteristics of a social relationship of a romantic or intimate nature are present.

F. "Domestic Violence" means crimes under § 3-301 of this subchapter committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, or by a person similarly situated to a spouse of the victim.

G. "Family or household Members" means:

1. Persons who are or have been related by blood, marriage or adoption;
2. Minor children who are part of the household; or
3. Persons who reside or have resided together in the past who have never been intimate partners.

H. "Family Violence" means the same or similar acts committed in Domestic Violence, but directed towards a Family or Household member instead of an intimate partner.

I. "Foreign protection order" means a protection order issued by any issuing court except the Muscogee (Creek) Nation District Court.

J. "Harassment" means a knowing and willful course or pattern of conduct by an adult, emancipated minor, or minor thirteen (13) years of age or older, directed at a specific person which seriously harms or annoys the person, and which serves no legitimate purpose. The course of conduct shall be such as would cause a reasonable person to suffer emotional distress, and shall actually cause substantial distress to the person. "Harassment" shall include, but not be limited to, harassing or obscene telephone calls.

K. "Indian" means a person who is a member of the Muscogee (Creek) Nation; or a person who is a member of any other federally recognized Indian Tribe, including Native Hawaiians and Alaska Natives; or a person who possesses a Certificate of Degree of Indian Blood; or a person who under oath confirms to the District Court that he/she is Indian.

L. "Issuing Court" means a court that has issued a protection order, and includes a court of any Tribe, the United States, a state of the United States, the District of Columbia, or a commonwealth, territory, or possession of the United States, or any foreign court which has adequate due process protection.

M. "Lighthouse Police" means law enforcement officers of the Muscogee (Creek) Nation.

N. "Mandatory Arrest" means that a police officer shall arrest if there is probable cause to believe the person to be arrested has committed an offense as defined by this Chapter even though the arrest may be against the expressed wishes of the victim.

O. "Noncriminal proceeding" means a trial or hearing before a court, other than a criminal proceeding.

P. "Other authorized law enforcement officer" means, for purposes of this Act, any federal, city, county, or state law enforcement officer who is authorized to enforce a Muscogee (Creek) Nation law or federal law under authority of a commission received pursuant to a Cross-Deputization Agreement as defined in subsection B of this section.

Q. "Perpetrator" means the person alleged to have committed an act of dating, domestic or family violence. The perpetrator may also be referred to as a "defendant" in a criminal case or "respondent" in a civil case.

R. "Prosecutor" shall mean the Prosecutor of the Muscogee (Creek) Nation charged with the duty of enforcing the criminal laws of the Nation.

S. "Protection Order" 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/or their domesticated animals and 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.

T. "Spouse or intimate partner" includes: (1)(a) a spouse or former spouse, persons who share a child in common, and persons who cohabit or have cohabited as a spouse; or (b) persons who are or have been in a social relationship of a romantic or intimate nature, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship; and (2) any other person similarly situated to a spouse who is protected by the domestic or family violence laws of the State or tribal jurisdiction in which the injury occurred or where the victim resides.

U. "Stalking" means the willful, malicious, and repeated following of a person by an adult, emancipated minor, or minor thirteen (13) years of age or older, with the intent of placing the person in reasonable fear of death or great bodily injury.

V. "Territorial jurisdiction" means the Muscogee (Creek) Nation territorial jurisdiction as defined by the Judicial Code of the Muscogee (Creek) Nation in Title 27 of the code of laws of the Muscogee (Creek) Nation.

W. "Violation of protection order" means: (1) any violation within the Muscogee (Creek) Nation territorial jurisdiction of a protection order issued by the District Court; and (2) where applicable, any violation within the Muscogee (Creek) Nation territorial jurisdiction of a foreign protection order.

**§ 3-104. Immunity**

Any law enforcement officer shall have immunity from any liability, civil or criminal, in making arrests or exercising any authority granted under this Code, if the law enforcement officer acts in good faith and has probable cause based on the totality of the circumstances so as to provide protection for victims of domestic violence. Law enforcement officers shall have the same immunity with respect to participation in any court proceedings resulting from arrests made for domestic violence or any crimes involving domestic violence.

No judge, Lighthorse Police or other authorized law enforcement officer, court employee, Attorney General, Assistant Attorney General, Prosecutor, Assistant Prosecutor or other Tribal government official who takes, or refrains from taking, any action to enforce a protection order can be sued in a civil suit or prosecuted in a criminal action. Nothing herein shall imply an absence of immunity for any other purpose. The Nation and all its officials, employees, and agents retain all available immunity in all settings, unless specifically and explicitly waived by law duly enacted by the National Council of the Muscogee (Creek) Nation.

**SUBCHAPTER 2. SPECIAL EVIDENTIARY RULES**

**§ 3-201. Expert Testimony**

Notwithstanding the provisions of any other evidentiary rules, in a civil or criminal action in the District Court, if a party offers evidence of a domestic, dating, or family violence, the testimony of an expert witness concerning the effects of such violence on the beliefs, behaviors and perception of the person being abused shall be admissible as evidence.

**§ 3-202. Spousal privileges inapplicable in criminal proceedings related to crimes involving domestic or family violence**

Notwithstanding the provisions of any other evidentiary rules, the following evidentiary privileges do not apply in any criminal proceeding in which a spouse or other family or

household member is the victim of a crime involving domestic or family violence perpetrated by the other spouse: the privilege of confidential communication between spouses and the testimonial privilege of spouses.

**§ 3-203. Advocate-victim privilege**

A. Prevention of disclosure. Except as otherwise provided in subsection B and Title 6, § 3-503, a victim of a crime involving domestic, dating, or family violence may refuse to disclose, and may prevent an advocate as defined in subsection B of Title 6, §3-501 from disclosing, confidential oral communication between the victim and the advocate and written records and reports concerning the victim of the privilege claimed by:

1. The victim; or
2. The person who was the advocate at the time of the confidential communication, except that the advocate may not claim the privilege if there is no victim in existence or if the privilege has been waived by the victim.

B. Mandatory reporting requirements. The privilege does not relieve a person from any duty imposed pursuant to any law of the Muscogee (Creek) Nation concerning mandatory reporting of child abuse or neglect. A person may not claim the privilege when providing evidence in proceedings concerning child abuse pursuant to any such law.

**§ 3-204. Child witness testimony by alternative methods**

A. The following shall apply to child witness testimony by alternative methods:

1. Hearing whether to allow testimony by alternative method 1. The Judge in a criminal or noncriminal proceeding may order a hearing to determine whether to allow a child witness to testify by an alternative method. The Judge, for good cause shown, shall order the hearing upon motion of a party, a child witness, or an individual determined by the Judge to have sufficient standing to act on behalf of the child.
2. A hearing to determine whether to allow a child witness to testify by an alternative method must be conducted on the record after reasonable notice to all parties, any nonparty movant, and any other person the Judge specifies. The child's presence is not required at the hearing unless ordered by the Judge. In conducting



the hearing, the Judge is not bound by rules of evidence except the rules of privilege.

**B. Standards for determining whether a child witness may testify by alternative method.**

1. In a criminal proceeding, the Judge may allow a child witness to testify by an alternative method only in the following situations:
  - a. The child may testify other than in an open forum in the presence and full view of the finder of fact if the Judge finds by clear and convincing evidence that the child would likely suffer serious emotional trauma if required to testify in the open forum.
  - b. The child may testify other than face-to-face with the defendant if the Judge finds by clear and convincing evidence that the child would likely suffer serious emotional trauma if required to be confronted face-to-face by the defendant.
2. In a noncriminal proceeding, the presiding Judge may allow a child witness to testify by an alternative method if the Judge finds by a preponderance of the evidence that allowing the child to testify by an alternative method is necessary to serve the best interest of the child or enable the child to communicate with the finder of fact.
  - a. In making this finding, the Judge shall consider:
    - (1) the nature of the proceeding;
    - (2) the age and maturity of the child;
    - (3) the relationship of the child to the parties in the proceeding;
    - (4) the nature and degree of emotional trauma that the child may suffer in testifying; and
    - (5) any other relevant factors.

**C. If the presiding Judge determines that the standards under B have been met, the Judge shall determine whether to allow a child witness to testify by an "alternative method" and in doing so shall consider:**

1. alternative methods reasonably available;
2. available means for protecting the interest of or reducing emotional trauma to the child without resorting to an "alternative method";

3. the nature of the case;
4. the relative rights of the parties;
5. the importance of the proposed testimony of the child;
6. the nature and degree of emotional trauma that the child may suffer if an alternative method is not used; and
7. any other relevant factor.

**D. Order regarding testimony by alternative method**

1. An order allowing or disallowing a child witness to testify by an alternative method must state the findings of fact and conclusions of law that support the Judge's determination.
2. An order allowing a child witness to testify by an alternative method must:
  - a. state the method by which the child is to testify;
  - b. list any individual or category of individuals allowed to be in, or required to be excluded from, the presence of the child during the testimony;
  - c. state any special conditions necessary to facilitate a party's right to examine or cross-examine the child;
  - d. state any condition or limitation upon the participation of individuals present during the testimony of the child; and
  - e. state any other condition necessary for taking or presenting the testimony.
3. The alternative method ordered by the Judge may be no more restrictive of the rights of the parties than is necessary under the circumstances to serve the purpose of the order.

**E. Right of party to examine child witness.**

An alternative method ordered by the presiding Judge must permit a full and fair opportunity for examination or cross-examination of the child witness by each party.

**SUBCHAPTER 3. LAW ENFORCEMENT PROCEDURES  
AND CRIMINAL PENALTIES**

**§ 3-301. Crimes involving domestic or family violence**

**A. Crimes defined in Criminal Code.** A "crime involving domestic, dating or family violence" occurs when a spouse, intimate partner, family or household member commits, or attempts or conspires to commit, one or more of the following crimes as

defined in and punishable pursuant to Title 14 of the Muscogee (Creek) Nation Code of Laws against another family or household member:

1. Arson;
2. Assault and battery offenses;
3. Burglary, breaking and entering;
4. Destruction, damage, vandalism of property, malicious mischief;
5. Homicide offenses, including without limitation, murder, non-negligent manslaughter, negligent manslaughter, and justifiable homicide;
6. Kidnapping and abduction;
7. Sex offenses, forcible, including without limitation, forcible rape, forcible sodomy, forcible sexual assault with an object, and forcible fondling;
8. Stolen property offenses;
9. Weapon law violations;
10. Disorderly conduct;
11. Stalking, harassment; and
12. Trespass of real property.

B. Violation of an ex parte, temporary or final protection order by a respondent is a crime.

1. In addition to the crimes listed in subsection A of this section, a "crime involving domestic, dating or family violence" includes the violation by a respondent of a protection order issued by the District Court in accordance with this Act and includes the violation by a respondent of a foreign protection order as follows: An order enjoining respondent from threatening to commit or committing acts of violence against the petitioner or other family or household member or their domesticated animals; an order prohibiting the respondent from harassing, visiting, stalking, annoying, telephoning, texting, emailing or using any other form of electronic or digital means to communicate, contacting or using a third party to contact, or otherwise interfering with or communicating with the petitioner, directly or indirectly; an order removing and excluding the respondent from the residence of the petitioner; an order requiring the respondent to stay away from the residence, school, place of employment or a specified place frequented regularly by the petitioner and any named family or household member; and an order prohibiting the respondent from using or possessing a firearm or other weapon specified by the Court.

2. Except as provided by paragraph 3, of this subsection, a respondent who has been served with a temporary or final protection order or foreign protection order and who is convicted of the crime of "Violation of a Protection Order" shall be guilty of a misdemeanor punishable by a fine of not less than fifty dollars (\$50.00) and not more than two thousand five hundred dollars (\$2,500.00) or by imprisonment of not less than one (1) day and not more than one (1) year, or by both such fine and imprisonment.
3. A respondent who has been served with a temporary or final protection order or foreign protection order and who is convicted of the crime of "Violation of a Protection Order – Second or Subsequent Offense" shall be guilty of a felony punishable by a fine of not less than one thousand dollars (\$1,000.00) and not more than fifteen thousand dollars (\$15,000.00) or by imprisonment of not less than ten (10) days and not more than three (3) year, or both such fine and imprisonment.
4. A respondent who has been served with a temporary or final protection order or foreign protection order who violates the protection order and causes physical injury or physical impairment to the petitioner or to any other person named in said protection order shall, upon conviction, be guilty of the crime of "Violation of Protection Order with Physical Injury Inflicted" and shall be guilty of a felony punishable by a term of imprisonment for not less than twenty (20) days nor more than three (3) year. In addition to the term of imprisonment, the person may be punished by a fine not to exceed fifteen thousand dollars (\$15,000.00). In determining the term of imprisonment required by this paragraph, the jury or sentencing judge shall consider the degree of physical injury or physical impairment to the victim. The provisions of this paragraph shall not affect the applicability of Title 14 of the Muscogee (Creek) Nation Code of Laws.
5. The minimum sentence of imprisonment issued pursuant to the provisions of paragraphs 1 and 2 of this subsection shall not be subject to statutory provisions for suspended sentences, deferred sentences or probation, provided the District Court may subject any remaining penalty under the jurisdiction of the District Court to the statutory provisions for suspended sentences, deferred sentences or probation.
6. In addition to any other criminal penalty specified by this section, the District Court may require the respondent to undergo the treatment or participate in the counseling services necessary to bring about the cessation of domestic, dating or family violence against the victim(s).

7. When a minor child violates the provisions of any protection order, the violation shall be heard in a civil juvenile proceeding and the District Court may order the child and the parent or parents of the child to participate in individual and/or family counseling services necessary to bring about the cessation of domestic, dating or family violence against the victim and may order community service hours to be performed.

**C. Firearms Disqualification.**

1. It shall be unlawful for any person to possess a firearm who:
  - a. Is subject to any court order from a court of competent jurisdiction that restrains such person from harassing, stalking, threatening, having contact or assaulting an intimate partner or family member as defined in this chapter or engaging in any other conduct that would place an intimate partner or family member in reasonable fear of physical harm to the intimate partner or family member.
  - b. Has been convicted under the law of any state, territory, tribe, or United States military tribunal of any crime involving domestic violence or family violence, as defined by the laws of the Muscogee (Creek) Nation, which involved the use or attempted use of physical force, or the threatened use of physical force, or the threatened use of a deadly weapon against an intimate partner or family member as defined in this chapter.
  - c. Has been found mentally incompetent to stand trial or has been committed for mental health reasons after a domestic violence, family violence, sexual assault, stalking, or dating violence offense.
2. Violation of this section shall be subject to criminal and/or civil penalty
  - a. Each violation is subject to a criminal penalty of up to five thousand dollars (\$5,000) fine, and three (3) years of imprisonment, or both.
  - b. Each violation of this section shall also be considered a civil violation subject to enforcement by any means not prohibited by federal law, including, but not limited to the issuance of a fine of up to ten thousand (\$10,000), forfeitures and/or civil contempt.

- c. A civil action brought under this paragraph may be filed in the Muscogee (Creek) Nation District Court by the Nation or any person harmed by a person's violation of the Domestic and Family Violence Act of this Code.

**§ 3-302. Criminal jurisdiction over crimes involving domestic or family violence**

A. Muscogee (Creek) Nation jurisdiction. The Muscogee (Creek) Nation shall have criminal jurisdiction for the enforcement of a crime involving domestic, dating or family violence that occurs in the Muscogee (Creek) Nation territorial jurisdiction pursuant to Title 27, §1-102 of the Muscogee (Creek) Nation Code of Laws.

B. Federal jurisdiction. The Muscogee (Creek) Nation recognizes that the United States possesses criminal jurisdiction over the following:

1. The enforcement of certain felony offenses as defined by 18 U.S.C. §1153 and any provisions of VAWA granting Federal Courts jurisdiction over crimes involving domestic or family violence or dating violence in Indian country.

C. Construction. Nothing herein shall be construed as limiting the authority of the Muscogee (Creek) Nation to take any of the following actions in the Muscogee (Creek) Nation territorial jurisdiction:

1. Lighthorse police enforcement of state or federal criminal laws against a non-Indian offender pursuant to a cross-deputization agreement;
2. Lighthorse arrest of a non-Indian offender, detention and referral to appropriate authorities for violation of a foreign protection order in the Muscogee (Creek) Nation territorial jurisdiction when the foreign protection order was issued against a non-Indian offender, pursuant to 18 U.S.C. § 2265; or
3. Civil enforcement related to a violation of a protection order. The Muscogee (Creek) Nation shall have full civil jurisdiction to issue and enforce protection orders involving any person, including the authority to enforce any order through civil contempt proceedings, to exclude violators from Indian land, and to use other appropriate mechanisms, in matters arising anywhere in Muscogee (Creek) Nation Indian country or otherwise within the authority of the Muscogee (Creek) Nation, regardless of the Indian or non-Indian status of the offender and the victim.

- a. Each violation of a provision of this Code shall be considered a civil violation subject to enforcement by any means not prohibited by federal law, including, but not limited to, the issuance of a fine of up to Ten Thousand Dollars (\$10,000.00), forfeitures, and/or civil contempt.
- b. A civil action brought under this paragraph may be filed in the Muscogee (Creek) Nation District Court by the Nation or any person harmed by a person's violation of this Code.

**§ 3-303. General duties of law enforcement officers to protect victims and prevent violence**

A Lighthorse police or other authorized law enforcement officer who responds to an allegation of domestic, dating, or family violence or a crime involving domestic, dating, or family violence occurring in the Muscogee (Creek) Nation territorial jurisdiction shall use all reasonable means to protect the victim and prevent further violence, including but not limited to:

1. Taking the action necessary to provide for the safety of the victim and any family or household member;
2. Confiscating any weapon involved in the domestic, dating, or family violence as provided in subsection F of Title 6, §3-305;
3. Transporting or obtaining transportation for the victim and any child to a shelter;
4. Assisting the victim in removing essential personal effects;
5. Assisting the victim and any child in obtaining medical treatment, including obtaining transportation to a medical facility; and
6. Giving the victim immediate and adequate notice of the rights of victims and of the remedies and services available to victims of domestic or family violence.

**§ 3-304. Response of Lighthorse police or other authorized law enforcement officers related to complaint of domestic or family violence**

A. Determination of identity of primary aggressor. If a Lighthorse police or other authorized law enforcement officer receives complaints of domestic, dating, or family violence from two (2) or more opposing persons, the officer shall evaluate each complaint separately to determine who was the primary aggressor. If the officer determines that one person was the primary physical aggressor, the officer need not arrest the other person believed to have committed domestic or family violence. In determining whether a person is the primary aggressor the officer shall consider:

1. Prior complaint of domestic or family violence;

2. The relative severity of the injuries inflicted on each person;
3. The likelihood of future injury to each person; and
4. Whether one of the persons acted in self-defense

B. Prohibited actions. A Lighthorse police or other authorized law enforcement officer shall not:

1. Discourage a victim of domestic, dating or family violence from pressing charges against the perpetrator by any means; or
2. Discourage a request for intervention by law enforcement by any party, such as threatening, suggesting, or otherwise indicating the possible arrest of all parties.

**§ 3-305. Arrests; rights of persons detained; reports**

A. Presumption of need to arrest. If a Lighthorse police or other authorized law enforcement officer has probable cause to believe that a person has committed a crime involving domestic, dating or family violence, even if the crime was committed outside the presence of the officer, the Lighthorse police or other authorized law enforcement officer shall presume that arresting and charging the person is the appropriate response. A Lighthorse police or other authorized law enforcement officer shall not base the decision to arrest or not to arrest on the specific consent or request of the victim or the Officer's perception of the willingness of a victim or witness to a crime involving domestic, dating or family violence to testify or otherwise participate in a judicial proceeding.

B. Warrantless arrest for crimes involving domestic, dating or family violence outside the presence of law enforcement officer. If a Lighthorse police or other authorized law enforcement officer observes a recent physical injury to, or an impairment of the physical condition of the victim, the officer shall arrest without a warrant a person located within the Muscogee (Creek) Nation territorial jurisdiction, including his/her place of residence. If the Lighthorse police or other authorized law enforcement officer has probable cause to believe that the person, within the preceding seventy-two (72) hours, has committed a crime involving domestic, dating or family violence in the Muscogee (Creek) Nation territorial jurisdiction, although the crime did not take place in the presence of the Lighthorse police or other authorized law enforcement officer.

C. Warrantless arrest for violation of protection order issued by District Court. A Lighthorse police or other authorized law enforcement officer, without a warrant, may arrest and take into custody a person if the Lighthorse police or other authorized law enforcement officer has reasonable cause to believe that:



1. An emergency ex parte, temporary or final protection order has been issued and served upon the person, pursuant to this title;
2. The person named in the order has received notice of the order and has had a reasonable time to comply with such order; and
3. The person named in the order has violated the order or is then acting in violation of the order in the Muscogee (Creek) Nation territorial jurisdiction, whether the violation was committed in or outside the presence of the officer.

**D. Mandatory warrantless arrest for violation of conditions of pretrial release.** If a Lighthorse officer or other authorized law enforcement officer has probable cause to believe that a person has violated a condition of pretrial release imposed in accordance with Title 6, §3-307 in the Muscogee (Creek) Nation territorial jurisdiction and verifies that the alleged violator has notice of the condition, the officer shall, without a warrant, arrest the alleged violator whether the violation was committed in or outside the presence of the officer.

**E. Warrantless arrest for violation of foreign protection orders.** A Lighthorse police or other authorized law enforcement officer, without a warrant, may arrest and take into custody a person if the following conditions have been met:

1. The Lighthorse police or other authorized law enforcement officer has reasonable cause to believe that a foreign protection order has been issued pursuant to the law of the issuing court; and
2. The Lighthorse police or other authorized law enforcement officer has reasonable cause to believe the person named in the order has violated the order or is then acting in violation of the order in the Muscogee (Creek) Nation territorial jurisdiction, whether the violation was committed in or outside the presence of the officer.

**F. Seizure of weapons incident to arrest.** Incident to an arrest for a crime involving domestic, dating or family violence, a Lighthorse police or other authorized law enforcement officer:

1. Shall seize all weapons that are alleged to have been involved or threatened to be used in the commission of a crime or any weapon in the immediate vicinity of the alleged commission of the offense. The immediate vicinity is not limited to the "wingspan" of the perpetrator and can include additional rooms of the home if weapons are reasonably suspected to be present; and
2. May seize a weapon that is in the plain view of the officer or was discovered pursuant to a consensual search, as necessary for the

protection of the officer or other persons. The seizure of weapons is without regard to ownership of the weapons; weapons owned by a third party are subject to seizure when officers conclude that the weapon must be seized to protect law enforcement, victims of domestic violence or others. Weapons belonging to a 3<sup>rd</sup> party will only be returned to the owner upon showing that the safety of the victim can be ensured.

G. Rights of person detained. Any person detained pursuant to this section shall be brought before the District Court within forty-eight (48) hours after arrest to answer to a charge for violation of the order, at which time the District Court shall do each of the following:

1. Set a time certain for a hearing on the violation of the order within twenty (20) days after arrest, unless extended by the District Court on the motion of the arrested person;
2. Set a reasonable bond pending a hearing of the violation of the order, provided, however, that any person arrested for a crime of domestic violence shall be detained for a period of no less than forty-eight (48) hours before being allowed to post bond; and
3. Notify the party who has procured the order and direct the party to appear at the hearing and give evidence on the charge.

H. Written report stating the grounds for action. In addition to any other report required, a Lighthorse police or other authorized law enforcement officer who does not make an arrest after investigating a complaint of domestic, dating or family violence or who arrests two or more persons for a crime involving domestic, dating or family violence shall submit a written report setting forth the grounds for not arresting or for arresting both parties.

§ 3-306. Assistance to victims by Lighthorse police or other authorized law enforcement officer

A. Notice to victim. The Lighthorse police or other authorized law enforcement officer shall give the victim immediate, adequate oral and written notice of the rights of victims and of the remedies and services available to victims of domestic, dating or family violence. The written notice shall include resources available in the Community for information relating to domestic, dating and family violence, treatment of injuries, and places of safety and shelters. The written notice shall not include the addresses of shelters, unless the location is public knowledge and shall be provided in the native language of the victim, if practicable, when the native language of the victim is not English. The written notice shall be substantially in the following form:

"If you are the victim of domestic, dating or family violence and you believe that law enforcement protection is needed for your physical safety, you have the right to request that the officer assist in providing for your safety, including asking for an emergency order for protection. You may also request that the officer assist you in obtaining your essential personal effects and locating and taking you to a safe place, including but not limited to a designated meeting place for a shelter, a family member's or a friend's residence, or a similar place of safety. If you are in need of medical treatment, you have the right to request that the officer assist you in obtaining medical treatment. You may assist law enforcement in the completion of a police report of the incident and receive a copy of the police report at no cost to you. You also have the right to file a petition in the Muscogee (Creek) Nation District Court requesting an order for protection from domestic, dating or family violence which could include any of the following orders:

- "1. An order enjoining your abuser from threatening to commit or committing acts of domestic, dating or family violence against you or other family or household member;
- "2. An order prohibiting your abuser from harassing, visiting, stalking, annoying, telephoning, contacting, or otherwise interfering with or communicating with the petitioner, directly or indirectly;
- "3. An order removing and excluding your abuser from the residence of the petitioner;
- "4. An order requiring your abuser to stay away from the residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family or household member;
- "5. An order prohibiting your abuser from using or possessing a firearm or other weapon specified by the Court;
- "6. An order requiring your abuser to pay attorney's fees and court costs; and
- "7. An order requiring your abuser to pay restitution, such as medical expenses, reimbursement for damaged property and expenses for shelter.

"The forms you need to obtain an order for protection are available from the Muscogee (Creek) Nation District Court Clerk. The resources available in this community for information relating to domestic, dating and family violence, treatment of injuries and places of safety and shelters are [Note: the list and hotline numbers shall be inserted by the District Court Clerk during preparation of this Notice for use by Lighthorse police]."

**B. Responsibility of law enforcement officers related to emergency protection order after arrest**

1. When an arrest has been made pursuant to Title 6, § 3-305 and the District Court is not open for business, the Lighthorse police or other authorized law enforcement officer shall either (1) seek an emergency temporary order on behalf of the victim or (2) provide

the victim with a form for a petition for an emergency temporary protection order and, if necessary, assist the victim in completing the petition form. The petition shall be in substantially the same form as provided by Title 6, §3-403 for a petition for protection order.

2. The Lighthorse police officer or other authorized law enforcement officer shall immediately notify, by telephone or otherwise, the Judge of the District Court of the request for an emergency temporary protection order and describe the circumstances. The District Court may issue a written or oral emergency order for protection ex parte when a law enforcement officer states to the Court in person or by telephone, and the Court finds reasonable grounds to believe, that the petitioner is in immediate danger of domestic, dating or family violence based on an allegation of a recent incident of domestic, dating or family violence. The order may include any of the types of relief set forth in paragraphs 1 through 5 of subsection A of this section. The Judge shall inform the Lighthorse police or other authorized law enforcement officer of his decision to approve or disapprove the emergency temporary order. If the order is approved, the law enforcement officer shall write and sign the order on the form required pursuant to Title 6, §§3-404 and 6-3-405.
3. The law enforcement officer shall inform the victim whether the Judge has approved or disapproved an emergency temporary order. If an emergency order has been approved, the officer shall provide the victim with a copy of the petition and a statement signed by the officer that the Judge has approved the emergency temporary protection order and notify said victim that the emergency temporary order shall be effective only for seventy-two (72) hours from the time of its issuance.
4. The law enforcement officer shall notify the person subject to the emergency temporary protection order of the issuance and conditions of the order. Notification pursuant to this paragraph may be made personally by the Lighthorse police or other authorized law enforcement officer or in writing. A copy of the petition and the statement of the officer attesting to the order of the Judge shall be made available to said person. The law enforcement officer shall file a copy of the petition and the statement of the Lighthorse police or other authorized law enforcement officer with the District Court immediately upon the opening of the District Court on the next business day. The temporary order shall be effective only for seventy-two (72) hours from the time of its issuance.

§ 3-307. Conditions of pretrial release of person arrested for or charged with crime involving domestic, dating or family violence

A. Review of facts. In making a decision concerning pretrial release of a person who is arrested for or charged with a crime involving domestic, dating or family violence or a violation of an order for protection, the District Court shall review the facts of the arrest and detention of the person and determine whether the person:

1. Is a threat to the victim or other family or household member;
2. Is a threat to public safety; and
3. Is reasonably likely to appear in court.

B. Findings. Before releasing a person arrested for or charged with a crime involving domestic, dating or family violence, the District Court shall make findings on the record if possible concerning the determination made in accordance with subsection A and may impose conditions of release or bail on the person to protect the victim of domestic, dating or family violence and to ensure the appearance of the person at a subsequent court proceeding. The conditions may include:

1. An order enjoining the person from threatening to commit or committing acts of domestic, dating or family violence against the victim or other family or household member;
2. An order prohibiting the person from harassing, annoying, telephoning, contacting or otherwise communicating with the victim, either directly or indirectly;
3. An order directing the person to vacate or stay away from the home of the victim and to stay away from any other location where the victim is likely to be;
4. An order prohibiting the person from using or possessing a firearm or other weapon specified by the court;
5. An order prohibiting the person from possession or consumption of alcohol or controlled substances; and
6. Any other order required to protect the safety of the victim and to ensure the appearance of the person in court.

C. Conditional release. If conditions of release are imposed, the District Court shall:

1. Issue a written order for conditional release;
2. Immediately distribute a copy of the order to the agency having custody of the arrested or charged person.

D. Provision of copy of conditions to person charged. The District Court shall provide a copy of the conditions to the arrested or charged person upon his or her

release. Failure to provide the person with a copy of the conditions of release does not invalidate the conditions if the arrested or charged person has notice of the conditions.

E. Hearing upon request. If conditions of release are imposed without a hearing, the arrested or charged person may request a prompt hearing before the court to review the conditions. Upon such a request, the Court shall hold a prompt hearing to review the conditions.

F. Notification of victim. When a person who is arrested for or charged with a crime involving domestic, dating or family violence or a violation of an order for protection is released from custody, the District Court shall:

1. Use all reasonable means to immediately notify the victim of the crime of the release; and
2. Furnish the victim of the crime, at no cost, a certified copy of any conditions of release.

G. No delay. Release of a person who is arrested for or charged with a crime involving domestic, dating or family violence or a violation of an order for protection shall not be delayed because of the requirements of subsection F of this section.

**§ 3-308. Duty of Advocate or Prosecutor to notify victim**

A. Notification of victim. The Advocate or Prosecutor shall make reasonable efforts to notify a victim of a crime involving domestic, dating or family violence when the prosecutor has decided to decline prosecution of the crime, to dismiss the criminal charges filed against the defendant, or to enter into a plea agreement.

B. No delay. Release of a defendant from custody shall not be delayed because of the requirements of subsection A of this section.

**§ 3-309. Record of dismissal**

When the District Court dismisses criminal charges or the Prosecutor moves to dismiss charges against a defendant accused of a crime involving domestic, dating or family violence, the specific reasons for the dismissal shall be recorded in the court file.

**§ 3-310. Rights of victims; duty of Prosecutor to inform victims of rights**

A. Rights of victims. A victim of a crime involving domestic, dating and family violence is entitled to all rights granted to victims of crime including but not limited to the right to:

1. To be treated with fairness, respect, and dignity, and to be free from/reasonably protected from intimidation, harassment, or abuse throughout the criminal justice process;
2. Reasonable communication to the Prosecutor;
3. Be informed of all hearing dates and continuances and be afforded an opportunity to be present when not prohibited by the rules of evidence or other applicable law;
4. To be heard at any proceeding involving a perpetrator's release plea, sentencing or any parole proceedings;
5. Recommend to the Court any conditions of probation and parole required to ensure the safety of the victim and other family or household members;
6. Provide the court with a victim-impact statement, victim-opinion statement, and an assessment of the risk of future harm;
7. Receive restitution for losses sustained as a direct consequence of any criminal conduct;
8. Be provided a waiting area that reduces contact with the defendant; and
9. Any relief the Court deems necessary.

**B. Duty of Prosecutor to inform victim of rights.** An attorney prosecuting a crime involving domestic, dating or family violence shall notify the victim of domestic, dating or family violence of the victim's rights set forth in this section.

**§ 3-311. Residential confinement in victim's home prohibited**

In criminal cases involving domestic, dating or family violence, the District Court shall not order residential confinement for a perpetrator in the home of the victim.

**§ 3-312. Diversion prohibited; deferred sentencing permitted**

**A. Diversion Prohibited.** The District Court shall not approve diversion for a perpetrator of a crime involving domestic or family violence.

**B. Deferred Sentence.** The Court may defer sentencing of a perpetrator of a crime involving domestic, dating or family violence if:

1. The perpetrator meets eligibility criteria established pursuant to subsection C of this section;
2. Consent of the Prosecutor is obtained after consultation with the victim, when the victim is available;

3. A hearing is held in which the perpetrator enters a plea or judicial admission to the crime; and
4. The Court orders conditions of the deferred sentence that are necessary to protect the victim, prevent future violence, and rehabilitate the perpetrator.

**C. Criteria.** District Court shall establish criteria for determination of:

1. A perpetrator's eligibility for deferred sentencing;
2. A perpetrator's successful completion of the conditions imposed by the Court; and
3. Penalties for violation of the conditions imposed by the Court.

**D. Dismissal.** The case against a perpetrator of a crime involving domestic, dating or family violence may be dismissed if the perpetrator successfully completes all conditions imposed by the Court pursuant to subsection B of this section.

**§ 3-313. Conditions of Probation**

**A. Considerations.** Before placing a perpetrator who is convicted of a crime involving domestic, dating or family violence on probation, the Court shall consider the safety and protection of the victim of a crime involving domestic, dating or family violence and any member of the victim's family or household.

**B. Conditions.** The Court may condition the suspension of sentence or granting of probation to a perpetrator on compliance with one or more orders of the Court, including but not limited to:

1. Enjoining the perpetrator from threatening to commit or committing acts of domestic, dating or family violence against the victim or other family or household member;
2. Prohibiting the perpetrator from harassing, annoying, telephoning, contacting, or otherwise communicating with the victim, directly or indirectly;
3. Requiring the perpetrator to stay away from the residence, school, place of employment, or a specified place frequented regularly by the victim and any designated family or household member;
4. Prohibiting the perpetrator from possessing or consuming alcohol or controlled substances;
5. Prohibiting the perpetrator from using or possessing a firearm or other specified weapon;
6. Directing the perpetrator to surrender any weapons owned or possessed by the perpetrator;



7. Directing the perpetrator to participate in and complete, to the satisfaction of the court, a program of intervention for perpetrators established pursuant to Title 6, § 3-502, treatment for alcohol or substance abuse, or psychiatric or psychological treatment;
8. Directing the perpetrator to pay restitution to the victim; and
9. Imposing any other condition necessary to protect the victim of domestic, dating or family violence and any other designated family or household member or to rehabilitate the perpetrator.

C. **Costs.** The perpetrator shall pay the costs of any condition of probation, according to ability.

D. **Probation Officer policies and procedures.** The Probation Officer shall establish policies and procedures for the exchange of information concerning the perpetrator with the Court and the victim; and for responding to reports of nonattendance or noncompliance by the perpetrator with conditions imposed pursuant to subsection B of this section.

E. **Immediate report required.** The probation department shall immediately report to the Court and the victim any assault by the perpetrator, the perpetrator's failure to comply with any condition imposed by the Court or probation department, and any threat of harm made by the perpetrator.

**§ 3-314. Record of reported incidents of domestic abuse; reports**

A. **Duty to maintain records.** It shall be the duty of the Lighthouse Police Administration to keep a record of each reported incident of domestic, dating and family violence 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. All reported incidents shall be included regardless of whether or not action was taken.

B. **Contents of records.** The record of each incident of domestic, dating or family violence shall:

1. Show the type of crime involved in the domestic abuse;
2. Show the day of the week the incident occurred;
3. Show the time of day the incident occurred;
4. County of incident;
5. Officer who responded; and
6. Action taken on report.

C. **Monthly report.** A monthly report of the recorded incidents of domestic abuse, dating or family violence as well as reports required by subsection D of Title 6, §

1-206, shall be submitted to the Lighthouse Commission and the Office of the Attorney General.

**§ 3-315. Giving false information to Lighthouse police or other authorized law enforcement officer**

It shall be a crime to knowingly and willfully present any false or materially altered protection order to any Lighthouse police or other authorized law enforcement officer to affect an arrest of any person. Such crime shall be punishable by a term of imprisonment of no more than one (1) year, or by a fine of not more than five thousand dollars (\$5,000.00) or by such fine and imprisonment.

**§ 3-316. Duty to preserve evidence**

A. The purpose of this section is to assist in the prosecution of perpetrators of crimes involving domestic, dating and family violence and to recognize that victims of crimes involving domestic, dating or family violence are often reluctant to cooperate or testify at subsequent hearings for many reasons, including but not limited to economic, emotional and psychological factors.

B. All law enforcement officers who respond to an allegation of a crime involving domestic, dating or family violence shall take reasonable steps to collect sufficient evidence to enable the prosecutor to secure a conviction of the perpetrator without the testimony of any victim. Reasonable steps include:

1. Photographing injuries to any victim, any damage to property and the location and surroundings of the alleged incident;
2. Describing both the physical and emotional condition of the victim in detail;
3. Noting the identity of any witnesses to the incident and determining what they observed;
4. Identifying all persons present at the location at the time of the incident, including children, whether or not they witnessed the incident;
5. Recording all oral comments;
6. Gathering a history of the relationship and its duration;
7. Describing the scene of the alleged crime on first contact and other physical evidence; and
8. Gathering statements and interviewing the responding medical personnel or following up with medical personnel if the victim is transported to a facility for medical treatment.

C. A law enforcement officer who responds to an allegation of domestic, dating or family violence shall encourage any victim to make an oral and written statement concerning the incident and shall take one from any perpetrator, if possible.

D. A law enforcement officer who responds to an allegation of a crime involving domestic, dating or family violence shall ensure that the victim is made aware of the importance of preserving evidence of the incident. In addition, the law enforcement officer shall preserve a chronology of events in written form.

E. If a child is present in the household, the officer shall note their presence. In order to preserve evidence and not taint testimony or induce additional trauma, an interview of a child shall be conducted by someone trained and qualified to interview children. However, if the child makes spontaneous statements, the officer shall note these within his or her report. If a child is present in the household, the officer shall make any reports, as required by the Tribal or other governmental agency responsible for investigating allegations of abuse or neglect.

F. Failure to comply with any of the above steps will not result in dismissal of the case but may result in disciplinary action.

**§ 3-317. Officials Who Batter, Including Law Enforcement Officers; Procedure**

A. Law enforcement officers and public officials who are suspected of committing crimes of domestic, dating, or family violence shall be subject to all provisions of this Code.

B. Upon receiving a report or notification that a law enforcement officer is a possible perpetrator of domestic, dating or family violence:

1. The responding officer shall immediately notify the on-duty supervisor or designate. The supervisor shall respond to the call and will notify the Chief or designate;
2. Line officers will secure the scene and ensure the safety of all parties.
3. Under no circumstances will line officers be responsible for or be assigned to investigate calls regarding other officers of equal rank or superior officers. Someone of higher rank than the alleged perpetrator shall be involved in responding.
4. The domestic violence investigator or designate shall be notified of the call.
5. Once the preceding has been completed, the line officer shall await the response of a superior.

C. Upon receiving notification that a public official is a possible perpetrator:

1. The responding officer shall notify the duty supervisor and domestic violence investigator or designate.
2. The responding officer shall proceed with all reasonable means to secure the scene and ensure the safety of all parties, if necessary, and await the response of the supervisor or domestic violence investigator.

**§ 3-318. Training**

All employees of the Court Staff, Family Violence and Lighthorse Police Department, as well as, Probation Officers and the Prosecutor shall participate in at least one (1) day of annual training to include but not be limited to:

1. The dynamics of domestic violence, the impact of victimization, offenders re-education programs, coordinated system response in order to facilitate the goals of this Title. In addition, law enforcement training shall include the technical aspects in making a domestic violence arrest including probable cause, self-defense, mutual arrest, evidence gathering, evidence-based prosecution and report writing.
2. Each department is responsible for submitting verification of training to Human Resources to be included in the employee's personnel file.
3. Failure to participate in the required training may result in appropriate disciplinary actions.

**SUBCHAPTER 4. CIVIL PROCEDURES AND REMEDIES**

**§ 3-401. District Court Civil jurisdiction**

The District Court has full civil jurisdiction to issue protection orders if either the petitioner or respondent currently or temporarily resides in the Muscogee (Creek) Nation territorial jurisdiction, if the respondent currently or temporarily resides in the Muscogee (Creek) Nation territorial jurisdiction or if the domestic, dating or family violence occurred in the Muscogee (Creek) Nation territorial jurisdiction or on other land under the authority of the Muscogee (Creek) Nation; provided that such civil jurisdiction may be exercised regardless of the Indian or non-Indian status of petitioners and respondents. There is no minimum requirement of residency to petition the District Court for an order for protection. In accordance with 18 U.S.C. § 2265(e), the District Court shall have full civil jurisdiction to enforce protection orders issued by the District Court and to enforce foreign protection orders pursuant to Title 6, §§ 3-415, 3-416 and 6-3-417.

**§ 3-402. Eligible petitioners for civil protection order**

A. Petition by victim. Any victim of domestic violence, stalking, harassment, sexual assault, dating violence or family violence, may seek relief by filing a civil petition for protection order with the District Court as an independent action or by a motion in a pendent lite order in another proceeding on behalf of their self and/or any domesticated animals threatened. Provided, that if made by oral motion it shall be promptly memorialized by written motion.

B. Petition on behalf of child. A parent, guardian, or other representative may file a civil petition for an order for protection on behalf of a child or incapacitated adult or any minor age sixteen (16) or seventeen (17) years may seek relief under the provisions of this Code.

C. Motion by Prosecutor. The Prosecutor may move for an order of protection on behalf of a victim, minor child or incapacitated adult in an independent action or as a pendent lite order in another proceeding provided that such motion is memorialized by a written motion.

D. Request for emergency temporary order. If the domestic, dating or family violence, stalking, harassment or sexual assault occurs when the District Court is not open for business, such person may request an emergency temporary protection order as provided by Title 6, §§ 3-306 and 3-405. The District Judge or other Court officer with authority to issue an order for protection shall be available twenty-four (24) hours a day to hear motions or petitions for emergency orders for protection.

**§ 3-403. Petition for protection order**

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

IN THE DISTRICT COURT OF THE MUSCOGEE (CREEK) NATION  
\_\_\_\_\_ DISTRICT

ON BEHALF OF : \_\_\_\_\_ )  
\_\_\_\_\_ (if filed by a third party) \_\_\_\_\_ )

Petitioner )

) Case No.: \_\_\_\_\_ )  
)  
)  
)  
)

vs. )  
Respondent )  
 )  
 )

**MOTION FOR PROTECTION ORDER**

Petitioner, being sworn, states:

This Court has jurisdiction to hear this petition because (Check all that apply):

Victim currently;  resides in, is employed within the Muscogee (Creek) Nation jurisdiction:

on an Indian restricted or trust allotment

lives on tribally owned property

other

---

Works at:

---

Respondent currently  resides in, and/or  is employed within the Muscogee (Creek) Nation jurisdiction:

on an Indian restricted or trust allotment

lives on tribally owned property (address or location of property, if known)

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other

---

Works at

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Is the Respondent a spouse, intimate partner, or dating partner of:

a member of the Muscogee (Creek) Nation; or

an Indian residing in the Indian country of the Muscogee (Creek) Nation.

If so, what Tribe affiliation is Respondent?

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1. Please tell why you are seeking a Protective Order. (Check one or more and explain)