



**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 enyekcetu 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 hvlattepicet toye hocce ton tos. Cuko hvmevlke humv enhuervt, mvt etvlwv, momen enhorkv yvt etvlwv vhakov yekcen, hvlattepicet 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. "Lighthorse 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.: \_\_\_\_\_ )



The Respondent has caused or attempted to cause serious physical harm to (victim's name):

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The Respondent threatened \_\_\_\_\_  
with imminent serious physical harm. (Victim's name)

The Respondent has stalked or harassed \_\_\_\_\_  
(Victim's name)

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

\_\_\_\_\_  
(Insert Date)

B. Describe what happened:

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C. Where did the incident occur?

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To the best of your knowledge, was this act or acts committed on Muscogee (Creek) Nation:

- Indian restricted or trust allotment;
- Tribal Trust land;
- Tribally owned property.

D. Are there any other court actions pending between the parties?

- Yes
- No

If yes, in what court?

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Briefly describe the action(s):

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3. The Victim and the Respondent are related as follows (check one):

- Married
- Divorced
- Parent and Child
- Persons Related by Blood
- Present Spouse of an Ex-Spouse
- Persons living in the Same Household
- Persons Formerly Living in the Same Household
- Biological Parents of the Same Child
- In a Dating Relationship: (please describe for how long, from when to when, the type of relationship, and the frequency of interaction between the persons involved in the relationship)

---

Not Related: (Briefly describe how victim and respondent know each other)

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

The petitioner and the victim are related as follows:

- Parent and Child
- Persons Related by Blood
- Next Friend and Incompetent
- Guardian and Ward

5. (Check A or B)

A. The victim is in immediate and present danger of abuse from the respondent and an emergency ex parte (without notice to the other party) order is necessary to protect the victim from serious harm. (Please explain why an order needs to be granted immediately without notice to the Respondent)

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The petitioner requests the following relief in the emergency *ex parte* order:  
(Check one or more)

order the respondent not to commit or threaten to commit any acts of violence against the petitioner or any domestic, dating, family or household member.

order the respondent not to harass, annoy, telephone, contact or otherwise communicate with the victim, directly or indirectly.

order the respondent not to visit or stalk the victim or otherwise interfere with the victim.

order the respondent to stay away from the residence of the victim located at \_\_\_\_\_ on or before \_\_\_\_\_.

order the respondent to stay away from the school, place of employment or other places frequented by the victim and any named family or household member specified as follows: \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ on or before \_\_\_\_\_.

order the respondent to take no action to make any changes to the utilities or telephone services at the petitioner's residence

order the respondent to refrain from having any contact with the petitioner's domestic animals.

order the respondent not to use or possess a firearm or other weapon specified by the Court.

\_\_\_\_\_  
(describe other relief the petitioner requests)

B. The Petitioner does not request an emergency *ex parte* order.

6. Petitioner requests the following order to be made by the District Court following notice to the respondent and a hearing;

(Check one or more)

order the respondent not to commit or threaten to commit any acts of domestic or family violence against the victim or other family or household member.

order the respondent not to harass, annoy, telephone, contact or otherwise communicate with the victim, directly or indirectly.

order the respondent not to visit or stalk the victim or otherwise interfere with the victim.

order the respondent to stay away from the residence of the victim located at \_\_\_\_\_ on or before \_\_\_\_\_.

order the respondent to stay away from the school, place of employment or other place frequented regularly by the victim and any named family or household member specified as follows:

\_\_\_\_\_ on or before \_\_\_\_\_.

order the respondent not to use or possess a firearm or other weapon specified by the Court.

order the respondent to pay restitution as follows:

Medical expenses arising from injuries caused by the respondent

Reimbursement for property damaged by the respondent

Expenses for shelter for the victim

order the respondent to pay attorney fees for the petitioner in the sum of \$ \_\_\_\_\_ on or before \_\_\_\_\_.

order the respondent to pay court costs of this action in the sum of \$ \_\_\_\_\_ on or before \_\_\_\_\_.

\_\_\_\_\_  
(describe other relief that petitioner requests)

7. Petitioner, being first duly sworn on oath states: That I have read the above and foregoing document, understand the meaning thereof, and declare, under penalty of perjury, that the facts and statements contained herein are believed to the best of my knowledge to be the truth, and nothing but the truth.

\_\_\_\_\_  
Petitioner

Witness my hand and seal, affixed on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
District Court Clerk  
Deputy District Court Clerk or Notary Public

B. Costs and fees. The victim shall not be required to pay filing or service costs related to a protection order. The District Court may assess court costs and filing fees against the abuser at the hearing on the petition.

§ 3-404. Protection order; statement required; validity

In addition to any other provisions required by this chapter, or otherwise required by law, each ex parte or final protection order issued pursuant to this chapter shall have the following statement printed in bold-faced type or in capital letters:

**"THE FILING OR NONFILING OF CRIMINAL CHARGES RELATING TO THIS MATTER AND THE PROSECUTION OF THE CASE SHALL NOT BE DETERMINED BY A PERSON WHO IS PROTECTED BY THIS ORDER, BUT SHALL BE AT THE DISCRETION OF THE MUSCOGEE (CREEK) NATION 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 FIVE (5) YEARS UNLESS RENEWED, MODIFIED, VACATED OR RESCINDED BY THE COURT. A VIOLATOR OF THIS ORDER MAY BE PUNISHED BY CIVIL CONTEMPT OF COURT BY FINE OF UP TO \$5,000. A VIOLATION OF THIS ORDER IS A CRIME PUNISHABLE BY A FINE OF UP TO \$2,500 OR IMPRISONMENT OF UP TO ONE (1) YEAR, OR BOTH SUCH FINE AND IMPRISONMENT FOR A FIRST OFFENSE AND UP TO FIFTEEN THOUSAND DOLLARS (\$15,000.00) FOR A SECOND OR SUBSEQUENT OFFENSE OR IMPRISONMENT OF UP TO THREE (3) YEARS, OR BY BOTH SUCH FINE AND IMPRISONMENT. A VIOLATION OF THIS ORDER WHICH CAUSES INJURY IS A CRIME PUNISHABLE BY IMPRISONMENT FOR TWENTY (20) DAYS TO THREE (3) YEARS OR A FINE OF UP TO FIFTEEN THOUSAND DOLLARS (\$15,000.00), OR BY BOTH SUCH FINE AND IMPRISONMENT. POSSESSION OF A FIREARM OR AMMUNITION BY A RESPONDENT WHILE THIS ORDER IS IN EFFECT MAY SUBJECT THE RESPONDENT TO PROSECUTION FOR VIOLATION OF FEDERAL LAW EVEN IF THIS ORDER DOES NOT SPECIFICALLY PROHIBIT THE RESPONDENT FROM POSSESSING A FIREARM OR AMMUNITION."**

"A KNOWING VIOLATION OF A PROTECTION ORDER IS A CRIME IN THE JURISDICTION OF THE MUSCOGEE (CREEK) NATION, IN THE STATE OF OKLAHOMA AND IN OTHER JURISDICTIONS. ANY PERSON WHO TRAVELS ACROSS STATE LINES OR ENTERS OR LEAVES THE MUSCOGEE (CREEK) NATION TERRITORIAL JURISDICTION OR OTHER INDIAN COUNTRY WITH THE INTENT TO VIOLATE A PROTECTION ORDER AND WHO SUBSEQUENTLY ENGAGES IN SUCH CONDUCT IS SUBJECT TO FEDERAL PROSECUTION FOR A FEDERAL OFFENSE UNDER 18 U.S.C. § 2262. ANY PERSON WHO ENTERS OR LEAVES THE MUSCOGEE (CREEK) NATION TERRITORIAL JURISDICTION OR OTHER INDIAN COUNTRY WITH THE INTENT TO KILL, INJURE, HARASS, OR INTIMIDATE A SPOUSE OR INTIMATE PARTNER, AND WHO, IN THE COURSE OF OR AS A RESULT OF SUCH TRAVEL, COMMITS OR ATTEMPTS TO COMMIT A CRIME OF VIOLENCE AGAINST THAT SPOUSE OR INTIMATE PARTNER, SHALL BE SUBJECT TO FEDERAL PROSECUTION FOR A FEDERAL OFFENSE UNDER 18 U.S.C § 2261."

"FEDERAL LAW REQUIRES THAT THIS ORDER BE GIVEN FULL FAITH AND CREDIT BY THE COURT OF ANY OTHER STATE OR INDIAN TRIBE UNDER 18 U.S.C § 2265."

**§ 3-405. Emergency ex parte protection order**

A. Hearing on request for emergency ex parte protection order. If a petitioner requests an emergency ex parte protection order pursuant to this section, the District Court shall hold an ex parte hearing on the same day the petition is filed. The District 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, dating and family violence, stalking, sexual assault/attempted sexual assault or harassment. The emergency ex parte order shall be in effect until after the full hearing is conducted; provided, if the respondent, after having been served, does not appear at the hearing, the emergency ex parte order shall remain in effect until the respondent 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 respondent with the permanent order. Any emergency ex parte order entered shall state: "IF YOU FAIL TO APPEAR AT THE HEARING, A PERMANENT ORDER MAY BE ISSUED WITHOUT FURTHER NOTICE TO YOU."

B. Contents of emergency ex parte order. An emergency ex parte order authorized by this section may include the following:

1. An order enjoining respondent from threatening to commit or committing acts of domestic or family violence against the petitioner or other family or household member;

2. An order prohibiting the respondent 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 the respondent from the residence of the petitioner;
4. 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;
5. An order prohibiting the respondent from making any changes to the utilities or telephone services to the victim's residence;
6. An order addressing custody, visitation, and support of minor children;
7. An order issuing a "Writ of Assistance" allowing for Lighthouse Police to escort/assist petitioner in obtaining personal effects/belongings from the residence;
8. An order addressing the possession and safety of domestic animals;
9. An order prohibiting the respondent from using or possessing a firearm or other weapon specified by the Court;
10. An order requiring the respondent to pay attorney's fees and court costs; and
11. An order requiring the respondent to pay restitution, such as medical expenses, reimbursement for damaged property and expenses for shelter.

C. Verbal or written order. If a petitioner requests an emergency temporary ex parte protection order as provided by subsection B of Title 6, §3-306, the judge who is notified of the request by a Lighthouse police or other authorized law enforcement 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 Lighthouse police or other authorized law enforcement officer to complete and sign a statement attesting to the order.

D. Effective period. The emergency temporary ex parte order shall be in effect no more than fifteen (15) days from the date it was issued unless extended, for good cause, by the District Court.

**§ 3-406. Service of Process**

A copy of the petition, notice of hearing and a copy of any ex parte order issued by the District Court shall be served upon the respondent in the same manner as a summons.

The Lighthorse police shall attempt service within twenty-four (24) hours of the issuance of an ex parte order by the District Court; provided that a private process server who is licensed pursuant to the law of the Muscogee (Creek) Nation may serve such documents in the event that jurisdictional or practical considerations prevent service by the Lighthorse police and provided further that a private process server who is licensed pursuant to Oklahoma law or a law enforcement officer from another jurisdiction may serve such documents outside of Muscogee (Creek) Nation territorial jurisdiction. Ex parte orders can be served twenty-four (24) hours a day.

**§ 3-407. Hearing and Issuance of order**

A. Hearing. Upon filing of a petition for protection order, the District Court shall schedule a full hearing on the petition, said hearing to be held no sooner than three (3) days and no later than fifteen (15) days from the date of filing of the petition, regardless of whether an emergency ex parte order has been previously issued, requested or denied.

B. Issuance of protection order. At the hearing for a protection order, the District Court may grant any protection order to bring about the cessation of domestic, dating or family violence stalking, sexual assault or harassment of the petitioner or other family or household members or domesticated animals.

C. Contents of probation order. Protection orders authorized by this section may include the following:

1. An order enjoining respondent from threatening to commit or committing acts of domestic or family violence against the petitioner or other family or household member;
2. 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;
3. An order removing and excluding the respondent from the residence of the petitioner;
4. 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;
5. An order prohibiting the respondent from using or possessing, or requiring the respondent to surrender to Lighthorse any firearm or other weapon specified by the Court;

6. An order addressing custody, visitation and support of minor children;
7. An order issuing a "Writ of Assistance" allowing for Lighthouse Police to escort/assist petitioner in obtaining personal effects/belongings from the residence;
8. An order requiring the respondent to pay attorney fees and court costs;
9. An order requiring the respondent to pay restitution, such as medical expenses, reimbursement for damaged property and expenses for shelter; and
10. Other relief deemed appropriate by the Court.

D. Treatment. After notice and hearing, protection orders authorized by this section may require the respondent to undergo treatment or participate in the counseling services necessary to bring about cessation of domestic or family violence against the victim. The respondent may be required to pay all or any part of the cost of such treatment or counseling services. The District Court shall not be responsible for such cost.

E. Service of Protection Order. When necessary to protect the victim and when authorized by the District Court, protection orders granted pursuant to the provisions of this section may be served upon the respondent by a Lighthouse officer or other authorized law enforcement officer whose duty it is to preserve the peace.

F. Time Limitations. Any protection order issued pursuant to this section shall be for a fixed period not to exceed a period of five (5) years unless extended by the District Court. The District Court shall notify the parties at the time of the issuance of the protection order of the duration of the protection order. The following shall apply:

1. The District Court Clerk shall send notice of expiration to the parties sixty (60) days prior to the expiration of a protection order.
2. The petitioning party shall have the opportunity to apply for renewal of the protection order for an additional five (5) years period.
3. Upon application, the District Court Clerk shall notify each party of the court date of the hearing on the application. It shall be the duty of each party to keep the District Court Clerk informed of his or her current address.
4. At the hearing for renewal of the protection order, the District Court may grant the renewal of the protection order or allow the protection order to expire.

G. Limited scope of protection order. No order issued under this chapter shall 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 division of property or any other like relief otherwise obtainable under the laws of the Muscogee (Creek) Nation.

H. Receipt of protection order by the victim. Upon the issuance of a protection order the victim shall be entitled to receive a copy of the order prior to leaving the courthouse.

**§ 3-408. Access to protection orders by law enforcement agencies**

A. District Court responsibility to distribute protection orders. Within twenty-four (24) hours of the return of service of any ex parte or final protection order, the District Court Clerk shall send certified copies thereof to Lighthorse as well as to all appropriate law enforcement agencies designated by the petitioner. A certified copy of any extension, modification, vacation, cancellation or consent agreement concerning a final protection order shall be sent by the clerk of the issuing court to those law enforcement agencies receiving the original orders pursuant to this section.

B. Lighthorse Police responsibility to ensure access to protection orders. The Lighthorse police 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. This includes but is not limited to insuring that all protection orders are entered into the National Crime Information Center (NCIC) database in a timely manner.

**§ 3-409. Other proceedings; delay of relief prohibited; omission of petitioner's address**

A. Duty to inform court. At any hearing in a proceeding to obtain an order for protection, each party has a continuing duty to inform the Court of each proceeding for an order for protection, any civil litigation, each proceeding in family or Juvenile Court, and each criminal case involving the parties, including the case name, the file number, and the county and state of the proceeding, if that information is known by the party.

B. Other actions. An order for protection is in addition to and not in lieu of any other available civil or criminal proceeding. A petitioner is not barred from seeking an order because of other pending proceedings. A Court shall not delay granting relief because of the existence of a pending action between the parties.

C. Address of Petitioner. A petitioner may omit her or his address from all documents filed with the Court. If a petitioner omits her or his address, the petitioner shall provide the Court a mailing address. If disclosure of petitioner's address is necessary to determine jurisdiction or consider venue, the Court may order the disclosure to be made:

1. After receiving the petitioner's consent;
2. Orally and in chambers, out of the presence of the respondent and a sealed record to be made; or
3. After a hearing, if the Court takes into consideration the safety of the petitioner and finds such disclosure is in the interest of justice.

**§ 3-410. Effect of action by petitioner or respondent on order**

If a respondent is excluded from the residence of a petitioner or ordered to stay away from the petitioner, an invitation by the petitioner to do so does not waive or nullify an order for protection.

**§ 3-411. Denial of relief due to lapse of time prohibited**

The Court shall not deny a petitioner relief requested pursuant to this subchapter solely because of a lapse of time between an act of domestic, dating or family violence, sexual assault, stalking or harassment and the filing of the petition.

**§ 3-412. Mutual orders for protection prohibited**

A court shall not grant a mutual order for protection to opposing parties.

**§ 3-413. Court-ordered and court-referred mediation of cases involving domestic, dating or family violence, stalking, sexual assault or harassment prohibited**

A court shall not order parties into mediation or joint counseling or refer them to mediation or joint counseling for resolution of the issues in a petition for an order for protection.

**§ 3-414. Violation of ex parte or final protection order; civil penalty**

A. Violation of order; contempt of court. Except as provided in subsection B of this section, any person who has been served with an ex parte or final protection order or foreign protection order and who is in violation of such protection order, may be punished for civil contempt of court and upon entry of a finding that such person is in contempt of court, shall be punished by a fine of not less than fifty dollars (\$50.00) and not more than five thousand dollars (\$5,000.00).

B. Violation of order; subsequent offenses. Any person who has been served with an ex parte or final protection order or foreign protection order and who is in violation of such protection order after a prior judicial finding of contempt of court for a previous violation of such protection order, may be punished for civil contempt of court and upon entry of a finding that such person is in contempt of court for a second or

subsequent offense, shall be punished by a fine of not less than one thousand dollars (\$1,000.00) and not more than five thousand dollars (\$5,000.00).

C. Treatment. In addition to any other civil 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 or family violence against the victim.

D. Violation of order by minor. 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 family counseling services necessary to bring about the cessation of domestic abuse against the victim and may order community service hours to be performed.

§ 3-415. Registration and enforcement of foreign orders for protection; duties of Court Clerk

A. Registration. A certified copy of a foreign protection order issued by another Tribal court or by a state court may be filed in the office of the District Court Clerk. The District Court Clerk shall act upon the order in the same manner as the clerk acts upon an order for protection issued by the District Court. The District Court Clerk shall not notify the perpetrator of the registration of an out of state or Tribal protection order, unless the victim requests the notification.

B. Effect of foreign order. An order for protection filed in accordance with subsection A of this section has the same effect and shall be enforced in the same manner as an order for protection issued by the District Court.

C. Court Clerk Responsibilities. The District Court Clerk shall:

1. Maintain a registry in which to enter certified orders for protection issued by other Tribal courts or by state courts that are received for filing.
2. At the request of a court of another Indian Tribe or of a state or at the request of a person who is affected by or has a legitimate interest in an order for protection, certify and forward a copy of the order to that court or person at no cost to the requesting party.

D. Enforcement. The District Court shall enforce all provisions of a registered foreign order for protection.

§ 3-416. Judicial enforcement of foreign protection orders

A. Full faith and credit. Pursuant to 18 U.S.C. §2265, any protection order issued that is valid according to the standards contained in subsection B of this section by the court of a state or another Indian Tribe shall be accorded full faith and credit by the District Court and the District Court shall enforce a valid foreign protection order as if it were issued by the District Court.

B. Requirements for valid orders. A protection order issued by a state or another Tribal court shall be valid if:

1. The issuing Court has jurisdiction over the parties and matter under the law of such state or Indian tribe; and
2. Reasonable notice and opportunity to be heard was given to the person against whom the order was sought sufficient to protect that person's right to due process. In the case of an ex parte order, notice and opportunity to be heard must have been provided within the time required by state or Tribal law, and in any event within a reasonable time after the order was issued, sufficient to protect the respondent's due process rights.

C. Registration is not required. Registration or filing of a foreign protection order shall not be a prerequisite for District Court enforcement of out-of-state or Tribal orders or protection.

D. Initiation of proceeding for enforcement. A proceeding to enforce a foreign protection order may be started in the District Court by:

1. A motion filed by the petitioner holding the foreign protection order, alleging that respondent has violated the protection order and requesting that the District Court enforce the order; and/or
2. An action filed by the Prosecutor alleging that respondent has violated the foreign protection order.

E. Validity of order; affirmative defense. If a foreign protection order bears the name of an issuing court, the persons to whom it applies, a judge's signature or an equivalent sign, terms and conditions against the respondent, and does not bear an expiration date that has passed or any other obvious indication that it is not authentic, it will be deemed valid, and the District Court shall enforce it, unless the party against whom the order is to be enforced proves, as an affirmative defense, that:

1. The issuing court did not have jurisdiction over the parties or the dispute under the law of the issuing court;
2. The respondent was not given due process, which means reasonable notice and an opportunity to be heard. If the foreign

protection order was originally entered without the respondent having an opportunity to be heard, the respondent shall have been given notice and an opportunity to be heard within the time required by the law of the issuing court, or in any event within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights;

3. The protection order is a support or child custody order issued pursuant to state divorce and child custody laws that are not entitled to full faith and credit under other federal law.

F. Cross or counter petitions. Cross or counter petitions are not entitled to full faith and credit unless a petition, complaint or other written pleading or motion was filed seeking a protection order and the issuing court made specific findings that each party was entitled to a protection order.

**§ 3-417. Role of law enforcement in foreign protection orders**

A. Manner of enforcement. A Lighthouse police or other authorized law enforcement officer shall enforce a foreign protection order in the same manner as he or she would enforce a protection order issued by the District Court.

B. Reliance on copy of order or statement of person. A Lighthouse police or other authorized law enforcement officer may rely on a copy of a foreign protection order that is provided to the officer from any source. A Lighthouse police or other authorized law enforcement officer may rely on the statement of a person protected by a foreign protection order that the order remains in effect.

C. Authenticity of order. If a copy of a foreign protection order is provided to the officer from any source, the officer shall enforce the order if it appears to the officer to be authentic. An officer shall treat a foreign protection order as authentic if it:

1. Bears the names of the issuing court and the persons to whom it applies, terms and conditions against the respondent, and a judge's signature or an equivalent sign; and
2. Does not bear an expiration date that has passed or any other obvious indication that it is not authentic.

D. Verification of authenticity. The fact that the foreign protection order cannot be verified in the manner described in the following paragraph does not mean that the order is not authentic.

E. Verification of information. If a person claiming to be protected by a foreign protection order does not have a copy of the order, the Lighthorse police or other authorized law enforcement officer shall attempt to verify the existence of the order, the names of the issuing court and the persons to whom it applies, the terms and conditions against the respondent, and that the order does not bear an expiration date that has passed or any other obvious indication that it is not authentic. If the Lighthorse police or other authorized law enforcement officer verifies this information, the officer shall enforce the foreign protection order. Examples of ways to verify the order include consulting the issuing court, the Law Enforcement Network ("LEIN"), the National Crime Information Center ("NCIC"), a registry operated by the issuing jurisdiction, or any similarly reliable source.

F. Maintenance of Peace. If a person claiming to be protected by a foreign protection order does not have a copy of the order and the Lighthorse Police or other authorized law enforcement officer cannot verify the existence of the order through reliable sources, the officer shall maintain the peace and take any other lawful action that appears appropriate to the officer.

G. Counter or cross petition. Cross or counter petitions shall not be enforced unless a petition, complaint or other written pleading was filed seeking a protection order and the issuing court made specific findings that each party was entitled to a protection order.

**§ 3-418. Violation of foreign protection order**

When, following a hearing, the District Court finds that a person has violated a foreign protection order within the Muscogee (Creek) Nation Indian Country or on other property otherwise within the authority of the Nation, the District Court may impose any penalty provided by law for violating a protection order issued by the District Court. The determination whether a foreign protection order has been violated is made in accordance with the Muscogee (Creek) Nation procedures governing criminal and civil cases.

**§ 3-419. Forfeiture for violations of this chapter**

A. Any weapon, vehicle, or any other item used by a native or non-native in the furtherance of an attempt or perpetration of a crime of domestic violence including violation of a protection order shall be subject to forfeiture.

B. All items forfeited in this section shall be forfeited under the procedures established under the Muscogee (Creek) Nation Judicial Procedures Code. Upon a finding of proof by a preponderance of the evidence that the particular item sought to be forfeited was used in an attempt to commit or in the perpetration of a crime of domestic;

dating or family violence, the district court shall order that the item be forfeited and any money or monies derived from the sale of such item be deposited in a revolving fund, with the proceeds to be used for law enforcement purposes as approved by the Lighthorse Chief, Attorney General, Controller and the Principal Chief. At the request of the Lighthorse Chief, the District Court may order that proceeds be divided between the Nation and one or more assisting law enforcement agencies. The District Court may also order that items seized may be used by Lighthorse rather than sold at a public sale.

C. Any third-party lawful owner of such property may petition the court for return of such property. Upon a finding that the third-party participated in or had knowledge of the purpose for which the property would be, the court has the discretionary authority to order the property to be forfeited.

D. Notice. Notice shall be given by the Lighthorse Police of said hearing to each and every owner known and as set forth in said application by certified mail directed to their last known address at least ten (10) days prior to the date of said hearing. Said notice shall contain a brief description of the property of said owner and the place and date of the hearing. In addition, notice of said hearing shall be posted in three public places in the Muscogee (Creek) Nation territorial jurisdiction, one being the courthouse.

**SECTION FOUR. AMENDMENT.** This amendment shall be codified in Title 27, Chapter 1 and Chapter 2 and Appendix 1 Rule 13 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 FIVE. AMENDMENT.** The following Sub-Chapters and Sub-Sections of MCNCA Title 27, Chapter 1, §1-102, and Chapter 2 §2-111 and Appendix 1 Rule 13 are hereby amended to read as follows:

**TITLE 27. JUDICIAL PROCEDURES**  
**SUBCHAPTER 1. AUTHORITY, JURISDICTION, AND APPLICABLE LAW**

**§ 1-102. Jurisdiction**

A. Territorial Jurisdiction. The territorial jurisdiction of the Muscogee Courts shall extend to all the territory defined in the 1866 Treaty with the United States,

including without limitation any real property within the Nation's political jurisdiction as defined in Article I, Section 2 of the 1979 Muscogee (Creek) Nation Constitution and which constitutes Muscogee (Creek) Nation Indian country as follows: (1) property owned by any Muscogee citizen subject to federal restrictions against alienation or held in trust by the United States for the benefit of any Muscogee citizen or (2) property held in trust by the United States for the benefit of the Muscogee (Creek) Nation or (3) any property owned by Muscogee (Creek) Nation or (4) property which otherwise constitutes Indian Country as that term is used in 18 U.S.C. § 1151.

**B. Civil Jurisdiction.** The Muscogee (Creek) Nation courts shall have general civil jurisdiction over all civil actions arising under the Constitution, laws, or treaties of the Muscogee (Creek) Nation including the Muscogee or Yuchi Common Law, which arise within the Muscogee (Creek) Nation Indian country, regardless of the Indian or non-Indian status of the parties. Personal jurisdiction shall exist over all defendants, regardless of the Indian or non-Indian status of said defendants, in cases arising from any action or event within the Muscogee (Creek) Nation Indian country and in any other cases in which the defendant has established contacts with Muscogee (Creek) Nation Indian Country sufficient to establish personal jurisdiction over said defendant. Personal jurisdiction shall also exist over all persons consenting to such jurisdiction. Residing, conducting business, using roadways or engaging in any other activity within the Muscogee (Creek) Nation Indian Country is deemed consent to Muscogee (Creek) Nation jurisdiction. All contracts between the Nation or its citizens and any other party entered into within the Muscogee (Creek) Nation Indian Country is deemed as consent to Muscogee (Creek) Nation jurisdiction by the parties. The act of entry upon the Muscogee (Creek) Nation Indian Country by any extraterritorial seller or merchant, or their agent(s) shall be considered consent by the seller or merchant to the jurisdiction of courts of the Muscogee (Creek) Nation for any dispute arising out of any sale or commercial transaction regardless of where the sale or transaction was entered or took place. The Muscogee Courts shall have probate jurisdiction as described by law of the Muscogee (Creek) Nation in Title 47 of the Code of Laws of the Muscogee (Creek) Nation. The Muscogee Courts shall have jurisdiction over proceedings involving family relations, including without limitation, child custody and divorce proceedings, as described by law of the Muscogee (Creek) Nation, including any such law codified in Title 6 of the Code of Laws of the Muscogee (Creek) Nation. The Muscogee Courts shall exercise such other civil jurisdiction as described by any other law of the Muscogee (Creek) Nation.

**C. Criminal Jurisdiction.** The Muscogee Courts shall have original jurisdiction over all Indians alleged to have committed in Muscogee (Creek) Nation Indian Country a criminal offense enumerated and defined by any law or statute of the Muscogee (Creek) Nation insofar as not prohibited by federal law. The Muscogee Courts shall also have original jurisdiction over all Indians alleged to have committed an offense involving the theft, misappropriation or misuse of Muscogee (Creek) Nation property or

funds, regardless of the geographical location of any specific act or omission involved or resulting in such theft, misappropriation or misuse. For purposes of criminal jurisdiction, an "Indian" refers to a person who is a member of the Muscogee (Creek) Nation; or a person who is a member of any other federally recognized tribe, including Native Hawaiians and Alaska Natives; or a person who possesses a CDIB; or a person eligible for membership in a federally recognized tribe.

D. **Special Domestic Violence Criminal Jurisdiction.** In addition to the general criminal jurisdiction over all Indians, in cases where the victim is Indian, the Muscogee (Creek) Nation shall exercise "Special Domestic Violence Criminal Jurisdiction" over all Non-Indian defendants alleged to have committed, in Muscogee (Creek) Nation Indian Country, a criminal offense involving acts of domestic violence, dating violence or violation of protection orders, who:

1. resides in Muscogee (Creek) Nation Indian Country;
2. or is employed in Muscogee (Creek) Nation Indian Country; or
3. is a spouse, intimate partner, or dating partner of –
  - a. a member of the Muscogee (Creek) Nation; or
  - b. an Indian who resides in Muscogee (Creek) Nation Indian Country.

E. **Suits Against the Muscogee (Creek) Nation.** Nothing in this title shall be construed to be a waiver of the sovereign immunity for the Muscogee (Creek) Nation, its officers, employees, agents, or political subdivisions or to be a consent to any suit except as expressly stated in this subsection E. The sovereign immunity of the Muscogee (Creek) Nation is hereby waived in all actions limited to injunctive, declaratory or equitable relief; provided that such waiver extends only to actions filed in the Muscogee (Creek) Nation courts and does not extend to any actions filed in a court of any other jurisdiction. The waiver of sovereign immunity in actions for injunctive, declaratory or equitable relief shall not be construed as granting a waiver for the purpose of obtaining any equitable relief requiring payment from, delivery of, or otherwise affecting funds in the Treasury of the Muscogee (Creek) Nation, or any real property, personal property or chattels of the Muscogee (Creek) Nation or any entities, agencies or political subdivisions of the Muscogee (Creek) Nation, or any funds belonging to, or owed to, owned by, held in trust for, administered by or under the control of the Muscogee (Creek) Nation or any entities, agencies or political subdivisions of the Muscogee (Creek) Nation, except interpleader actions in disputes arising between the Nation and its political subdivisions or the Nation and other parties where financial institutions are holders of disputed funds. Nothing in this subsection E shall be construed as allowing any award of actual damages, punitive damages, exemplary damages or any other type of damages against the Muscogee (Creek) Nation.

**SUBCHAPTER 2. TRIBAL COURT PROCEEDINGS**

**§ 2-111. Formation of trial jury**

The formation of a trial jury shall be in accordance with Title 27, Appendix 1, Rule 13.

**APPENDIX 1. RULES AND PROCEDURES OF THE  
MUSCOGEE (CREEK) NATION TRIBAL COURTS  
Rule 13. Selection of Jurors**

**Rule 13. Selection of Jurors**

A. **Supervision of jury selection.** The District Court Clerk shall manage the jury selection process with the assistance of the District Court Judge. Until they have been qualified in open Court, the names of persons summoned for jury service shall not be made public unless the District Court shall otherwise direct. The contents of records or papers used by the District Court in connection with the jury selection process shall not be disclosed, except upon Order of the Court.

B. **Summons.** The District Court Clerk shall issue summons directed to the persons so drawn for service by first class mail.

C. **Random selection of jurors from Election Board's voter registration database.**

1. **From Election Board's voter registration database.** The Voter Registration Database represents a fair selection of the communities and districts within the Muscogee (Creek) Nation. The Election Board shall annually provide the District Court with a digital copy of the Voter Registration Database to be used in the Court's automated jury selection process. The District Court shall make a random selection of names via a reputable court management software. All expenses associated with the transfer of data for jury selection from the Election Board to the District Court shall be paid by the Judicial Branch.
2. **From Muscogee (Creek) Nation employee database.** The purpose of this subsection is to provide defendants charged with crimes designated as domestic, dating, or family violence an impartial jury that reflects a fair cross-section of the community and does not systematically exclude any distinctive group in the community, including non-Indians. Recognizing that the community of the Muscogee (Creek) Nation includes individuals living or working on land owned or under the authority of the Nation, the District Court

shall annually obtain a list of employees from all the Muscogee (Creek) Nation Human Resources Departments to be incorporated into the random selection process for the jury pools of defendants charged with crimes of domestic violence. All Muscogee (Creek) Nation Human Resources shall, upon request by the District Court Clerk, provide the District Court a list of employees to be incorporated into the random selection process for the jury pools of with crimes of domestic violence.

**D. Formation of trial jury. The formation of a trial jury shall be as follows:**

1. A jury of trial shall consist of six (6) persons, but the parties may agree to a number less than six (6).
2. All registered voters of the Muscogee (Creek) Nation, of sound mind and character, residing within the original 1867 territorial boundaries of the Muscogee (Creek) Nation are eligible to be summoned for jury service. Additionally, all Muscogee (Creek) Nation employees are eligible to be summoned for jury service.
3. The District Court Judge shall question all jurors summoned for trial to determine if all are qualified to be empaneled to try the issue or issues before the Court. Attorneys and/or pro se litigants shall be given an opportunity to examine all jurors selected to try the issue or issues before the Court and may challenge any juror for cause. No judges, law enforcement officers, attorneys, physicians or ministers shall be compelled to serve as jurors, additionally, persons over seventy (70) years of age or under eighteen (18) years of age may be excused. The dismissal of a juror for cause shall be made by the District Court Judge.
4. Each side shall be entitled to three (3) preemptory challenges.
5. Habitual drunkards, persons convicted of any felony, or persons who have served in any penitentiary shall not be eligible to serve as jurors.
6. Prospective trial jurors may be summoned by notifying each orally or by mail as to the time and place at which his attendance is required.
7. For jury dockets, the District Court shall summon a jury panel of not less than twenty-four (24) eligible jurors, to be paid twenty dollars (\$20.00) per day from the Court Fund until they shall be dismissed.

**SECTION SIX. AMENDMENT.** This amendment shall be codified in Title 14, Chapter 1 and Chapter 2 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 SEVEN. AMENDMENT.** The following Sub-Chapters and Sub-Sections of MCNCA Title 14, Chapters 1 and 2 are hereby amended to read as follows:

**TITLE 14. CRIMES AND PUNISHMENTS**  
**CHAPTER 1. CRIMINAL PROCEDURE**  
**SUBCHAPTER 3. GENERAL PROCEDURAL PROVISIONS**

**§1-303. Rights of defendant**

In all criminal proceedings, the defendant shall enjoy all applicable rights under the Indian Civil Rights Act of 1968 including but not limited to:

A. Representation. The defendant shall have the right to appear and represent himself; to be represented by an Indigent Defense Attorney upon application and approval by the Court if found qualified for free representation; to be represented at his or her own expense by any attorney admitted to practice before the District Court.

B. Nature of charges. The defendant shall have the right to be informed of the nature of the charges against him and to have a written copy of the complaint containing all information required by Title 14, § 1-401 herein.

C. Testimony by defendant. The defendant shall have the right to testify in his or her own behalf, or to refuse to testify regarding the charge against him or her, provided, however, that once a defendant takes the stand to testify on any matter relevant to the immediate proceeding against him or her, he or she shall be deemed to have waived all right to refuse to testify in that immediate criminal proceeding. However, such a waiver in one distinct phase of the criminal trial process, such as a motion hearing, trial or sentencing hearing, shall not be deemed to constitute a waiver of defendant's right to remain silent in other distinct phases of the criminal trial process.

D. Confront witnesses. The defendant shall have the right to confront and cross-examine all witnesses against him, subject to evidentiary requirements in the Judicial Code or other applicable law of the Muscogee (Creek) Nation.

E. Subpoena. The defendant shall have the right to compel by subpoena the attendance of witnesses on his or her own behalf.

F. **Speedy Trial.** The defendant shall have the right to have a speedy public trial. The defendant may waive his or her right to a speedy trial, otherwise, said trial is to be held before an impartial judge or jury as provided in this Title or other applicable law of the Nation.

G. **Appeal.** The defendant shall have the right to appeal in all cases.

H. **Right to Habeas Corpus.** Every defendant has the privilege of the writ of habeas corpus to test the legality of his or her detention by order of the Muscogee (Creek) Nation and may petition the court to stay further detention pending the habeas proceeding.

1. The court may grant a stay if the court:

- a. finds that there is a substantial likelihood that the habeas corpus petition will be granted; and
- b. after giving each alleged victim in the matter an opportunity to be heard, finds by clear and convincing evidence that under the conditions imposed by the court, the petitioner is not likely to flee or pose a danger to any person or the community if released.

I. **Spouse's testimony.** The defendant shall have the right to prevent his or her present or former spouse from testifying against him concerning any matter which occurred during such marriage, except that:

1. The defendant's present or former spouse may testify against him in any case in which the offense charged is alleged to have been committed against the spouse or the immediate family, or the children of either the spouse or the defendant, or against the marital relationship; and
2. Any testimony by the spouse in the defendant's behalf will be deemed a waiver of this privilege.

J. **Double jeopardy.** The defendant shall have the right to not be twice put in jeopardy by the Nation for the same offense, provided that nothing herein shall be construed as prohibiting the prosecution in the Muscogee (Creek) Nation Courts of a defendant following a state or federal jeopardy.

#### **SUBCHAPTER 5. TRIAL**

§ 1-501. Trial by jury or by Court

A. All trials of offenses which are punishable by incarceration shall be by jury unless the defendant and the Muscogee (Creek) Nation waive trial by jury, in which case the proceeding shall be tried by the District Court without a jury. Jurors shall be selected and jury trials shall be conducted in accordance with the provisions governing juries contained in the Judicial Procedures Code of the Muscogee (Creek) Nation.

B. Bifurcation of Trial. In an effort to enable the trier of fact to make the most informed decisions while limiting prejudice to the Defendant, in cases in which the defendant's criminal record could effect the sentence if found guilty, the Court may allow for the case to be tried in two separate stages.

1. The first stage shall be solely for determining whether the Nation has proven if the defendant is guilty of the charge(s) alleged in the Criminal Complaint and Information. Except in cases in which a former conviction is an element of the offense charged, during the first stage, no reference shall be made nor evidence presented of prior offenses except as permitted by the rules of evidence. At the conclusion of this stage, the Judge shall instruct the jury to only determine whether the Nation has proven its case beyond a reasonable doubt; and
2. If a verdict of guilt is returned, the trial shall proceed to the sentencing stage. During this stage, the trier of fact shall be permitted to receive any evidence, whether aggravating or mitigating, so long as it would be relevant in aiding the trier of fact in determining the appropriate punishment.

#### **SUBCHAPTER 6. JUDGMENT AND SENTENCE**

##### **§1-601. Sentence and Judgment**

- A.
  1. If a verdict of acquittal is rendered the defendant must immediately be discharged.
  2. After a plea or verdict of guilty, or after judgment against the defendant, the court must designate a time for sentencing, which must be within a reasonable time after the verdict or judgment is rendered. The sentence must be entered in the minutes of the Court as soon as it is imposed.
  3. If the defendant pleads guilty, or is convicted either by the court or by a jury, the court must impose the sentence imposed by the jury or a sentence in conformity with the law; or sentence the defendant to pay a fine or both.

4. The determination and imposition of sentence shall be the exclusive duty of the court.

B. When a person has been found guilty of a criminal offense under Title 14, Chapter 2, the Court shall sentence the defendant in accordance with the following Paragraphs of this Subsection, depending upon whether the offense is denominated a misdemeanor or a felony in the provisions relating to the offense of which the defendant was convicted unless the provisions relating to such offense expressly specify a different punishment:

1. **Misdemeanors: fines and imprisonment.** Every person who is convicted of any criminal offense set forth in Title 14, Chapter 2, which is denominated a misdemeanor shall be punished by a fine of not more than two thousand five hundred dollars (\$2,500) and/or not more than one (1) year imprisonment. In addition to any punishment provided for in this paragraph, the Court may also order community service and/or counseling as authorized by Paragraphs 3 and 4 of this Subsection.
2. **Felonies: fines and imprisonment.** Every person who is convicted of any criminal offense set forth in Title 14, Chapter 2, which is denominated a felony shall be punished by a fine of not more than fifteen thousand dollars (\$15,000) and/or not more than three (3) years imprisonment. In addition to any punishment provided for in this paragraph, the Court may also order community service and/or counseling as authorized by Paragraphs 3 and 4 of this Subsection.
3. **Community Service:** In addition to or, at the discretion of the sentencing judge, in lieu of any fine or any portion thereof or any term of imprisonment or any portion thereof which may be imposed under paragraph 1 and 2 of this Subsection, the Court may order that the convicted defendant perform community service as determined by the Court in the sound exercise of its discretion.
4. **Counseling:** In addition to any fines, imprisonment, community service, restitution and/or other punishment imposed by the Court for violations of Title 14, Chapter 2, the Court may also order the defendant to receive counseling through Muscogee Nation Behavioral Health or any other counseling service.
5. **Multiple convictions: concurrent and consecutive sentencing.** Each violation of any provision of Title 14, Chapter 2 shall be a separate offense and shall be punishable as such. Provided, however, when a defendant has been convicted of multiple offenses under Title 14, Chapter 2, the Judge at the time of sentencing shall have the discretion to order that any term of imprisonment for any offense be

served concurrently with one or more other terms of imprisonment or consecutively to one or more other terms of imprisonment.

**§ 1-609. Deferred judgment procedure**

A. Upon a verdict or plea of guilty or upon a plea of nolo contendere, the Court may, prior to and without entering a judgment of guilt and with the consent of the defendant, defer the finding of guilt and place the defendant on probation under the supervision of the Court of the Muscogee (Creek) Nation upon the conditions of probation prescribed by the Court in the exercise of its sound discretion. As part of the terms of probation, the Court may also consider ordering the defendant to pay a sum of money into the court fund not to exceed the amount of any fine authorized by this title for the crime charged, to pay restitution, perform community service and/or attend counseling or other conditions the Court deems appropriate.

B. The period of probation under this procedure shall not exceed three (3) years for any single offense. Where multiple offenses are charged and the judgment on one or more of said offenses is deferred, the Judge at the time of sentencing shall have the discretion to order the probationary period for each offense to be served concurrently with one or more other terms of probation or consecutively to one or more other terms of probation. Upon completion of all periods of probation the defendant shall be discharged by the Court without any entry of judgment of guilt, plea of nolo contendere shall be expunged by the Court Clerk from the record and said charge shall be dismissed with prejudice to any further action.

**SUBCHAPTER 8. BAIL AND BONDS**

**§ 1-801. Release prior to arraignment**

A. Posting of jail bond with police. Defendants may be released following arrest after posting jail bond with the police. The purpose of the bond is to guarantee the appearance of any person accused of public offense at his or her hearing and trial and ensure public safety with a minimum of inconvenience to the defendant, but with maximum assurance thereof to the public. The bond shall include notice to the defendant that he or she must appear for arraignment on the next Court day, and no other notice of the Court date shall be given to the defendant or bondsmen. The privilege of making bond prior to formal charging and arraignment incorporates the duty to voluntarily and promptly appear for arraignment, where any substitution offered by the bondsman for the "prior approved" jail bond for may be considered by the Judge. The jail bond shall not be sued to frustrate the orderly disposition of the case.

B. Schedule. A schedule of appropriate appearance bond shall be provided by the District Court on a jail bond schedule, under which the police are authorized to

receive non-cash bonds and release the accused. Licensed bondsmen can post surety bonds with Lighthorse or the Court. Friends or family members may post cash bonds with the Court, however, only money orders or cashiers checks, endorsed to the Muscogee (Creek) Nation District Court Clerk, may be posted, with the Lighthorse Police.

**§ 1-802. Release prior to trial**

A. General recognizance or appearance bond. Any person charged with an offense shall, at his or her appearance before a Judge, be ordered release pending trial on his or her personal recognizance or upon execution of an unsecured or secured appearance bond or upon posting a cash bond in an amount specified by the Judge, subject to the condition that such person shall not attempt to influence, injure, tamper, with or retaliate against an officer, juror, witness, informant, or victim or violate any other law, unless the judicial officer determines in the exercise of his or her discretion, that such a release will not reasonably ensure public safety or assure the appearance of the person as required.

B. Conditions. When such determination is made, the Judge shall, impose one or any combination of the following conditions of release which will reasonably assure the appearance of the person for trial and ensure public safety:

1. Place the person in custody of a designated person or organization agreeing to supervise him;
2. Place restrictions on the travel, association, or place of abode of the person during the period of release;
3. Require the person to abstain from the use of alcohol or other substances and be subject to testing to ensure compliance during the period of release;
4. Require the execution of a bail bond with sufficient solvent sureties, or the deposit of cash in lieu thereof; or
5. Impose any other condition deemed reasonably necessary to assure appearance and public safety as required, including a condition requiring that the person return to custody at a specified hour.

C. Considerations. In determining which conditions of release will reasonably assure appearance and ensure public safety, the judicial officer shall, on the basis of available information, take into account the nature and circumstances of the offense charged, the weight of the evidence against the accused, the accused's family ties, employment, financial resources, character and mental condition, length of his or her residence in the community, his or her record of conviction, and his or her record of

appearance at Court proceedings or of flight to avoid prosecution or failure to appear at Court proceedings.

D. Order of release. A judge authorizing the release of a person under this section shall issue an appropriate order containing a statement of the conditions imposed, if any, shall inform such person of the penalties applicable for violation of the conditions of his or her release and shall advise him that a warrant for his or her arrest will be issued immediately upon any such violation.

E. Review of conditions of release. A person whom conditions of release are imposed and who after seventy-two (72) hours from the time of the release hearing continues to be detained as a result of his or her inability to meet the conditions of release, shall, upon application, be entitled to have the conditions reviewed by the judicial officer who imposed them. Unless the conditions of release are amended and the person is thereupon released, the judicial officer shall set forth in writing the reasons for requiring the conditions imposed. A person who is ordered released on a condition, which requires that he or she return to custody after specified hours shall, upon application, be entitled to a review by the judicial officer who imposed the condition. Unless the requirement is removed and the person is thereupon released on another condition, the judicial officer shall set forth in writing the reasons for continuing the requirement. In the event that the judicial officer who imposed the conditions of release is not available, any other judicial officer of the Court may review such conditions.

F. Amendment of release order. A judicial officer ordering the release of a person on any condition specified in this section may at any time amend his or her order to impose additional or different conditions of release, provided that, if the imposition of such additional or different conditions result in the detention of the person as a result of his or her inability to meet such conditions or in the release of the person on a condition requiring him to return to custody after specified hours, the provisions of subsection E shall apply.

G. Information in release order. Information state in, or offered in connection with any order entered pursuant to this section need not conform to the rules pertaining to the admissibility of evidence in a court of law.

H. Security. Nothing contained in this section shall be construed to prevent the disposition of any case or class of cases by forfeiture of collateral security where such disposition is authorized by the Court, nor to prevent the Court by rule from authorizing and establishing a policeman's bail schedule for certain offenses or classes of offenses through which a person arrested may post bail with the police for transmittal to the Court Clerk and obtain his or her release prior to his or her appearance before a judicial officer.

**TITLE 14. CRIMES AND PUNISHMENTS**  
**CHAPTER 2. CRIMINAL OFFENSES**  
**SUBCHAPTER 1. GENERAL; PURPOSE; PUNISHMENTS**

§ 2-113. Definitions; general. In this Code, unless a different meaning is specified in reference to a particular crime the following words and phrases shall have the following meanings:

A. "Actor" means the person who allegedly committed or omitted the act or acts constituting the crime.

B. "Bodily Injury" means a person suffers physical pain, illness or any impairment of physical condition.

C. "Carries away" means removing an article of the slightest distance. It is more than a mere change in position. It is a movement for the purpose of permanent relocation.

D. "Child," "children" or "minor" means a person or persons under eighteen (18) years of age.

E. "Child pornography" means any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct where:

1. the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct;
2. such visual depiction is a digital image, computer image, or computer-generated image that is, or is indistinguishable from, that of a minor engaging in sexually explicit conduct; or
3. such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct.

F. "Coercion" means forcing or attempting to force another to do or refrain from doing something through the use of intimidation, physical force or a threat, however communicated, to:

1. Physically injure the person threatened or any other person, which by its terms will not be, or based on the circumstances cannot be carried out at substantially the same time as its utterance or receipt;

2. Physically injure the person threatened or any other person which is not made in the presence of the person threatened, but which may be capable of substantially contemporaneous execution;
3. Injure the property of the person threatened or the property of one with whom such person has a family, social, business or other similar relationship;
4. Accuse the person threatened of a crime or to so accuse one with whom such person has a family, social, business or other similar relationship;
5. Expose the person threatened to hatred, contempt, ridicule or disgrace, or to so expose one with whom such person has a family, social, business or other similar relationship;
6. Take or withhold action as a public official or employee, or to cause a public official or employee to take or withhold action; or
7. Expose any secret, fact, report or information sought to be concealed by the person threatened.

G. "Computer" means an electronic, magnetic, optical, electrochemical or other high speed data processing device performing logical, arithmetic, or storage functions, and includes any data storage facility or communications facility directly related to or operating in conjunction with such device, but such term does not include an automated typewriter or typesetter, a portable hand-held calculator, or other similar device.

H. "Court" or "Criminal Trial Court" shall mean the Criminal Trial Court of the Muscogee (Creek) Nation.

I. "Criminal negligence" or "criminally negligent" means a gross deviation from the standard of care that a reasonable person would observe in the Actor's situation.

J. "Custody or control" includes temporary supervision over or responsibility for a minor whether legally or illegally obtained.

K. "Dangerous weapon" or "deadly weapon" means any firearm, whether loaded or unloaded, or any other instrument, material or substance, whether animate or inanimate, which is likely to produce death or serious bodily injury in the manner it is used or attempted to be used.

L. "Duty of care" means that one has a legal duty to render aide.

M. "Extreme indifference to the value of human life" means that a person acts in total disregard of the consequences to others by unjustifiably creating what a

reasonable person would realize is an inordinately high degree of risk of death to others.

N. "Force" means any touching, no matter how slight, of a person or any property on the person's body.

O. "Graphic", when used with respect to a depiction of sexually explicit conduct, means that a viewer can observe any part of the genitals or pubic area of any depicted person or animal during any part of the time that the sexually explicit conduct is being depicted.

P. "Identifiable minor"

1. means a person:

- a. who was a minor at the time the visual depiction was created, adapted, or modified; or
- b. whose image as a minor was used in creating, adapting, or modifying the visual depiction; and
- c. who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature; and

2. shall not be construed to require proof of the actual identity of the identifiable minor.

Q. "Incapacitated" means any person who by reason of mental or physical illness is disabled to the extent that the person lacks the ability to effectively engage in self-protection.

R. The term "Indistinguishable" used with respect to a depiction means virtually indistinguishable, in that the depiction is such that an ordinary person viewing the depiction would conclude that the depiction is of an actual minor engaged in sexually explicit conduct. This definition does not apply to depictions that are drawings, cartoons, sculptures, or paintings depicting minors or adults.

S. "Intent" or "intentionally" means that in addition to doing the acts or failing to act which caused the harm, the Actor acted with the specific purpose of accomplishing that harm.

T. "In the commission of" means the performance of an act which is an inseparable part of a crime or necessary for its completion, or which is performed in the

process of fleeing from the immediate scene of the crime before a position of relative safety has been reached.

U. "Know," "knows," "knowing," "knowingly," or "known" means in addition to doing the acts or failing to act, which caused the harm, the Actor has a subjective belief that something exists. Proof of actual or direct knowledge is not required. It is sufficient if the facts and circumstances sufficient to demonstrate that the Actor was relying on a particular belief. Of course, ignorance of the law is not an excuse.

V. "Law enforcement official" means any federal, state or tribal police officer, sheriff, deputy sheriff, highway patrol officer, investigator or similar public officer or official.

W. "Legal duty to render aid" means one or more of the following is present:

1. A law imposes a duty to care for another;
2. One is in a spousal relationship to another or is the parent, guardian or other person having custody of a child;
3. One has assumed a contractual duty to care for another; or
4. One has voluntarily assumed the care of another person who acts in reliance on that care. The recipient is or becomes helpless and is in a situation where others cannot reasonably render aid.

X. "Nation" means the Muscogee (Creek) Nation, including all of its agencies, Boards and Commissions, but not including its Communities.

Y. "Malicious," "maliciously," or "with malice" means that, in addition to doing the acts or failing to act, which caused the harm, the actor either had specific intent to cause the harm or had a wanton disregard of the pain and strong likelihood of causing that harm.

Z. "Minor" means any person under the age of eighteen years.

AA. "Motor vehicle" or "motor powered vehicle" means any self-propelled instrumentality in, upon, or by which a person or property may be transported.

BB. "Official detention" means:

1. detention by a Lighthouse officer or employee, or under the direction of a Lighthouse officer or employee, following arrest for an offense; following surrender in lieu of arrest for an offense; following a charge or conviction of an offense, or an allegation or finding of juvenile delinquency; following commitment as a material witness;

- following civil commitment in lieu of criminal proceedings or pending resumption of criminal proceedings that are being held in abeyance or pending extradition, deportation, or exclusion, or
2. custody by a Lighthouse officer or employee, or under the direction of a Lighthouse officer or employee, for purposes incident to any detention described in subparagraph (A) of this paragraph, including transportation, medical diagnosis or treatment, court appearance, work and recreation;
  3. but does not include supervision or other control (other than custody during specified hours or days) after release on bail, probation, or parole, or after release following a finding of juvenile delinquency.

CC. "Official proceeding" means a proceeding before any legislative, judicial, administrative or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary or other person taking testimony or deposition in connection with any such proceeding.

DD. "Omission" means a failure to act in circumstances where a legal duty to act exists.

EE. "Organization" means an organized body of people with a particular purpose.

FF. "Personal Property" means chattels and includes such things as money, goods, evidences of rights in action, and written instruments effecting a monetary obligation or right to title or property. The value of the property is immaterial.

GG. "Prison" means a correctional, detention, or penal facility;

HH. "Producing" means creating, directing, manufacturing, issuing, publishing, or advertising;

II. "Public servant" means any officer or employee of the Nation, including legislators and judges and any person performing an authorized governmental duty.

JJ. "Serious bodily injury" means bodily injury that involves a substantial risk of death, or unconsciousness, extreme physical pain, protracted and obvious disfigurement or protracted loss or impairment of the function of any bodily member or organ, or mental faculty.

KK. "Sexual act" means

1. contact between the penis and the vulva or the penis and the anus, and for purposes of this subparagraph contact involving the penis occurs upon penetration, however, slight;
2. contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus;
3. the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or
4. the intentional touching, not through the clothing of the genitalia or another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person;

LL. "Sexual activity" means a sexual act, sexual conduct, or the production of child pornography.

MM. "Sexual contact" means the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person;

NN. Except as provided in subparagraph I, "Sexually explicit conduct" means actual or stimulated:

1. sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;
2. bestiality
3. masturbation;
4. sadistic or masochistic abuse; or
5. lascivious exhibition of the genitals or pubic area of any person;

OO. For purposes of the definition of "Child pornography," "sexually explicit conduct" means:

1. graphic sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex, or lascivious simulated sexual intercourse where the genitals, breast or pubic area of any person is exhibited;
2. graphic or lascivious simulated:
  - a. Bestiality;

- b. Masturbation; or
  - c. Sadistic or masochistic abuse; or
3. graphic or simulated lascivious exhibition of the genitals or pubic area of any person.

PP. "State: means a State of the United States, a federally recognized Indian tribe, the District of Columbia, and any commonwealth, possession, or territory of the United States.

QQ. "Unlawfully" means not authorized by law.

RR. "Visual depiction" includes undeveloped film and videotape, data stored on computer disk or by electronic means which is capable of conversion into a visual image, and data which is capable of conversion into a visual image that has been transmitted by any means, whether or not stored in a permanent format.

SS. "Witness" means any person who:

- 1. Has knowledge of the existence or nonexistence of facts relating to any crime or claim or any other matter which is or may be the subject of an official proceeding or investigation;
- 2. Has made a statement under oath which has been or may be received as evidence in an official proceeding or investigation;
- 3. Has been legally served with a subpoena issued under the legal authority of the Criminal Trial Court; or
- 4. Would be believed by a reasonable person to be a person described in this paragraph.

### **SUBCHAPTER 3. CRIMES AGAINST PERSON**

#### **§ 2-303. Battery**

A. The crime of simple battery occurs when a person unlawfully applies force to another person. Any person convicted of committing battery shall be guilty of a misdemeanor.

B. The crime of protected status battery is a felony and occurs when all of the elements of battery are present and, in addition, it is knowingly committed against:

- 1. Law enforcement officials, referees or umpires, teachers or school officials, during performance of or related to their duties;
- 2. A child under fifteen (15) years of age;

3. A person sixty-two (62) years of age or older;
4. An incapacitated person; or
5. Any person because of that person's race, religion, ancestry, national origin, sexual orientation or disability.

Any person convicted of committing protected status battery shall be guilty of a felony.

C. Any person who commits any assault and battery against a current or former spouse, a present spouse of a former spouse, a former spouse of a present spouse, parents, a foster parent, a child, a person otherwise related by blood or marriage, a person with whom the defendant is or was in a dating relationship, an individual with whom the defendant has had a child, a person who formerly lived in the same household as the defendant shall be guilty of domestic abuse. Upon conviction, the defendant shall be punished by imprisonment for not more than one (1) year, or by a fine not exceeding Two Thousand Five Hundred Dollars (\$2,500.00), or by both such fine and imprisonment. Upon conviction for a second or subsequent offense, the person shall be punished by imprisonment for not more than three (3) years, or by a fine not exceeding Fifteen Thousand Dollars (\$15,000.00), or by both such fine and imprisonment.

- D.1. Any person who, with intent to do bodily harm and without justifiable or excusable cause, commits any assault, battery, or assault and battery upon a current or former spouse, a present spouse of a former spouse, a former spouse of a present spouse, a parent, a foster parent, a child, a person otherwise related by blood or marriage, a person with whom the defendant is in a dating relationship, an individual with whom the defendant has a child, a person who formerly lived in the same household as the defendant, or a person living in the same household as the defendant with any sharp or dangerous weapon, upon conviction, is guilty of domestic assault or domestic assault and battery with a dangerous weapon which shall be a felony and punishable by imprisonment not exceeding three (3) years or by a fine not exceeding Fifteen Thousand Dollars (\$15,000.00), or by both such fine and imprisonment.
2. Any person who, without such cause, shoots a current or former spouse, a present spouse of a former spouse, a former spouse of a present spouse, a parent, a foster parent, a child, a person otherwise related by blood or marriage, a person with whom the defendant is in a dating relationship, an individual with whom the defendant has a child, a person who formerly lived in the same household as the defendant, or a person living in the same household as the defendant, by means of any deadly weapon that is likely to produce death shall, upon conviction, be guilty of

domestic assault and battery with a deadly weapon which shall be a felony punishable by imprisonment not exceeding three (3) years or by a fine not exceeding Fifteen Thousand Dollars (\$15,000.00) or by both such fine and imprisonment.

E. Any person convicted of domestic abuse as defined in subsection C of this section that was committed in the presence of a child shall be punished by imprisonment for not less than six (6) months nor more than one (1) year or by a fine exceeding Two Thousand Five Hundred Dollars (\$2,500.00), or by both such fine and imprisonment. Any person convicted of a second or subsequent domestic abuse as defined in subsection C of this section that was committed in the presence of a child shall be punished by imprisonment for not less than one (1) year nor more than three (3) years, or by a fine not exceeding Fifteen Thousand Dollars (\$15,000.00), or by both such fine and imprisonment.

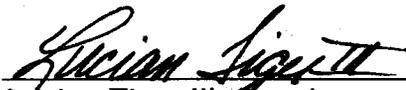
F. As used in subsection E of this section, "in the presence of a child" means in the physical presence of a child; or having knowledge that a child is present and may see or hear an act of domestic violence. For the purposes of subsections C and G of this section, "child" may be any child whether or not related to the victim or the defendant.

G. Any person who commits any assault and battery with intent to cause great bodily harm by strangulation or attempted strangulation against a current or former spouse, a present spouse of a former spouse, a former spouse of a present spouse, parents, a foster parent, a child, a person otherwise related by blood or marriage, a person with whom the defendant is or was in a dating relationship, an individual with whom the defendant has had a child, a person who formerly lived in the same household as the defendant, or a person living in the same household as the defendant shall, upon conviction, be guilty of domestic abuse by strangulation and shall be punished by imprisonment of not less than one (1) year nor more than three (3) years, or by a fine of not more than Fifteen Thousand Dollars (\$15,000.00), or by both such fine and imprisonment. As used in this subsection, "strangulation" means any form of asphyxia; including, but not limited to: asphyxia characterized by closure of the blood vessels or air passages of the neck as a result of external pressure on the neck or the closure of the nostrils or mouth as a result of external pressure on the head.

**SECTION EIGHT. EFFECTIVE DATE.** This Act shall become effective immediately upon proper approval and execution in accordance with the requirements of the Muscogee (Creek) Nation Constitution.

**ENACTED** by the Muscogee (Creek) National Council on this 19<sup>th</sup> day of March, 2016.

**IN WITNESS WHEREOF**, the Speaker of the Muscogee (Creek) National Council has hereto attached his signature.

  
\_\_\_\_\_  
Lucian Tiger III, Speaker  
National Council  
Muscogee (Creek) Nation

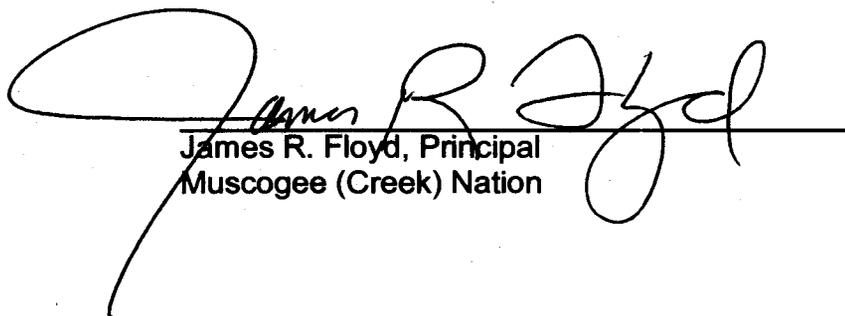
**CERTIFICATION**

I, the undersigned, certify that the foregoing is a true extract from the minutes of the Muscogee (Creek) National Council comprised of Sixteen members with **Sixteen** members attending this meeting on the **19<sup>th</sup>** day of **March, 2016** and that the above is in conformity with the provisions therein adopted by a vote of **15** in favor, **0** against, and that said Law has not been rescinded or amended in any way and the above is the signature of the Speaker of the National Council.

  
\_\_\_\_\_  
Kristie A. Sewell, Recording Secretary  
Muscogee (Creek) National Council

**APPROVAL**

I, the Principal Chief of the Muscogee (Creek) Nation, hereby affix my signature on this **28<sup>th</sup>** day of **March**, **2016** to the above Law, **NCA 16-038** authorizing it to become a Law under Article VI., Section VI., of the Constitution of the Muscogee (Creek) Nation.

  
\_\_\_\_\_  
James R. Floyd, Principal  
Muscogee (Creek) Nation

