

## DOMESTIC AND FAMILY VIOLENCE

### CHAPTER 1                    GENERAL PROVISIONS

#### Section X-1-1                Purpose.

1. The purpose of this chapter is to recognize domestic violence and family violence as serious crimes against society, the Tribes, and the family, and to provide the victim of domestic violence or family violence the maximum protection from further violence that the law, and those who enforce the law, can provide. Furthermore, the purpose of this chapter is to recognize that the strength of the Tribes is founded on healthy families, and that the safety of victims of domestic and family violence, especially children, must be ensured by immediate intervention of law enforcement, prosecution, education, treatment, and other appropriate services.
2. It is the intent of the Tribes that the official response to domestic violence and family violence shall stress the enforcement of the laws to protect the victim and to hold the perpetrator accountable, which will in turn communicate the Tribes' policy that violent behavior against intimate partners or family members is criminal behavior and will not be excused or tolerated. This in turn will promote healing of families and the Tribes where possible, and promote cultural teachings and traditional Tribal values so as to nurture nonviolence and respect within families. This chapter shall be interpreted and applied to give it the broadest possible scope to carry out these purposes.

#### Section X-1-2                Definitions.

As used in this chapter, the following terms shall have the meanings given below:

1. Abuse means the intentional infliction of physical harm, bodily injury or sexual assault or the infliction of the fear of imminent physical harm, and includes but is not limited to assault and battery as defined in the SALOC.
2. Advocate means a person who volunteers or is employed to provide services to victims of domestic violence and/or sexual assault after receiving relevant training and who is bound by confidentiality policies.
3. Anger management means a program based on psychological therapeutic techniques and exercises by which someone with excessive or uncontrollable anger can control or reduce the triggers, degrees, and effects of an angered emotional state. Anger management is not appropriate or approved for domestic violence

perpetrators. Anger management may, however, be utilized for family violence perpetrators, provided they receive an intake evaluation assessment from a qualified Tribal or State certified domestic violence professional.

4. Alarm means to cause apprehension or fear resulting from the reasonable perception of danger.
5. Coercion means to restrain, compel or dominate by force or threat.
6. Contact includes but is not limited to:
  - a) Repeatedly coming into and/or remaining in the visual or physical presence of the other person;
  - b) Following the other person;
  - c) Waiting outside the home, property, place of work or school of the other person;
  - d) Sending or making written communications in any form, including text messaging, instant messaging, and social media, to the other person;
  - e) Speaking with the other person by any means, including leaving a voicemail message;
  - f) Communicating with the other person through a third person;
  - g) Committing a crime against the other person;
  - h) Communicating with a third person who has some relationship to the other person with the intent of impacting the third person=s relationship with that other person;
  - i) Communicating with business entities with the intent of affecting some right or interest of the other person;
  - j) Damaging the other person=s home, property, place of work or school; or
  - k) Delivering directly or through a third person any object to the home, property, place of work or school of the other person.
7. Court means the Wind River Tribal Court.
8. Course of conduct means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose.
9. Dating relationship@ means a social relationship of a romantic nature. In determining whether parties have a Dating relationship, the trier of fact shall consider:
  - a) The length of time the relationship has existed;
  - b) The nature of the relationship; and
  - c) The frequency of the interaction between the parties.

10. Dating violence means a crime committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
11. Domestic violence means a crime 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 under the domestic violence laws of the Tribes. Domestic violence can take many forms including, but not limited to, use of intimidation, contact as defined within this chapter, manipulation, isolation, coercion, fear and/or violence, as well as other tactics of power and control to establish and maintain a relationship of dominance over an intimate partner, but does not include acts of self-defense. The following are examples of what form the domestic violence action may take, but are merely illustrative and not an exhaustive list:
  - a) Attempting to commit or committing any criminal offense as defined by SALOC Title VII against an intimate partner;
  - b) Physically harming, attempting to physically harm, or placing an intimate partner in reasonable fear of physical harm to himself or herself. Reasonable fear may be produced by behavior which induces fear in the victim, including, but not limited to, harassment, stalking, destruction of property, or physical harm or threat of harm to household pets;
  - c) Emotional or mental abuse of the intimate partner, including physical or mental intimidation, controlling activities, or using demeaning language;
  - d) Economic abuse of an intimate partner;
  - e) Causing an intimate partner to engage involuntarily in sexual activity; or
  - f) Preventing the victim from accessing services.
12. Electronic communications means any form of expression or exchange of information by speech, photographs or written form using electronic means. Electronic communication includes, but is not limited to, communication via telephone, facsimile, electronic mail, social media and other electronic forms.
13. Electronic surveillance means monitoring the behavior, activities, or whereabouts by electronic means.
14. Emotional Distress means a reaction such as anguish, grief, fright, humiliation, or fury.

15. Elder means a person sixty (60) or more years old.
16. Essential personal effects means those items necessary for a person's health, welfare and livelihood, including but not limited to clothing, furniture, bedding, family heirlooms, medications, money, personal documents, personal hygiene items, tools of the trade, vehicles, jewelry, regalia or any cultural or ceremonial items, and pets.
17. Ex parte in this chapter means that only the requesting party is heard by the Court, and that notice and an opportunity to contest the facts are not available to the party adversely affected by the Court's action.
18. Family or household member means:
  - a) Persons who are related by blood, marriage, or adoption;
  - b) Minor children, by blood, marriage, or adoption;
  - c) Minor children who are part of the household; or
  - d) Persons who reside or have resided together in the past who are not or have not been intimate partners.
19. 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. The dynamics of power and control may or may not be present.
20. Foreign protection order means an injunction or other order related to domestic violence or family violence, harassment, sexual abuse, or stalking, for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with, or physical proximity to another person, issued by a court of another state, territory, or possession of the United States, the Commonwealth of Puerto Rico, or the District of Columbia, or any United States military tribunal, or a Tribal Court, in a civil or criminal action.
21. "Harassment" means any intentional gesture or communication, whether electronic, written, verbal, symbolic, or otherwise, or any other intentional physical act, made directly or through a surrogate, which a reasonable person under the circumstances should know will:
  - a. Place someone in reasonable fear of physical harm to them or a loved one;
  - b. Place someone in reasonable fear of damage to their property or property of a loved one;
  - c. Cause substantial disruption or interference with the conduct of their personal or business activities or those of a loved one; or

- d. Create an intimidating, threatening, or abusive work or social environment for them or a loved one.
22. Indian Country means the definition given in 18 U.S.C. 1151.
23. Immediate family means a spouse, parent, child, sibling, live-in partner, or any other person who regularly resides in the household or who in the past regularly resided in the household.
24. Intimate partner means:
- a) Spouses;
  - b) Former spouses;
  - c) Persons who are or have been in a marital-like relationship, including same-sex relationships;
  - d) Persons who have a child in common, regardless of whether they have been married or have lived together at any time in a romantic relationship; or
  - e) Persons who are dating or have dated in the past.
25. Mandatory arrest means that a Police Officer shall arrest a person 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.
26. Minor or juvenile means any person under the age of eighteen (18) years of age.
27. No contact order means a Court order issued pursuant to a criminal case that prohibits a criminal defendant from having contact with the victim.
28. Protection order means a temporary or permanent Court order, injunction or other order related to domestic violence or family violence, harassment, sexual abuse, or stalking, granted for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with, or physical proximity to another person, who is a victim or alleged victim of domestic violence or family violence, dating violence, sexual assault or stalking; and includes any temporary or final order issued by a civil or criminal court, whether obtained by filing an independent action, 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.
29. Perpetrator means the person who has committed or is alleged to have committed an act of domestic violence or family violence. The perpetrator may also be referred to as a defendant in a criminal case or respondent in a civil case.

30. Law Enforcement Officer means any person employed or commissioned as a police or law enforcement officer by the Tribes, Bureau of Indian Affairs, Fremont County, State of Wyoming or any agency of the state or federal government or any law enforcement agency having jurisdiction within the Wind River Indian Reservation, including non-Tribally deputized officers who may make arrests on the Reservation. "Law Enforcement Department" means the governmental entity which employs the Law Enforcement Officer.
31. Probable cause for arrest means that the Law Enforcement Officer, acting as a person of reasonable caution, has reasonable grounds to believe that the person to be arrested has committed an offense as defined by this chapter, based on all the facts known to the officer, including the officer's personal observations, statements made by parties involved in the incident, statements made by witnesses, if any, and any other reliable information.
32. Repeated means two or more times.
33. Safe house means a safe home/safe house that provides temporary refuge and other services on a 24-hour, seven days per week basis, to victims of domestic violence, family violence, dating violence, sexual assault, or stalking and their children.
34. School means a public or private institution of learning or a child care facility.
35. A Tribal or State certified domestic violence perpetrator treatment program@ means a State or Tribally certified program (that adopts at the minimum the State standards) for abusers in which they are held accountable for their abusive actions and/or controlling behavior and in which their belief systems are sought to be changed.

Section X-1-3

General Jurisdiction; Repeal of Inconsistent Provisions.

1. Jurisdiction over domestic and family violence matters shall be in accordance with SALOC Title I. In addition, the Wind River Tribal Court shall exercise jurisdiction over any violations of orders of protection entered pursuant to this chapter which are alleged to have occurred outside of the boundaries of the Wind River Indian Reservation, where such orders are entitled to recognition outside Reservation boundaries as a matter of full faith and credit.
2. SALOC 9-1-1 through 9-1-5, SALOC 6-6-1(1), and any other provisions of law inconsistent with the provisions of this Code are repealed.

Section X-1-4

Special Domestic Violence Criminal Jurisdiction.

1. The Tribes hereby exercise special domestic violence criminal jurisdiction@ as a participating tribe, as defined within 25 U.S.C. 1304 (2013), subject to applicable exceptions defined therein, in the Wind River Tribal Court.
2. In all proceedings in which the Tribal Court is exercising special domestic violence criminal jurisdiction as a participating tribe, all rights afforded by SALOC Title I and those enumerated in the Indian Civil Rights Act, 25 U.S.C. 1302 shall apply to all defendants. Should there be any inconsistency between SALOC Title I and 25 U.S.C. 1302, the rights enumerated in 25 U.S.C. 1302 shall apply.
3. Every defendant has the privilege of the writ of habeas corpus as detailed in SALOC 15-2-2 to test the legality of his or her detention by order of the Tribes and may petition the Court to stay further detention pending the habeas proceeding.
  - a) The Court shall grant a stay if the Court:
    - i. Finds that there is a substantial likelihood that the habeas corpus petition will be granted; and
    - ii. After giving each alleged victim in the matter an opportunity to be heard, finds by clear and convincing evidence that under conditions imposed by the Court, the petitioner is not likely to flee or pose a danger to any person or the community if released.
4. The Tribes hereby declare and assert their special domestic violence criminal jurisdiction over any person only if he or she:
  - a) Resides within the jurisdiction of the Wind River Tribal Court; or
  - b) Is employed within the jurisdiction of the Tribes; or
  - c) Is a spouse, intimate partner, or dating partner of:
    - i. A member of the Eastern Shoshone or Northern Arapaho Tribes; or
    - ii. A member of another Indian tribe who resides within the jurisdiction of the Tribes.

Section X-1-5

Special Jurisdiction - Criminal Conduct Applicable.

The Tribes exercise the special domestic violence criminal jurisdiction over a defendant for criminal conduct that falls into one or more of the following categories:

1. Domestic Violence and Dating Violence. An act of domestic violence or dating violence that occurs within the jurisdiction of the Tribes.
2. Violations of Protection Orders. An act that occurs within the jurisdiction of the Tribes,

and:

- a) Violates the portion of a protection order that:
  - i. Prohibits or provides protection against violent or threatening acts of harassment against, sexual violence against, contact or communication with, or physical proximity to the person protected by the order;
  - ii. Was issued against the defendant;
  - iii. Is enforceable by the Tribes; and
  - iv. Is consistent with 18 U.S.C. 2265(b).

\*Disclaimer: The Eastern Shoshone Tribe and Northern Arapaho Tribe are separate federally recognized Tribes with a shared land base and choose to exercise SDCJ cooperatively, each being a “participating tribe” under this single Chapter.

For purposes of this chapter, the statute of limitations shall be consistent and follow Title IV Rule 4-2-3 or any successor code.

Section X-1-7                      Nonwaiver of Sovereign Immunity.

Nothing in this chapter shall be deemed to constitute a waiver by either Tribe of its sovereign immunity for any reason whatsoever.

Section X-1-8                      Severability.

If any part, or parts, or the application of any part of this chapter is held invalid, such holding shall not affect the validity of the remaining parts of this chapter. The Tribes hereby declares that they would have enacted the remaining parts of this chapter even if they had known that such part or parts or application of any part thereof would be declared invalid.

Section X-1-9                      Savings.

This chapter takes effect on the date approved by the Tribes’ legislative governing bodies and does not extinguish or modify any civil or criminal liability or enforcement of such penalty or forfeiture that existed on or prior to the effective date of this chapter and such code(s) shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such civil or criminal action, enforcement of any penalty therefrom, forfeiture or liability.

Section X-1-10                      Reporting Domestic and Family Violence.

1. The following persons are obligated to report suspected domestic violence or family violence if they believe it is occurring, or is about to occur and they believe the victim is at imminent risk of harm: any physician, physician=s assistant, psychologist, psychiatrist,

mental health counselor, nurse, nurse=s aide, nurse practitioner, midwife, dentist, dental assistant, hygienist, optometrist, or any medical or mental health professional; school principal, school teacher, or other school official; social worker; child day care center worker, or other child care staff including foster parents, residential care or institutional personnel; peace officer or other law enforcement official; and judge, attorney if not prevented by the attorney client privilege, probation staff, Clerk of the Court, or other judicial system official. The suspected domestic violence or family violence shall be reported immediately by telephone or otherwise to the Tribal or BIA Police Department or other tribally authorized law enforcement. The reporter may initially be logged in as anonymous.

2. Any person subject to mandatory reporting who fails, neglects, or refuses to report acts of domestic violence known to him/her, after notice and hearing, will be assessed a minimum fine or subject to a civil penalty in an amount no less than \$250 and not exceeding \$500.

**Section X-1-11**      **Immunity from Liability.**

The following persons have immunity from liability in any civil action for any act or omission made in good faith under this chapter and arising from alleged domestic violence or family violence or a crime involving domestic violence or family violence:

1. Law enforcement officers;
2. Victim advocates; and
3. Mandatory reporters.

**CHAPTER 2**      **POWER AND DUTIES OF LAW ENFORCEMENT**

**Section X-2-1**      **Law Enforcement Duties to Victims.**

A Law Enforcement Officer who responds to an allegation of domestic violence or family violence shall protect the victim and any family or household member(s), and prevent further violence, through the use of all reasonable means, including, but not limited to:

1. Taking necessary actions to provide for the safety of the victim and any family or household member(s) or witness(es), including arresting the alleged perpetrator or dominant aggressor;
2. Transporting or obtaining transportation for the victim and any child(ren) to a domestic violence safe house or other place of safety within the Tribes' service area at the victim's request;
3. Assisting the victim in removing essential personal effects, at the victim's request;
4. Assisting the victim and any child(ren) in obtaining medical treatment, including

- obtaining transportation to a medical facility;
5. Giving the victim immediate and adequate written notice of the rights of victims and of the remedies available as well as the name, address, and telephone number of local services available to victims, family or household members or witnesses of domestic violence or family violence;
  6. Confiscating any weapon as provided within this chapter;
  7. Providing assistance in obtaining a temporary protection order or emergency no contact order; and/or
  8. Offering information to the victim about his or her right to have a non-law enforcement advocate present and calling that advocate from the local agency if the victim so desires.
  9. Advising victims of all reasonable means to prevent further abuse, including advising each person of the availability of a shelter or other services in the Tribes= service area, and giving each person immediate notice of the legal rights and remedies available. The notice shall include handing each person a copy of the following statement:

IF YOU ARE THE VICTIM OF DOMESTIC VIOLENCE, you can ask the tribal court clerk to help you file a petition. You also have the right to file a petition in tribal, district, or municipal court requesting an order for protection from domestic abuse which could include any of the following: (a) An order restraining your abuser from further acts of abuse; (b) an order directing your abuser to leave your household; (c) an order preventing your abuser from entering your residence, school, business, or place of employment; (d) an order awarding you or the other parent custody of or visitation with your minor child or children; and (e) an order restraining your abuser from molesting or interfering with minor children in your custody. The forms you need to obtain a protection order are available in any tribal, municipal, or district court.

Section X-2-2                      Duty to Preserve Evidence.

1. The purpose of this section is to assist in the prosecution of perpetrators of crimes involving domestic violence and family violence and to recognize that victims of crimes involving domestic violence 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.
2. All Law Enforcement Officers who respond to an allegation of a crime involving domestic violence 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:
  - a) Photographing injuries to any victim, any damage to property and the location and surroundings of the alleged incident;
  - b) Describing both the physical and emotional condition of the victim in detail;

- c) Noting the identity of any witnesses to the incident and determining what they observed;
  - d) Identifying all persons present at the location at the time of the incident, including children, whether or not they witnessed the incident;
  - e) Recording any oral comments;
  - f) Gathering a history of the relationship and its duration;
  - g) Describing the scene of the alleged crime on first contact and other physical evidence; and
  - h) Gathering statements and interviewing responding medical personnel or following up with medical personnel if the victim is transported to a facility for medical treatment.
3. A Law Enforcement Officer who responds to an allegation of domestic violence or family violence shall encourage any victim to make an oral and written statement concerning the incident and, subject to the right against self-incrimination, shall take a statement from any perpetrator, if possible.
  4. A Law Enforcement Officer who responds to an allegation of a crime involving domestic violence 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.
  5. If a child is present in the household, the officer shall note his or her 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, or contact another appropriate Tribal or other governmental agency responsible for investigating allegations of abuse or neglect.

Section X-2-3            Mandatory Arrest.

1. The purpose of mandating arrest of perpetrators is to provide victims with immediate protection from the current violence, to afford them an opportunity to consider legal options, to provide victims with time to safely relocate or obtain a protection order, and to ensure an adequate and prompt law enforcement response to domestic violence or family violence.
2. A Law Enforcement Officer shall, without a warrant, arrest a person and charge him or her with the appropriate crime if the officer has probable cause to believe that the person has committed a crime of domestic violence or family violence within four hours of the time when the victim first has the ability to report the incident. The officer must

make an arrest upon probable cause regardless of the express wishes of the victim, but those wishes should be noted in the report. Nothing in this subsection prohibits an officer from arresting and booking a person upon probable cause to believe that a person has committed a crime involving domestic violence or family violence when more than four hours have passed.

3. If a Law Enforcement Officer receives a complaint alleging a crime involving domestic violence or family violence where two or more persons acted as aggressors but also claim to be the victims, the officer shall evaluate each account separately to determine who was more likely to have been the predominant physical aggressor. In determining whether a person was the predominant physical aggressor, the officer must consider the following as well as any other relevant factors:
  - a) Prior complaints of domestic violence or family violence;
  - b) The relative severity of the injuries inflicted on each person;
  - c) The likelihood of future injury to each person; and
  - d) Whether one of the persons acted in self-defense.
4. If a Law Enforcement Officer determines that one person was the predominant physical aggressor, the officer need not arrest the other person, even if the officer has probable cause to believe that the other person has also committed a crime involving domestic violence or family violence against the predominant physical aggressor.
5. A Law Enforcement Officer who does not make an arrest, or who arrests two or more persons after investigating an alleged crime involving domestic violence or family violence, must include in the police report a detailed statement explaining why the officer did not make an arrest, or arrested two or more parties.
6. Whenever a Law Enforcement Officer investigates an allegation of domestic violence or family violence, whether or not an arrest is made, the officer shall make a detailed written report of the alleged abuse and submit that report to the Wind River Tribal Court Prosecutor's office within forty-eight (48) hours.
7. A Law Enforcement Officer shall not threaten, suggest, or otherwise indicate the possible arrest of all parties to discourage requests for intervention by law enforcement.

Section X-2-4                      Emergency Criminal No Contact Order.

A Law Enforcement Officer shall have the authority to request from the on-call Judicial Officer an emergency criminal no contact order prohibiting contact with the victim, including third party contact, on a form approved by the Court, if the officer has probable cause to believe that a crime involving domestic violence or family violence has occurred. One of the following methods shall be used:

1. The officer shall call the on-call Judicial Officer from jail at time of booking and provide the Judicial Officer with enough information for a finding of probable cause. The officer shall then sign the order on the Judge's behalf and serve it on the defendant.
2. The officer shall call the Judicial Officer from the scene once arrest has been made and follow the same procedure as above, providing the victim with copy of the order at the scene if possible.
3. The order shall be effective until the first Court appearance or as vacated or amended by Court order.
4. Upon issuance of such an order, the officer shall serve a copy on the Perpetrator and file the order with the Court by noon on the next judicial day. The officer shall provide a copy of the order to the victim and assist the victim in securing any essential personal effects.

Section X-2-5                    Violations of Conditions of Release.

If a Law Enforcement Officer has probable cause to believe that a person has violated a condition of release from arrest or judgment or order in a domestic violence or family violence case, the officer shall, without a warrant, arrest the alleged violator.

Section X-2-6                    Duty to Expedite Service of Protection Orders.

Law Enforcement Officers shall serve orders of protection on an expedited basis and shall attempt to complete service within forty-eight (48) hours and provide a declaration of service to the Court by the next judicial day.

Section X-2-7                    Authority to Seize and Hold Weapons.

1. Incident to arrest for a crime involving domestic violence or family violence, Law Enforcement Officers shall seize all weapons that are alleged to have been involved or were threatened to be used in the commission of the crime.
2. Law Enforcement Officers may also seize weapons that are in plain view of the officer or that are discovered pursuant to a consensual search, an officer safety pat down or a search incident to arrest as necessary for the protection of the officer or other persons.
3. Law Enforcement Officers are authorized to confiscate weapons from a person who is prohibited from possessing or using them.

Section X-2-8                    Mandatory Arrest for Violations of Civil Protection Orders or Criminal No Contact Orders.

When a Law Enforcement Officer has probable cause to believe that a person has violated one of the following Court orders, the officer shall, without a warrant, arrest the alleged violator. This section applies to all violations of any protection order or no contact order whether civil or criminal. Arrest shall be mandatory where the violation is of one of the following, regardless of whether the issuing authority is the Wind River Tribal Court or another court:

1. A criminal no contact order;
2. A civil domestic violence protection order;
3. A sexual assault protection order;
4. A foreign protection order.

Section X-2-9                    Law Enforcement Records on Domestic Violence or Family Violence to be Identifiable.

The Law Enforcement Officer shall provide and his or her Department shall maintain written records of arrests, incident reports, and initial contacts in such a manner as to allow tracking and identification of them as related to domestic violence or family violence.

The Law Enforcement Officer is not required to provide to the alleged perpetrator records of police contacts alleging incidents of domestic violence, family violence, or stalking. Records may be obtained by the alleged perpetrator by Court order after notice to the Prosecutor and a hearing. In ordering disclosure, the Court may order that the victim identification and location be redacted, and may make other orders as necessary to protect the confidentiality of victim and/or witness information.

Section X-2-10                    Liability of Law Enforcement Officers.

A Law Enforcement Officer or his or her legal adviser shall not be held liable in any civil action for an arrest based on probable cause, enforcement in good faith of any Court order, or any other act or omission made in good faith under this chapter arising from an incident of alleged domestic violence or family violence or violations of one of the named criminal or civil protection orders identified within this chapter.

Section X-2-11                    Officials Who Batter.

No special treatment by policy makers or law enforcement officials shall be given to any person because of his or her official capacity as a Law Enforcement Officer, or public official, or because of his or her connections to or influence over policy makers, public officials, Law

Enforcement Officers, or the community.

### **CHAPTER 3**                    **COURT REQUIREMENTS**

#### **Section X-3-1**                    **Confidentiality.**

1. The Court shall establish a method for identifying civil and criminal cases that arise from an allegation of domestic violence or family violence or a crime of domestic violence or family violence. These files shall be treated as other confidential files subject to limited release.
2. Civil Court proceedings arising from a petition for a domestic violence or family violence order are closed to the general public. The Court may designate appropriate persons who may attend the proceeding.
3. Court records arising from a civil petition for a domestic violence or family violence order are confidential. Documents and other information contained in the file may be released to the petitioner, Law Enforcement Officers, judicial officers, Tribal Prosecutor or Reservation Attorney, victim advocates, child protection workers, and elder protection workers. The records may be released, except for the address and location of the protected person, to the respondent. The records may also be released to other persons upon order of the Court for good cause shown.
4. At all stages of a criminal proceeding under this chapter, the Court shall take steps necessary to ensure that a victim's address or location is kept confidential from members of the public, except that the address or location may be revealed, with the victim's consent, to the attorneys for the parties to the case. Defense counsel may not reveal to his or her client the address or location of the victim without authorization of the Court. The Court may order release of the information to other persons upon good cause shown.

#### **Section X-3-2**                    **Pre-Trial and Release Conditions.**

1. Any person arrested for a crime involving domestic violence, family violence, or violation of a protection order or no contact order shall be held in custody on the maximum bail allowable and without bail for violation of protection orders pending the person's first appearance before the Court, at which time bail and conditions of release shall be established. Thereafter the Court shall consider the following factors when setting bail:
  - a) Whether the person is charged with a crime of violence and
    - i. the person has been recently convicted of another crime of violence, or

- ii. the person has committed this offense while on probation or other release for another crime of violence;
  - b) Whether the person is charged with obstructing justice by having threatened, injured, or intimidated a judge, witness, or juror, or has attempted such threat, injury or intimidation;
  - c) Whether there is a strong likelihood of the person=s flight to escape trial. This requires a documented history of such flight, or evidence of circumstances indicating that such flight is a strong likelihood; or
  - d) Whether the person represents a danger to the community. This requires a pattern of behavior evidenced by past and present conduct and also requires that no conditions for release are available which would reasonably assure the safety of the community.
2. No Contact Order. Because of the likelihood of repeated violence directed at those who have been victims of domestic violence or family violence, when any person is arrested for or charged with a crime of domestic violence or family violence, the Court may issue a no contact order prohibiting the defendant from having any contact with the victim. Such an order shall be entered at the first opportunity with no additional hearing required. The following provisions shall also apply:
- a) The protected party in a no contact order shall be provided with a certified copy of the order and respondent shall be served pursuant to Section X-2-6;
  - b) In issuing a no contact order, the Court shall consider whether the firearms prohibition provisions of this chapter apply; and
  - c) A no contact order shall not be vacated without notice to the prosecutor and a hearing.
3. Other Considerations.
- a) No Ex Parte Bench Warrant Quash. A warrant issued in a domestic violence or family violence crime cannot be quashed without notice to the Prosecutor and a hearing.
  - b) Bail. Bail set in a domestic violence or family violence case requires cash only. A bond is not available unless approved by the Court and after input from the Prosecutor.
  - c) The use of GPS monitoring may be required pre- or post-trial at the recommendation of the Prosecutor or Probation Officer and at the defendant=s expense.

- d) Other Conditions. The Court may order any other lawful relief as it deems necessary for the protection of any claimed or potential victim of domestic violence or family violence, including orders or directives to the Law Enforcement Department.

Section X-3-3                      Special Court Rules for Domestic Violence or Family Violence Crimes.

In addition to the rules of court generally applicable to criminal proceedings, the Court is authorized to take the following actions in proceedings of alleged domestic violence or family violence:

1. If the alleged perpetrator pleads or is found guilty, the Court, in its discretion, may order the Probation Department to prepare a pre-sentence report prior to sentencing.
2. If it appears to the Court that alcohol or drugs played a part in the crime, a chemical dependency evaluation with a treatment plan may be ordered prior to sentencing at the discretion of the Court.
3. Upon a guilty plea, conviction, or other disposition, the Court may issue a no contact order prohibiting the defendant from having any contact with the victim irrespective of whether the victim consents.
4. Upon a guilty plea, conviction, or other disposition, the perpetrator shall be ordered to participate in a behavioral health certified domestic violence perpetrator treatment program. If a behavioral health program is unavailable at the time of sentencing, the Court may approve a certified domestic violence perpetrator treatment program in accordance with Section X-3-4(3) that comports with, at least, the following:
  - a) An intake session which the perpetrator must cooperate in and attend
  - b) The intake shall be completed by the perpetrator treatment program not later than ten (10) calendar days after entry of the order requiring treatment, unless the Court extends that time period for good cause shown.
  - c) A copy of the recommended treatment plan adopted by the domestic violence perpetrator treatment program shall be provided to the Court.
  - d) The domestic violence perpetrator treatment program, or another services provider acting on behalf of the treatment program, shall submit written progress reports to the Court at least every six (6) calendar weeks.
  - e) At the Court's discretion, the perpetrator's participation in treatment sessions based on the treatment plan may be in lieu of confinement and/or fine, or the execution of any such penalty may be suspended pending completion of the treatment ordered by the Court. However, once this service is ordered it must be completed prior to dismissal unless probation is revoked.

When entering a judgment upon conviction for a crime involving domestic violence, family violence, or stalking, the Court shall:

1. Consider the entry of orders for the protection of the victim, including those set out within this chapter;
2. Order restitution as warranted; and
3. Order the perpetrator to appropriate treatment.
  - a) For the purposes of this section, a domestic violence perpetrators= treatment intake assessment should include the following considerations: an official copy of current and past criminal history; all violence history whether or not it resulted in a conviction; family and cultural issues; substance abuse issues; and a treatment plan that adequately and appropriately addresses the treatment needs of the individual. The intake may not be based solely on the defendant=s self-report and the evaluator must make reasonable efforts to contact the victim. The defendant must sign privacy releases for the evaluator to obtain any confidential information that is necessary to the evaluation.
  - b) Satisfactory completion of domestic violence treatment required under this section must be based on meeting treatment goals, not merely the completion of a certain period of time or certain number of sessions. The treatment must focus on ending the violence and holding the defendant accountable for his or her behavior. The treatment must include education about the individual, family, and cultural dynamics of domestic violence. Treatment must include education about the effects of domestic violence on children. The defendant must sign privacy releases for the treatment provider to obtain any confidential information that is necessary to the treatment. The defendant must also sign a release for the treatment provider to provide information to the Prosecutor or probation office in order to monitor compliance with the Court order.
4. In the Court's discretion, order any other lawful relief as it deems necessary for the protection of any claimed, alleged, or potential victim of domestic violence or family violence, including orders or directives to the Law Enforcement Department.

Section X-3-5

Witness Testimony.

1. Upon the request of a Prosecutor or the defense, the Court may issue a material witness warrant compelling a witness to appear before the Court. In making the request, the party seeking a warrant must certify that:
  - a) The witness is material to the party's case;
  - b) The witness has failed or refused to appear before the Court; and
  - c) Other means of securing the witness's presence at trial have proved futile.
  
2. The Tribes declare that protection of domestic violence and family violence victim-witnesses is a substantial and compelling interest. When abuse is prosecuted, a domestic violence or a family violence victim-witness may suffer serious emotional and mental trauma from exposure to the abuser or from testifying in open court. The creation of procedural devices designed to enhance the truth-seeking process and to shield domestic violence or family violence victim-witnesses from the trauma of exposure to the abuser and the courtroom, without compromising the due process rights of the accused, is a compelling Tribal interest.
  
3. Prior Statement. A prior statement is admissible as substantive evidence at trial if the victim or other witness appears and testifies inconsistently with the statement. In determining the admissibility of the statement, the Court shall consider whether the statement was made subject to the following provisions:
  - a) The witness voluntarily made the statement;
  - b) The statement was made under circumstances that would indicate minimal guaranties of truthfulness, such as in a sworn declaration, certified statement, or affidavit signed before a notary. The sworn declaration, certified statement, or affidavit should be signed, dated, and include the following:

I have read the attached statement or it has been read to me and I know the contents of the statement. I understand that my written statement is made under penalty of perjury by signing below.
  - c) The statement was taken pursuant to standard procedure; and
  - d) The witness whose prior statement is being offered as substantive evidence is subject to cross-examination.

**CHAPTER 4**

**CRIMINAL ACTIONS AND REMEDIES**

Section X-4-1

Interfering with the Reporting of Domestic Violence or Family Violence.

1. Any person who prevents or attempts to prevent a victim or witness of domestic

violence or family violence from calling 911 or any Law Enforcement Department, or from obtaining medical assistance or making a report to any Tribal, State or Federal law enforcement official, has committed the crime of interfering with the reporting of domestic violence or family violence.

2. Persons who violate this section may be sentenced to imprisonment for a period not to exceed one (1) year, or a fine not to exceed \$5,000, or both, unless another sentence is specified by statute.

Section X-4-2            Interfering with the Prosecution of Domestic Violence or Family Violence.

1. Any person who prevents or attempts to prevent a witness from testifying in a Court proceeding, or otherwise impedes the prosecution of a case involving domestic violence or family violence, has committed the crime of interfering with the prosecution of domestic violence or family violence.
2. Persons who violate this section may be sentenced to imprisonment for a period not to exceed one (1) year, or a fine not to exceed \$5,000, or both, unless another sentence is specified by statute.

Section X-4-3            Powers and Duties of Prosecutor.

The Prosecutor shall indicate in the charging document that the defendant is being accused of a crime of domestic violence or family violence

Section X-4-4            Communication with Victim.

In every case in which a person is arrested for, or charged with, a crime under this chapter, the Prosecutor shall endeavor to maintain contact with the victim throughout the criminal proceedings, with particular attention to the following:

1. Hearing Dates, Continuances, Sentencing. The Prosecutor shall assure that the victim is informed of all hearing dates and continuances and of the right to address the Court at any hearing, in person or in writing, regarding the various impacts of the criminal offense on the victim, the risk of further acts of domestic violence or family violence, and the conditions of sentence necessary to ensure the safety of the victim and the victim's family and household members.
2. Prosecutorial Decisions. The Prosecutor shall inform the victim of every major prosecutorial decision, including a decision to decline prosecution of the crime, to dismiss the charges, or to enter into a plea agreement, within five (5) Court days of the decision and should include available resources for the victim.

3. Restitution. The Prosecutor shall obtain information from the victim regarding costs and losses sustained as a result of the defendant's act(s) of domestic violence or family violence and shall seek restitution for the victim.

Section X-4-5                      Dismissals Disfavored.

The Tribes do not favor dismissal of domestic violence or family violence charges. Thus, when the Prosecutor moves to dismiss a domestic violence or family violence charge against a defendant, the Prosecutor shall provide specific reasons for the dismissal to the Court. If the dismissal is based on the unavailability of the alleged victim or any witness, the Prosecutor shall indicate why such person(s) are unavailable and why the case cannot be prosecuted without the individuals.

Section X-4-6                      Violation of No Contact Order - Penalties.

1. A Law Enforcement Officer shall arrest without a warrant and take into custody any person who the Police Officer has probable cause to believe has willfully violated a no contact order issued under Section X-2-4 and/or Section X-3-3(3).
2. All provisions of an order issued shall remain in full force and effect until the order terminates or is modified by the Court.
3. Willful violation of a no contact order subjects the defendant to criminal penalties under this chapter. Any defendant who is found guilty of violating the terms of a no contact order may also, subject to the Court's discretion, be held in contempt of court as detailed in SALOC 1-4-1, and the Court may impose such sanctions as it deems appropriate.
4. Upon a violation of a no contact order, the offender may be sentenced to imprisonment for a period not to exceed one (1) year, or a fine not to exceed \$5,000, or both, unless another sentence is specified by statute.
5. Upon a third or subsequent violation of a no contact order, the offender may be sentenced to imprisonment for a period not to exceed three (3) years, a fine not to exceed \$15,000, or both, unless another sentence is specified by statute.
6. Consent is not a defense to a violation of a domestic violence no contact order.

Section X-4-7                      Violation of Domestic Violence Protection Order - Penalties.

1. A Law Enforcement Officer shall arrest without a warrant and take into custody any

person who the Law Enforcement Officer has probable cause to believe has willfully violated an order issued.

2. All provisions of an order issued shall remain in full force and effect until the order terminates or is modified by the Court.
3. Willful violation of any domestic violence protection order subjects the respondent to criminal penalties under this chapter. Any respondent who is found guilty of violating the terms of a domestic violence protection order may also, subject to the Court's discretion, be held in contempt of court, and the Court may impose such sanctions as it deems appropriate.
4. Upon a violation of a domestic violence protection order, the offender may be sentenced to imprisonment for a period not to exceed one (1) year, or a fine not to exceed \$5,000, or both, unless another sentence is specified by statute.
5. Upon a third or subsequent violation of a domestic violence protection order, the offender may be sentenced to imprisonment for a period not to exceed three (3) years, a fine not to exceed \$15,000, or both, unless another sentence is specified by statute.
6. Consent is not a defense to a charge of violation of a domestic violence protection order.

Section X-4-8            Victim Rights.

Notwithstanding other provisions of this Code, a victim of a crime under this chapter shall have the following rights:

1. The right to be reasonably protected from the accused.
2. The right to reasonable, accurate, and timely notice of any public Court proceeding, or any probation proceeding, involving the crime or of any release or escape of the accused.
3. The right not to be excluded from any such public Court proceeding, unless the Court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding.
4. The right to be reasonably heard at any public proceeding in Court involving release, plea, sentencing, or any parole proceeding.
5. The reasonable right to confer with the Prosecutor in the case.

6. The right to full and timely restitution as provided by law.
7. The right to proceedings free from unreasonable delay.
8. The right to be treated with fairness and with respect for the victim's dignity and privacy.
9. The right to provide a victim impact statement.
10. The right to engage a domestic violence advocate outside of law enforcement to support the victim throughout the process.

For purposes of this section, a victim impact statement @ is a written or oral statement given to the sentencing judge by the victim. Such statements may include the impact of the crime on the victim, and how the crime affected the victim psychologically, financially, and physically. The Prosecutor shall assist the victim to provide this statement. The Court shall make all reasonable efforts to accommodate the participation of the victim at the sentencing hearing, being mindful of the unique emotional and psychological barriers victims may experience when facing a perpetrator in Court.

Section X-4-9                      Written Statement of Conditions to Defendants.

The Court shall direct that the probation officer provide the defendant with a written statement that sets forth all the conditions to which the sentence is subject, and that is sufficiently clear and specific to serve as a guide for the defendant's conduct and for such supervision as is required. This statement shall be signed and dated by defendant when received.

Section X-4-10                      Violations by Juveniles - Mandatory Arrest.

1. Whenever a Law Enforcement Officer has grounds to arrest a person who is a juvenile, the officer shall arrest the juvenile as provided in this chapter, and the provisions of this chapter shall govern the arrest and all subsequent proceedings.
2. A juvenile held in custody under this chapter shall be held in any of the following places:
  - a) Juvenile detention facility.
  - b) Juvenile halfway home.
  - c) Any other suitable place approved by the Court.
3. All civil and criminal proceedings against a juvenile under this chapter shall be within the jurisdiction of the Tribal Court rather than the Juvenile Court.

4. The arrest and prosecution of a juvenile under this chapter does not bar proceedings in an appropriate Juvenile Court.
5. A petition for a protection order may be filed against a juvenile who is alleged to have committed an act of domestic violence, and the provisions of this chapter shall govern all subsequent proceedings in the action.

## **CHAPTER 5**                      **CIVIL REMEDIES AND ACTIONS**

### **Section X-5-1**                      **Civil Protection Order.**

Purpose. A person may seek a protection order whether or not the person has contacted Law Enforcement Officers to report a crime, but such persons should be referred to Law Enforcement Officers in the event that a crime has been committed. It is the policy of the Tribes that temporary protection orders may be issued without prior notice to the respondent to ensure the immediate protection of the victim and any family or household member, and to prevent further violence. Orders may be modified or extended, with or without prior notice to the respondent or a hearing, consistent with this purpose. Relief under this chapter may not be denied or delayed on the grounds that the relief is available in another action.

1. A petition to obtain a protection order under this section may be filed by:
  - a) Any person claiming to be the victim of domestic violence, family violence, dating violence, sexual assault, or stalking;
  - b) Any family member or household member of a minor or vulnerable adult alleged to be the victim of domestic violence, family violence, dating violence or stalking on behalf of the minor or vulnerable adult;
  - c) The Tribal Prosecutor; or
  - d) Any person acting in an official capacity in the protection of victims of domestic violence, family violence, dating violence or stalking

### **Section X-5-2**                      **Petition for Civil Protection Order or Modification.**

1. A petition shall allege the existence of domestic violence, family violence, dating violence, sexual assault or stalking, and shall be supported by an affidavit made under oath stating the specific facts and circumstances justifying the requested order.
2. A petition may be filed regardless of the pendency of any other civil or criminal proceeding related to the allegations in the petition.
3. No filing fee shall be required for the filing of a petition under this section. If an alleged perpetrator has been arrested for the offense of domestic violence, family violence,

dating violence or stalking, the Court or the arresting Law Enforcement Officer shall advise the alleged victim of the right to file a petition under this section without cost.

4. The petitioner, or the victim on whose behalf a petition has been filed, is not required to file for annulment, separation, or divorce as a prerequisite to obtaining a protection order. However, the petition shall state whether any other action is pending between the petitioner or victim and the respondent.
5. The Court shall make available standard, simplified petition forms and instructional brochures with instructions for completion. The Tribal or BIA Police Department and the Tribal Court shall make such forms available upon request to victims of domestic violence, family violence, dating violence, or stalking.
6. Once a petition has been filed, the Court Clerk shall conduct a criminal background check according to Court policy and attach the report(s) to the petition.

Section X-5-3                      Procedure for Issuance of a Civil Protection Order.

Upon the filing of a petition for a protection order, the Court shall evaluate the petition and, when deciding whether or not to grant an ex parte temporary protection order, apply a rebuttable presumption in favor of protecting the petitioner and any other family members during this initial process, and:

1. Immediately grant an ex parte protection order without bond if, based on the specific facts stated in the affidavit, the Court has probable cause to believe that the petitioner or the person on whose behalf the petition has been filed is the victim of an act of domestic violence, family violence, dating violence, sexual assault, or stalking committed by the respondent, and issuance of the ex parte order is necessary to protect the victim from further abuse.
2. Cause an ex parte protection order, together with notice of hearing, to be made immediately available to the petitioner for service by a Law Enforcement Officer, Court Officer, or other authorized person.
3. Hold the record open, at the Court's discretion, and request additional information if the submitted information is insufficient at the time of filing. The record must be completed within seventy-two (72) hours, at which time the order shall be granted or denied.
4. Hold a hearing within fourteen (14) days after the granting of the ex parte temporary protection order to determine whether the temporary order should be vacated, extended, or modified in any respect, or made a permanent order of protection with or

without an expiration date. At the hearing, both parties may testify, and the Court will review the record and may consider other relevant evidence. Copies of any writings, declarations, affidavits or other documentary evidence entered as exhibits must be provided to the other party. Rules of evidence may be relaxed in these proceedings and testimony is not required.

5. Serve notice upon both parties to appear in Tribal Court and hold a hearing on the petition for protection order within seventy-two (72) hours after the filing of the petition, if an ex parte order is not granted.
6. Once granted, the protection order may not be dismissed without a Court hearing.

Section X-5-4            Contents of a Civil Protection Order.

An ex parte protection order or a protection order entered after notice and hearing may, when deemed appropriate by the Court, include provisions:

1. Restraining the respondent from committing acts of domestic violence, family violence, dating violence, sexual assault, or stalking.
2. Excluding the respondent from the residence, work place, school, and grounds of dwelling of the victim or other specific location where the victim can be found on a regular basis, whether or not the respondent and the victim share that residence.
3. Restraining the respondent from any contact with the victim and his or her family or household members as is necessary for their safety and welfare.
4. Awarding temporary custody or establishing temporary visitation rights with regard to minor children of the respondent on a basis that gives primary consideration to the safety of the claimed victim and the minor children.
  - a) In every proceeding where there is a dispute as to the custody of a minor child, a determination by the Court that domestic violence, family violence, sexual assault or stalking has occurred raises a rebuttable presumption that it is detrimental to the child and not in the best interest of the child to reside with or be placed in sole custody, joint legal custody, or joint physical custody with the perpetrator of domestic violence, family violence, dating violence, sexual assault, or stalking.
  - b) In every such proceeding where there is a dispute as to the custody of a minor child, a determination by the Court that domestic violence, family violence, sexual assault, or stalking has occurred raises a rebuttable presumption that it is in the best interest of the child to reside with the parent who is not a

- perpetrator of domestic violence, family violence, dating violence, sexual assault, or stalking in the location of that parent's choice.
- c) In every such proceeding involving the modification of an order for custody or visitation of a minor child, the finding that domestic violence, family violence, dating violence, sexual assault, or stalking has occurred since the last custody determination constitutes a finding of a change in circumstances.
  - d) If the Court finds that the safety of the claimed victim or the minor children will be jeopardized by unsupervised or unrestricted visitation, the Court shall set forth conditions to or restrict visitation as to the time, place, duration, or supervision, or deny visitation entirely, as needed, to guard the safety of the claimed victim and the minor children.
  - e) In determining custody and/or visitation, the Court must consider the perpetrator's history of causing physical harm, bodily injury, assault, or causing reasonable fear of physical harm, bodily injury, or assault to another person.
  - f) If a parent is absent or relocated because of an act of domestic violence, family violence, dating violence, sexual assault, or stalking by the other parent, the absence or relocation is not a factor that weighs against the parent in determining temporary custody or visitation.
  - g) Any temporary custody order shall provide for child support and temporary support for the person having custody of the children, in amounts deemed proper by the Court.
  - h) In a visitation order, the Court may:
    - i. Order an exchange of a minor child to occur in a protected setting;
    - ii. Order that visitation be supervised by another person or agency at the expense of the perpetrator of domestic violence, family violence, dating violence, sexual assault, or stalking;
    - iii. Order the perpetrator of domestic violence, family violence, dating violence, sexual assault, or stalking to attend and complete, to the satisfaction of the Court, a program of intervention for perpetrators or other designated counseling as a condition of the visitation;
    - iv. Order the perpetrator of domestic violence, family violence, dating violence, sexual assault, or stalking to abstain from possession or consumption of alcohol, controlled substances or abuse of prescription drugs during the visitation and for twenty-four (24) hours preceding the visitation and may order submission of a drug test exam prior to the visit;
    - v. Prohibit overnight visitation;
    - vi. Require a Court-approved bond from the perpetrator of domestic violence, family violence, dating violence, sexual assault, or stalking for the return and safety of the minor child; and
    - vii. Impose any other condition that is deemed necessary to provide for the safety of the minor child, the victim of domestic violence, family violence, dating violence, sexual assault, or stalking or other family or household

member.

- i) Whether or not visitation is allowed, the Court may order the address of the minor child and the victim to be kept confidential.
  - j) The Court may refer but may not order an adult who is a victim of domestic violence, family violence, dating violence, sexual assault, or stalking to attend counseling relating to the victim=s status or behavior as a victim, as a condition of receiving custody of a minor child or as a condition of visitation.
  - k) If the Court allows a family or household member to supervise visitation, the Court must establish, in writing, conditions to be followed during visitation.
  - l) The Court shall notify the restrained party that the willful violation of any provision of the protection order is a criminal offense and punishable by imprisonment and/or a fine.
5. Ordering temporary guardianship with regard to an elderly or vulnerable adult victim of domestic violence, family violence, dating violence, sexual assault, or stalking if necessary for the safety of the elderly or vulnerable adult until the matter can be addressed.
  6. Awarding temporary use and possession of property of the respondent.
  7. Restraining one or both parties during the pendency of the action from transferring, encumbering, concealing, or disposing of property except as authorized by the Court and requiring that an accounting shall be made to the Court for all such transfers, encumbrances, dispositions, and expenditures.
  8. Ordering the respondent to timely pay any existing debts of the petitioner, including mortgage or rental payments, necessary to maintain the claimed victim in his/her residence.
  9. Describing any prior orders of the Court relating to domestic matters which are superseded or altered by the protection order.
  10. Notifying the parties that the willful violation of any provision of the order constitutes contempt of court as defined in SALOC Section 1-4-1 punishable by a fine or imprisonment or both and constitutes a violation of this code for which civil penalties may be assessed.
  11. Ordering the landlord, including Tribal housing, to change ~~of~~ the locks of the victim=s residence, within twenty-four (24) business hours of issuance of the order, if the victim or alleged victim is awarded temporary use of the residence and is listed on the rental agreement.

12. Ordering Law Enforcement to assist the victim in removing essential personal effects from a shared home.
13. Ordering, in the Court's discretion, any other lawful relief as it deems necessary for the protection of any claimed or potential victim of domestic violence, family violence, dating violence, sexual assault, or stalking, including orders or directives to the Law Enforcement Department.

Section X-5-5                      Duration of Permanent Civil Protection Order and Modification.

1. The provisions of the order shall remain in effect for the period of time stated in the order, not to exceed one year unless extended by the Court at the request of any party or at the request of a victims service program.
2. The Court may modify a protection order in its discretion upon request of either party or a victims service program
3. By the Petitioner. Before the Court may modify or reconsider a protection order at the request of the petitioner, if children live in the home, the Court may require petitioner to attend a relevant support group, with a session focused on the effects of domestic violence, family violence, dating violence, sexual assault or stalking on children.
4. By the Respondent. Before the Court may modify or reconsider a protection order at the request of the respondent, he or she shall provide the Court with all pertinent documents, affidavits, compliance forms or any other information required by the Court for either reconsideration or modification of protection orders.

Section X-5-6                      Service of Temporary Civil Protection Orders.

Temporary protection orders are to be served personally upon the respondent by a Law Enforcement Officer, officer of the Court, or other authorized person within 48 hours if possible. If the respondent cannot be located, the order shall be mailed by certified mail with return receipt requested and regular mail to the respondent's last known address. If respondent has been served with notice of the hearing and fails to appear, the petitioner has no further requirement to serve the respondent with the final order entered by the Court at the hearing.

Section X-5-7                      Copy to the Police Department and Other Jurisdictions.

Each protection order granted pursuant to this code and each order issued shall be forwarded by fax or email by the Clerk of Courts within twenty-four (24) hours to the appropriate Law Enforcement Department and the courts of Fremont and Hot Springs County, or any other appropriate jurisdiction for entry into the State-wide data system. The Law Enforcement

Department shall make available to each officer information as to the existence and status of each such order.

Section X-5-8                    Penalties for Violation of a Civil Protection Order.

Violation of a protection order is a crime.

1. Upon a violation of a protection order, the offender may be sentenced to imprisonment for a period not to exceed one year, or a fine not to exceed \$5,000, or both, unless another sentence is specified by statute.
2. Upon a third or subsequent violation of a protection order, the offender may be sentenced to imprisonment for a period not to exceed three years, a fine not to exceed \$15,000, or both, unless another sentence is specified by statute.
3. Consent is not a defense to a charge of violation of a protection order.

**CHAPTER 6**                    **SPECIAL RULES OF COURT AND OTHER ISSUES**

Section X-6-1                    Secure Waiting Area.

Whenever practical, the Court shall provide a secure waiting area or bailiff supervision prior to and during Court proceedings for a victim, and his or her family, of domestic violence, family violence, sexual assault, dating violence, or stalking, which will not require them to be in close proximity to the defendant or his or her families or friends.

Section X-6-2                    Fees Not Permitted.

Neither the Tribal Court nor a public agency may charge a fee for filing or preparation of certified, authenticated, or exemplified copies to a person entitled to protection who seeks relief under this chapter or to a foreign prosecutor or a foreign law enforcement agency seeking to enforce a protection order. A person entitled to protection and foreign prosecutors or law enforcement agencies must be provided the necessary number of certified, authenticated, or exemplified copies at no cost.

Section X-6-3                    Child Custody Disputes.

1. Any disputes regarding provisions in foreign protection orders dealing with custody of children, residential placement of children, or visitation with children shall be resolved judicially. The proper venue and jurisdiction for such judicial proceedings shall be determined in accordance with Title 14, Chapter 19 of SALOC or its successor.

2. A Law Enforcement Officer shall not remove a child from his or her current placement unless:
  - a) A writ of habeas corpus to produce the child has been issued by the Wind River Tribal Court, a court of the State of Wyoming, or another tribal court; or
  - b) There is probable cause to believe that the child is abused or neglected and the child would be injured or could not be taken into custody if it were necessary to first obtain a Court order.

## **CHAPTER 7**

## **FOREIGN ORDERS**

### **Section X-7-1**

### **Full Faith and Credit.**

Purpose. The purpose of this section is to ensure compliance with the full faith and credit provision of the Violence Against Women Act of 1994 (VAWA) as set forth in 18 U.S.C. 2265, as it may be amended from time to time, and to ensure that victims of domestic violence are able to move across State and Tribal boundaries without losing the ability to enforce protection orders they have previously obtained to increase their safety.

A foreign protection order is valid if recognition is sought under SALOC Title 1, Chapter 9, and if the issuing court had jurisdiction over the parties and matter under the law of the state, territory, possession, Indian tribe, or United States military tribunal.

A person under restraint must have been given reasonable notice and the opportunity to be heard before the protection order of the foreign state, territory, possession, Indian tribe or United States military tribunal was issued. In the case of an ex parte order, notice and opportunity to be heard must have been provided within a reasonable time after the order was issued, consistent with due process.

### **Section X-7-2**

### **Filing a Foreign Protection Order.**

1. A person entitled to protection who has a valid foreign protection order may file that order by presenting a certified, authenticated, or exemplified copy of the foreign protection order to a Clerk of the Wind River Tribal Court. Any out-of-state department, agency, or court responsible for maintaining protection order records may by facsimile or electronic transmission send a reproduction of the foreign protection order to the Clerk of the Court as long as it contains a facsimile or digital signature by any person authorized to make such transmission.
2. There shall be a presumption in favor of validity where a protection order appears authentic on its face.

3. Filing of a foreign protection order with a court and entry of the foreign protection order into any computer-based criminal intelligence information system available in this State used by law enforcement agencies to list outstanding warrants are not prerequisites for enforcement of the foreign protection order.
4. The Court shall accept the filing of a foreign protection order without a fee or cost.
5. The Clerk of the Court shall provide information to a person entitled to protection of the availability of domestic violence, family violence, sexual abuse, stalking and dating violence or other services to victims in the community.
6. The Clerk of the Court shall assist the person entitled to protection in completing an information form that must include, but need not be limited to, the following:
  - a) The name of the person entitled to protection and any other protected parties;
  - b) The name and address of the person who is subject to the restraint provisions of the foreign protection order;
  - c) The date the foreign protection order was entered;
  - d) The date the foreign protection order expires;
  - e) The relief granted under the foreign protection order (specify the relief awarded and citations thereto, and designate which of the violations are arrestable offenses);
  - f) The judicial district and contact information of the court administration for the court in which the foreign protection order was entered;
  - g) The Social Security number, date of birth, and description of the person subject to the restraint provisions of the foreign protection order;
  - h) Whether the person who is subject to the restraint provisions of the foreign protection order is believed to be armed and dangerous;
  - i) Whether the person who is subject to the restraint provisions of the foreign protection order was served with the order, and if so, the method used to serve the order; and
  - j) The type and location of any other legal proceedings between the person who is subject to the restraint provisions and the person entitled to protection
  - k) An inability to answer any of the above questions does not preclude the filing or enforcement of a foreign protection order.
7. The Clerk of the Court shall provide the person entitled to protection with a copy of the foreign order bearing proof of filing with the Tribal Court.
8. Any assistance provided by the Clerk under this section does not constitute the practice of law. The Clerk is not liable for any incomplete or incorrect information that he or she is provided.

Section X-7-3

Transmittal of Filed Foreign Protection Orders to Law Enforcement Agency.

1. The Clerk of the Court shall forward a copy of a foreign protection order that is filed under this chapter on or before the next judicial day to the Tribal or BIA Police Department and County Sheriff along with the completed information form. The Clerk may forward the foreign protection order to the County Sheriff by facsimile or electronic transmission. Upon receipt of the filed foreign protection order, the Tribal or BIA Police Department shall immediately enter the foreign protection order into any computer-based criminal intelligence information system available, listing outstanding warrants. The foreign protection order must remain in the computer for the period stated in the order. The Tribal or BIA Police Department shall only expunge from the computer-based criminal intelligence information system foreign protection orders that are expired, vacated, or superseded. Entry into the computer-based intelligence information system constitutes notice to all law enforcement agencies of the existence of the foreign protection order. The foreign protection order is fully enforceable on the Wind River Reservation.
2. The information entered into other computer-based criminal intelligence information systems must include, if available, notice to law enforcement whether the foreign protection order was served and the method of service.

Section X-7-4

Violation of Foreign Orders.

1. Whenever a foreign protection order is granted to a person entitled to protection and the person under restraint knows of the foreign protection order, a violation of a provision prohibiting the person under restraint from contacting or communicating with another person, or of a provision excluding the person from a residence, workplace, school, or daycare, or of a provision prohibiting a person from knowingly coming within, or knowingly remaining within, a specified distance of a location, or a violation of any provision for which a foreign protection order specifically indicates that a violation will be a crime, shall subject the person to the same penalties as if the order were issued by the Wind River Tribal Court.
2. Upon conviction, and in addition to any other penalties provided by law, the Court may require the person under restraint to submit to electronic or other monitoring (Global Positioning System (GPS) or similar). The Court shall specify who will provide the electronic or other monitoring services, and the terms under which the monitoring will be performed. The order also may include a requirement that the person under restraint pay the costs of the monitoring. The Court shall consider the ability of the convicted person to pay for electronic or other monitoring.

3. A Law Enforcement Officer shall arrest without a warrant and take into custody a person when the Law Enforcement Officer has probable cause to believe that a foreign protection order has been issued of which the person under restraint has knowledge and the person under restraint has violated a provision of the foreign protection order for which the foreign protection order specifically indicates that a violation will be a crime. Presence of the order in the law enforcement computer-based criminal intelligence information system is not the only means of establishing knowledge of the order.

Section X-7-5                    Police/Peace Officer Immunity.

No Law Enforcement Officer, peace officer, or officer=s legal advisor shall be held criminally or civilly liable for making an arrest under this chapter if the Law Enforcement Officer, peace officer, or the officer=s legal advisor acted in good faith and without malice.

**CHAPTER 8**                    **HARRASSMENT**

Section X-8-1                    Purpose.

The Tribes find that the prevention of harassment is important to the health, safety, and general welfare of the Tribal community. This chapter is intended to provide victims with a speedy and inexpensive method of obtaining civil harassment protection orders preventing all further unwanted contact between the victim and the perpetrator.

Section X-8-2                    Harassment protection order.

For the purpose of this section, Aharassment protection order@ means a Court order restricting a person from harassing, threatening, contacting, or approaching another specified person for a period of time.

Section-X-8-3                    Temporary harassment protection order.

For the purpose of this section, Atemporary harassment protection order@ means a Court order restricting a person from harassing, threatening, contacting, or approaching another specified person not longer than fourteen (14) days.

Section X-8-4                    Petition for harassment protection order.

There shall exist an action known as petition for harassment protection order for cases of harassment. The requirements for obtaining such an order are as follows:

1. A petition to obtain a harassment protection order under this section may be filed by any person claiming to be the victim of harassment or made by a parent or guardian, if the child is subject to the jurisdiction of the Court, on behalf of the child. A petition for relief may be made regardless of whether or not there is a pending lawsuit, criminal complaint, petition, or other action between the parties, except that a parent may not petition for a harassment protection order on behalf of his or her child against the child=s other parent. Petitioner and respondent shall disclose the existence of any other litigation or of any other restraining, protection, or no contact orders between the parties.

Section X-8-5                      Contents of a Petition for Harassment Protection Order.

1. A petition for relief shall allege the existence of harassment and shall be accompanied by a statement made under penalty of perjury stating the specific facts and circumstances from which relief is sought.
2. The Court shall make simplified petition forms and instructional brochures available. Any information provided by clerks under this section does not constitute the practice of law and clerks are not responsible for incorrect information contained in a petition.
3. Civil filing fees shall apply for filing of a petition under this section, unless the Court makes a finding upon due inquiry that the petitioner lacks the financial resources to pay filing fees.
4. No bond is required to obtain relief in any proceeding under this section.
5. The parent or guardian of a child under age eighteen (18) years may petition for an harassment protection order to restrain a person age eighteen (18) years or over from contact with that child upon a showing that contact with the person to be restrained is detrimental to the welfare of the child.

Section X-8-6                      Temporary Harassment Protection Order - Ex parte.

1. Upon filing a petition for an harassment protection order under this section, the petitioner may obtain an ex parte temporary harassment protection order with or without serving notice upon the respondent by filing a statement made under penalty of perjury which, to the satisfaction of the Court, shows evidence of harassment of the petitioner by the respondent, and that continued harassment may result if the temporary harassment protection order is not granted.
2. An ex parte temporary harassment protection order shall be effective for a fixed period not to exceed fourteen (14) days. A full hearing, as provided in this chapter, shall be set

for not later than fourteen (14) days from the issuance of the temporary order. The respondent shall be personally served with a copy of the ex parte temporary harassment protection order along with a copy of the petition and notice of the date set for the hearing.

Section X-8-7                      Permanent Harassment Protection Order.

1. At the hearing within fourteen (14) calendar days after the granting of the temporary harassment protection order, a permanent order shall be issued prohibiting such harassment if the Court finds by a preponderance of the evidence that harassment exists or has occurred. Otherwise, the temporary harassment protection order shall expire on its own terms. If the respondent does not appear, the petitioner must demonstrate that he or she effected proper service, and a default judgment will be entered.
2. An order issued under this section shall be effective for not more than one year unless the Court finds that any future contact with petitioner would result in the harm from which the petitioner originally sought protection. If the Court so finds, the Court may enter an order to a fixed time exceeding one year or may enter a permanent harassment protection order.
3. In the event that a respondent fails to appear for a hearing and the petitioner cannot demonstrate service upon him or her, the Court may grant a second ex parte temporary harassment protection order to the same petitioner enjoining the same respondent. If an officer investigates an alleged violation of an order issued pursuant to this chapter and service has not been effected prior to contact, the officer shall provide service as described herein and within the next day file proof of service with the Court.
4. At any time within three months prior to the expiration of the order, the petitioner may apply for a renewal of the order by filing a motion for renewal with the Court. The motion for renewal shall state the reasons why he or she seeks to renew the order. Upon receipt of the motion for renewal, the Court shall order a hearing which shall be held within 14 days from the date of motion. The Court shall grant the motion for renewal unless the respondent proves by a preponderance of evidence that he or she will not resume harassment of the petitioner when the order expires. The Court may renew the harassment protection order for another fixed period or may enter a permanent order.
5. The Court, in granting an harassment protection order, shall have broad discretion to grant such relief as the Court deems proper including but not limited to:
  - a) Restraining the respondent from making attempts to contact the petitioner and all persons listed in the petition.

- b) Restraining the respondent from making any attempts to monitor the petitioner by actual, electronic, or any other form of surveillance.
- c) Requiring the respondent to stay a specified minimum distance from the petitioner=s residence, workplace, and/or school.

Section X-8-12                      Notice to Local Law Enforcement Agencies - Enforceability.

- 1. A copy of a permanent or temporary harassment protection order granted under this chapter shall be forwarded by the Clerk of the Court on or before the next judicial day to the Tribal or BIA Police Department or appropriate law enforcement agency. Upon receipt of the order, the Police Department shall enter the order into the computer-based criminal intelligence information system currently in use by the Department to list outstanding warrants. The Police Department shall expunge expired orders from the computer system. Entry into the information system constitutes notice to the Police Department of the existence of the order.
- 2. If an officer investigates an alleged violation of an order issued pursuant to this chapter and service has not been effected prior to contact, the officer shall provide service as described herein and within the next business day file proof of service with the Court. Law Enforcement Officers shall update the criminal information system to reflect that service has been effected.

Section X-8-13                      Contempt and Violation of Harassment Protection Order - Penalties.

- 1. Knowing violation of any permanent or temporary harassment protection order subjects the respondent to criminal penalties under this chapter.
- 2. Any respondent who is found guilty of violating the terms of the order may also, subject to the Court=s discretion, be held in civil contempt of court as detailed in Section 1-4-1 of SALOC, and the Court may impose such sanctions as it deems appropriate.
- 3. Upon a violation of a permanent or temporary harassment protection order, the offender may be sentenced to imprisonment for a period not to exceed six (6) months, or a fine not to exceed \$2,500, or both, unless another sentence is specified by statute.
- 4. Upon a third or subsequent violation of a permanent or temporary harassment protection order, the offender may be sentenced to imprisonment for a period not to exceed one (1) year, or a fine not to exceed \$5,000, or both, unless another sentence is specified by statute.
- 5. Consent is not a defense to a charge of violation of a permanent or temporary

harassment protection order.

Section X-8-14      Full Faith and Credit.

Harassment protection orders are entitled to full faith and credit pursuant to Section X-7-1.

**CHAPTER 9**                      **SEXUAL ASSAULT PROTECTION ORDERS**

Section X-9-1 Purpose.

The Tribes find that there are times when a victim of a sexual assault or unwanted sexual contact is neither an intimate partner nor family member, thus does not qualify for the protections from these types of orders. Nevertheless, the victim deserves all the protections afforded within this chapter because the alleged sexual assault or unwanted sexual contact is such a heinous incident that goes to the heart of the health, safety, and general welfare of the communities of the Wind River Reservation. Therefore, a protection order provided under this chapter is to protect those that have been sexually assaulted.

Section X-9-2                      Persons Authorized to File.

A petition for a sexual assault protection order may be filed by a person:

1. Who does not qualify for a domestic violence or family violence protection order and who is a victim of nonconsensual sexual conduct or nonconsensual sexual penetration, including a single incident of nonconsensual sexual conduct or nonconsensual sexual penetration; or
2. On behalf of any of the following persons who is a victim of nonconsensual sexual conduct or nonconsensual sexual penetration and who does not qualify for a domestic violence or family violence protection order:
  - a) A minor child; or
  - b) Any other adult who, because of age, disability, health, or inaccessibility, cannot file the petition.

Section X-9-3                      Petition for Sexual Assault Protection Order.

There shall exist an action known as a petition for a sexual assault protection order.

1. A petition for relief shall allege the existence of nonconsensual sexual conduct or nonconsensual sexual penetration, and shall be accompanied by an affidavit made

under oath stating the specific statements or actions made at the same time of the sexual assault or subsequently thereafter which give rise to a reasonable fear of future dangerous acts for which relief is sought. Petitioner and respondent shall disclose the existence of any other litigation or of any other restraining, protection, or no contact orders between the parties.

2. A petition for relief may be made regardless of whether or not there is a pending lawsuit, criminal complaint, petition, or other action between the parties.
3. Forms and instructional brochures and the necessary number of certified copies shall be provided to the petitioner free of charge.
4. A person is not required to post a bond to obtain relief in any proceeding under this section.
5. If the petition states that disclosure of the petitioner=s address would risk abuse of the petitioner or any member of the petitioner=s family or household, that address may be omitted from all documents filed with the Court. If the petitioner has not disclosed an address under this subsection, the petitioner shall designate an alternative address, such as a victims service office, at which the respondent may serve notice of any motions.

Section X-9-4

Emergency Sexual Assault Protection Order - Ex parte.

1. An ex parte temporary sexual assault protection order shall issue if the petitioner, to the satisfaction of the Court, provides evidence that shows:
  - a) The petitioner has been a victim of nonconsensual sexual conduct or nonconsensual sexual penetration by the respondent; and
  - b) There is good cause to grant the remedy, regardless of the lack of prior service of process or of notice upon the respondent, because the harm which that remedy is intended to prevent would be likely to occur if the respondent were given any prior notice, or greater notice than was actually given, of the petitioner=s efforts to obtain judicial relief.
3. If the Court declines to issue an ex parte temporary sexual assault protection order, the Court shall state the particular reasons for the Court=s denial and set a hearing on the petition. The Court=s denial of a motion for an ex parte temporary protection order shall be filed with the Court.
4. A willful violation of a Court order issued under this section is punishable under the laws for the Tribes and will subject the perpetrator to arrest.

5. An ex parte temporary sexual assault protection order shall be effective for a fixed period not to exceed fourteen (14) days. A full hearing, as provided in this chapter, shall be set for not later than fourteen (14) days from the issuance of the temporary order. The respondent shall be personally served with a copy of the ex parte temporary sexual assault protection order along with a copy of the petition and notice of the date set for the hearing. Any ex parte temporary sexual assault protection order issued under this section shall contain the date and time of issuance and the expiration date and shall be transmitted to the clerk of the court of the county in which the petitioner resides and to the Wind River Police Department within one judicial day after issuance.
6. Any ex parte temporary or final sexual assault protection order may be renewed one or more times, as necessary for victim safety. The petitioner may apply for renewal of the order by filing a petition for renewal at any time within the three months before the order expires. If the motion for renewal is uncontested and the petitioner seeks no modification of the order, the order may be renewed on the basis of the petitioner's motion or affidavit stating that there has been no material change in relevant circumstances since entry of the order and stating the reason for the requested renewal. Renewals may be granted only in open court.

Section X-9-5            Appointment of Counsel.

The Court may appoint counsel to represent the petitioner.

Section X-9-6            Permanent Sexual Assault Protection Order.

1. Except as otherwise provided in this section, a final sexual assault protection order shall be effective for a fixed period of time, not to exceed two (2) years. However, the order may be renewed prior to its expiration.
2. Any sexual assault protection order which would expire on a Court holiday shall instead expire at the close of the next Court business day.

Section X-9-7            Request for Reconsideration or Modification.

Upon motion with notice to all parties and after a hearing, the Court may modify the terms of an existing sexual assault protection order. In any situation where an order is terminated or modified before its expiration date, the Clerk of the Court shall, on or before the next judicial day, forward a true copy of the modified order or the termination order to the appropriate law enforcement agency specified in the modified or terminated order. Upon receipt of the order, the law enforcement agency shall promptly enter it in the computer-based criminal intelligence information system, or if the order is terminated, remove the order from the computer-based criminal intelligence information system.

Section X-9-8

Sexual Assault protection Orders - Personal Jurisdiction - Nonresident Individuals.

1. In a proceeding in which a sexual assault protection order is sought under this chapter, the Wind River Tribal Court may exercise personal jurisdiction over a nonresident individual if:
  - a) The individual is personally served with a petition; or
  - b) The individual submits to the jurisdiction of the Tribes by consent, entering a general appearance, or filing a responsive document having the effect of waiving any objection to consent to personal jurisdiction; or
  - c) The act or acts of the individual or the individual's agent giving rise to the petition or enforcement of a sexual assault protection order occurred within the jurisdiction of the Tribes; or
  - d) The act or acts of the individual or the individual's agent giving rise to the petition or enforcement of a sexual assault protection order occurred outside the jurisdiction of the Tribes but are part of an ongoing pattern of sexual assaults or stalking that has an adverse effect on the petitioner, a member of the petitioner's family or household and the petitioner resides within the exterior boundaries of the Wind River Reservation; or
  - e) There is any other basis consistent with laws of the Tribes and/or the laws of the United States.
  
2. For jurisdiction to be exercised under subsections (1)(a) through (e) of this section, the individual must have communicated with the petitioner or a member of the petitioner's family, directly or indirectly, or made known a threat to the safety of the petitioner or member of the petitioner's family while the petitioner or family member resides within the exterior boundaries of the jurisdiction of the Tribes. For purposes of subsections (1)(a) through (e) of this section, "communicated or made known" includes, but is not limited to, regular or electronic mail, telephonic, or a posting on an electronic communication site, medium or social website. Communication on any electronic medium that is generally available to any individual residing in the State of Wyoming shall be sufficient to exercise jurisdiction under subsection (1)(d) of this section if directed at a resident of the Wind River Reservation.

Section X-9-9

Penalties for Violation of a Sexual Assault Protection Order.

Violation of a sexual assault protection order is a crime.

1. Upon a violation of a permanent or emergency sexual assault protection order, the offender may be sentenced to imprisonment for a period not to exceed one (1) year, or a fine not to exceed \$5,000, or both, unless another sentence is specified by statute.

2. Upon a third or subsequent violation of a permanent or emergency sexual assault protection order, the offender shall be sentenced to imprisonment for a period not to exceed three (3) years, and fined not to exceed \$15,000, unless another sentence is specified by statute.
3. Consent is not a defense to a charge of violation of a permanent or emergency protection order.