

## Title 18 Article 2

### CHAPTER ONE DEFINITIONS

#### Section 2101 Title

This Title shall be entitled "The Domestic Violence Code" (Code).

#### Section 2102. Purpose

The purpose of this code is to protect all persons who are within the jurisdiction of the Kaw Nation District Court, especially women, children, the elderly, disabled persons, and other vulnerable persons, from all forms of domestic abuse as defined in this section. This code shall be liberally construed and interpreted in order to achieve its purpose. This code embodies the intent of the Nation to promote the following goals:

To recognize the illegal nature of domestic abuse;

To provide victims with the maximum protection from domestic abuse that can be made available under law;

To establish an efficient and flexible remedy that discourages violence against and harassment of persons within a family setting, or others with whom the abuser has continuing contact;

To expand the ability of law enforcement officers to assist victims, to enforce existing laws, and to prevent subsequent incidents of abuse;

To facilitate the reporting of domestic abuse;

To develop a greater understanding of the incidence and causes of domestic abuse by encouraging data collection and evaluation; and

To reduce the incidence of domestic abuse, which has a detrimental and lasting effect on the abuser, victims, the family, culture, and society.

#### Section 2103. Specific Applicability

The provisions herein apply specifically to the Domestic Violence Code and take precedence over any laws of general applicability.

#### Section 2104. Definitions

These definitions shall be liberally construed to protect all persons who are subjected to domestic violence or family violence. This Title also incorporates all definitions that may be contained in Title 7 that do not conflict with the definitions contained in this article. As used in this section and subject to additional definitions contained in Title 7:

“Abuse” means the purposeful infliction, actual or threatened, of physical harm, bodily injury or sexual assault, and includes but is not limited to assault as defined in Title 7, Crimes Punishments and Police Practices.

“Advocate” means a person who is employed by any of the Nation’s Domestic Violence Programs to provide services to victims of domestic violence and/or sexual assault, or a person who volunteers to provide services after receiving training in the area.

“Attorney General” means the Attorney General of the Kaw Nation or any assistants or designees authorized by the Attorney General to carry out his or her duties;

"Caretaker" means an individual who has the responsibility for the care of only elders, either voluntarily, by contract, receipt of payment for care as a result of a family relationship, or by an order of a court of competent jurisdiction;

“Coercion” means to restrain, compel or dominate by force or threat, either by verbal or physical means.

“Contact” includes but is not limited to:

1. Repeatedly coming into and/or remaining in the visual or physical presence of another person;
2. Following another person;
3. Waiting outside the home, property, place of work or school of another person;
4. Sending or making written communications in any form, including text messaging, IM, and social media, to another person;
5. Speaking with another person by any means, including leaving a voicemail message;
6. Communicating with another person through a third person;
7. Committing a crime against another person;
8. Communicating with a third person who has some relationship to the other person with the intent of affecting the third person’s relationship with that other person;
9. Communicating with business entities with the intent of affecting some right or interest of the other person;
10. Damaging the other person’s home, property, place of work or school; or
11. Delivering directly or through a third person any object to the home, property, place of work or school of the other person.

“Court” means the District Court of the Kaw Nation

“Domestic Violence” means any act or attempt to commit an offense defined in Title 7, Crimes Punishments, and Police Practices, which is of a violent character if any of the following applies:

1. The relationship between the victim and the defendant is one of marriage or former marriage or of person residing or having resided in the same household as intimate or dating partners;
2. The victim and the defendant have a child in common;
3. The victim or the defendant is pregnant by the

other;

4. The victim and the defendant are or have been in a social relationship of a romantic or intimate nature as determined by the length of the relationship, the type of the relationship, and the frequency of the interaction between the persons involved in the relationship;

“Elderly” means any person who has attained the age of fifty-five (55) years;

“Exploitation” means the act or process of using an elder or their resources for another person's profit, advantage, gain, or for monetary or personal benefit without legal entitlement to do so;

“Family Violence” means the same or similar acts committed in domestic violence, and which are offenses defined in Title 7, and are dangerous crimes against children, when such act is directed towards a family or household member instead of an intimate partner. Family violence occurs when the offense is directed at:

1. A victim who is related to the defendant or to the defendant's spouse by blood or court order as a parent, grandparent, child, grandchild, brother or sister or by marriage as a parent-in-law, stepparent, stepchild, step-grandchild, step-brother or step-sister, or brother-in-law or sister-in-law.

2. A victim who is a child that resides or has resided in the same household as the defendant and is related by blood to a former spouse of the defendant or to a person who resided or who has resided in the same household as defendant.

“Indian” means a person who is a member of an Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village or regional or village corporation as defined or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

“Intimate relationship” means any of the following relationships:

1. Spouses
2. Former spouses
3. Persons who are or have been in a marital-like relationship including same-sex relationships
4. 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.

“Mandatory arrest” means that a law enforcement officer shall arrest if there is probable cause to believe the person to be arrested has committed an offense as defined by this article even though the arrest may be against the expressed wishes of the victim.

“Mental anguish” means to subject an elder only to fear, agitation, confusion, severe depression, or other forms of serious emotional distress, through threats, harassment, or other forms of intimidating behavior.

“Probable cause” is means based on the officer's observations and statements made by the parties involved and witnesses (if any) the officer using reasonable judgment believes a crime under this Title did occur and the person to be arrested committed the crime.

“Prosecuting Attorney” means the attorney representing the Kaw Nation.

“Protection Order” or “Protective Order” or “Order of Protection” means a temporary or permanent Court order, injunction or other order, however titled, related to domestic violence or family violence, harassment, sexual abuse, or stalking, granted for the purpose of preventing harm 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. This definition includes any temporary or final order issued by a civil or criminal court 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.

“Social Services” means any of the contracted Social Services Programs of the Kaw Nation of Oklahoma that can provide a specific service, including treatment, to a domestic violence victim or perpetrator.

## CHAPTER TWO GENERAL PROVISIONS

### Section 2201. Domestic Violence Court Established

There is hereby created and established within the Kaw Nation District Court, a Domestic Violence Division whose powers and duties are set forth in this Code. Any District Court Judge, excluding Magistrate Judges, may be assigned to hear cases on the Domestic Violence Division of the Court by the Kaw Nation Supreme Court.

### Section 2202. General Jurisdiction

Jurisdiction over domestic violence and family violence matters shall be in accordance with the Kaw Nation Constitution, and all relevant Kaw Nation laws.

The Kaw Nation District Court Domestic Violence Division shall retain jurisdiction over members of federally-recognized Indian tribes and any violations of Orders of Protection entered pursuant to this Code which are alleged to have occurred outside the boundaries of the Nation where such orders are entitled to recognition outside the Nation’s boundaries as a matter of full faith and credit.

### Section 2203. Special Domestic Violence Criminal Jurisdiction

The Nation hereby exercises “special domestic violence criminal jurisdiction” as a “participating tribe,” as defined within 25 U.S.C. § 1304, subject to applicable exceptions defined therein, in the Kaw Nation Tribal Court.

The Nation hereby declares its special domestic violence criminal jurisdiction over any person only if he or she:

- 1) Resides within the jurisdiction of the Nation; or
- 2) Is employed within the jurisdiction area of the Nation; or

3) Is a spouse, intimate partner, or dating partner of:

- a) A member of the Nation; or
- b) A member of another Indian tribe who resides within the jurisdiction of the Nation.

In all proceedings in which the Tribal Court is exercising special domestic violence criminal jurisdiction as a participating tribe, all rights afforded in the Kaw Nation Criminal Procedure Code shall apply and those enumerated in the Indian Civil Rights Act, 25 U.S.C. § 1302 to all defendants. Should there be any inconsistency between the Kaw Nation Criminal Procedure Code and 25 U.S.C. § 1302, those of 25 U.S.C. § 1302 shall apply.

Every defendant has the privilege of the writ of habeas corpus to test the legality of his or her detention by order of the Nation and may petition the Court to stay further detention pending the habeas proceeding.

A court shall grant a stay if the court:

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

#### Section 2204. Special Domestic Violence Criminal Jurisdiction: Criminal Conduct Applicable

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

- a. Domestic Violence as defined under this Title.
- b. Violations of Protection Orders. An act that occurs within the jurisdiction of the Nation, and:
- c. 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 Nation; and
  - iv. Is consistent with 18 U.S.C. 2265(b).

#### Section 2205. Evidentiary Standards

##### Testimonial Privileges

In a proceeding where a spouse or other family or household member is allegedly the victim of domestic violence, the following evidentiary privileges do not apply to the person that allegedly caused the act of domestic violence:

- a. the privilege of confidential communication between spouses, and
- b. the testimonial privilege of spouses.

Section 2206. Reporting Domestic Violence and Family Violence

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 in 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, probation staff, Clerk of the Court, or other judicial system official.

The suspected Domestic Violence or Family Violence shall be reported immediately to the Tribal Police Department. The reporter may initially be logged in as anonymous.

Any person subject to mandatory reporting who fails, neglects, or refuses to report suspected acts of domestic violence known to him/her, after notice and hearing, will be assessed a civil penalty in an amount not to exceed \$500.00 and/or no more than forty (40) hours of community service or domestic violence education.

Section 2207. Standard of Proof. Defenses

The civil standard of proof shall apply to proceedings under this Code, except as otherwise specified in this Code. The court shall grant a protection order when a preponderance of the evidence shows that it is more likely than not that an act of domestic violence has occurred or is about to occur. The order's purpose shall be to prevent the occurrence of recurrence of domestic violence

A petitioner shall not be denied relief under this Code because:

- a. the petitioner used reasonable force in self-defense against the respondent;
- b. the petitioner has previously filed for a protection order and subsequently reconciled with the respondent;
- c. the petitioner has not filed for a divorce; or
- d. the petitioner or the respondent is a minor.

Neither intoxication nor spousal immunity shall be considered a defense in a proceeding for the issuance or enforcement of a protection order under this Code.

Section 2208. Criminal Sanctions

Nothing in this Title shall prevent the filing of criminal sanctions as defined in Title 7 in addition to the consequences imposed for violation of provisions of the Domestic Violence Code.

Section 2209. Limitations

Any protective order issued under this code is valid for a period not to exceed three (3) years unless re-issued by the Court.

Section 2210. Non-Waiver of Sovereign Immunity

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

Section 2211. Savings

This chapter takes effect on the date approved by the Tribal Council 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 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 2212. Effective Date

The provisions of this Code shall become effective on the day of its approval by the Tribal Council.

### CHAPTER THREE PROTECTION ORDERS

Section 2301. Filing Order of Protection

Who may file a petition: A petition for a protective order may be filed by a person:

- for herself or himself;
- on behalf of a minor child;
- a minor child
- on behalf of any person prevented by a physical or mental incapacity, or by hospitalization, from seeking a protection order;
- on behalf of a client in the case of social service, housing, health, legal or law enforcement personnel; where prior consent was obtained from the client, or when consent is not necessary or applicable because of the client's incapacity; or
- If a petition is filed by or on behalf of a minor child, the Court may appoint a guardian ad litem to represent the child's interests. Additionally, if the petition involves the child's parent or legal guardian, the Court shall refer the matter to the Kaw Nation's Indian Child Welfare Department.

The Court shall, within eight (8) hours, or as soon as otherwise possible, give notice to the Victims' Advocacy Specialist of all petitions for protective orders.

Section 2302. Confidentiality

A petitioner seeking protection shall not be required to disclose his or address, place of residence, or place of employment except to the judge, or judicial designee, under oath, for the purposes of determining jurisdiction.

Section 2303. Forms of Petitions; Fee Waived

No fee will be charged for filing or service of process for any proceeding seeking only the relief provided in this Chapter. However, the court may assess charges and order respondents to pay if the petition is granted or order a petitioner who files a false petition or report under this Code to pay court costs

The petitioner shall prepare the petition or, at the request of the petitioner, the Clerk of the Court, the Domestic Violence Program Coordinator or other persons properly delegated shall assist the petitioner in preparing the same.

Section 2304. Temporary Ex Parte Protective Orders

Petition, Motion and Order

Upon the filing of a Petition for Domestic Abuse Protection Order and Motion for Temporary Protection order the court shall immediately grant or deny the petitioner's Motion for Temporary Protection Order without a hearing or notice to the respondent. The Court shall grant the motion if it determines that an emergency exists.

A petitioner shall demonstrate an emergency by showing that: (a) the respondent recently committed acts of domestic abuse resulting in physical or emotional injury to the petitioner or another victim, or damage to property; or (b) the petitioner or another victim is likely to suffer harm if the respondent is given notice before the issuance of a protection.

Evidence proving an emergency situation may be based on the petition and motion, police reports, affidavits, medical records, other written submissions, or the victim's statement.

The Temporary Protection Order may include any relief permitted by this Code and any other relief necessary to prevent further domestic abuse.

The Temporary Protection Order shall direct the respondent to appear at a hearing to show cause why the Court should not issue a Domestic Abuse Protection Order.

Upon issuing the Temporary Protection Order, the court shall immediately provide for notice to the respondent and notify law enforcement of the order.

If the court finds that an emergency does not exist, the court shall deny the petitioner's Motion for a Temporary Protection Order and schedule a hearing on the Petition for Domestic Abuse Protection Order.

The court shall schedule the hearing at the next scheduled docket call for the Domestic Violence Court.

The court shall provide for notice to the Respondent according to the provisions listed in the Kaw Nation rules of civil procedure.

The Court shall give a Motion for Temporary Protection Order priority over all other docketed matters and shall issue an order granting or denying the motion within 72 hours.

#### Section 2305. Protection Order Service of Process

A copy of the petition, notice of hearing and a copy of any ex parte order issued by the court shall be served, pursuant to the Kaw Nation Civil Procedure Code, upon the respondent in the same manner as a summons. Ex parte orders shall be given priority for service by the Kaw Nation Tribal Police Department and can be served twenty-four (24) hours a day.

When the defendant is a minor child who is ordered removed from the residence of the victim, in addition to those documents served upon the defendant, a copy of the petition, notice of hearing and a copy of any ex parte order issued by the court shall be delivered with the child to the caretaker of the place where such child is taken pursuant to the Kaw Nation Juvenile Code.

When service cannot be made upon the defendant by the police within three (3) days following the filing of a petition for a protective order or the issuance of an emergency ex parte order, the police may contact another law enforcement officer or private investigator to serve the defendant. A temporary ex parte order, a petition for protective order, and a notice of hearing may be transferred to any law enforcement jurisdiction to effect service upon the defendant. If service cannot be completed, the court shall notify the respondent by regular mail, postage prepaid, of the date and time of the hearing. The court shall also notify the petitioner by mail in the event of personal contact has not been made.

Within a reasonable time of the filing of the petition the court shall schedule a full hearing on the petition, regardless of whether a temporary ex parte order has been previously issued, requested or denied. If the petitioner seeks further relief concerning an issue not outlined by the Temporary Ex Parte Protective Order, the court may continue the hearing and/or the Respondent may request a continuance.

Section 2306. Protection Order Hearing

The court shall schedule a full hearing within at the next reasonable opportunity after granting or denying a Temporary Protection Order.

The respondent may move the court to dissolve or modify any Temporary Protection Order within that time.

The respondent must give at least five (5) days' notice of the motion to the parties. The court shall give priority to such motions.

If the petitioner fails to appear at the hearing, the court may continue the hearing for a reasonable time, or dismiss the petition without prejudice, as justice requires. Any Temporary Protection Order shall remain in effect during the continuance.

If the respondent fails to appear after receiving notice, the hearing shall go forward.

If, after a hearing, the court finds by a preponderance of the evidence that the alleged domestic abuse occurred, the court shall issue a Domestic Abuse Protection Order. The Order may include the relief granted in any Temporary Protection Order and any additional relief that the court deems necessary.

Section 2307. Standard of Proof

A court shall grant a protection order when a preponderance of the evidence shows that it is more likely than not that an act of domestic abuse has occurred or is about to occur. The order's purpose shall be to prevent the occurrence or recurrence of abuse.

A petitioner shall not be denied relief under this section because:

- a. the petitioner used reasonable force in self-defense against the respondent;
- b. the petitioner has previously filed for a protection order and subsequently reconciled with the respondent;
- c. the petitioner has not filed for a divorce; or
- d. the petitioner or the respondent is a minor.

The following shall not be considered a defense in a proceeding for the issuance or enforcement of a protection order under this Code:

1. intoxication;
2. spousal immunity; or
3. provocation.

Section 2308. Protection Order Relief

Upon issuing a protective order, temporary or otherwise, the respondent shall abide by the following:

- a. Respondent shall not abuse, harass, or threaten the Petitioner, or commit any other domestic abuse;
- b. Respondent shall immediately leave Petitioner's residence;
- c. Respondent shall stay at least 100 yards away from the Petitioner's residence, place of employment, school, or any other places as ordered to do so;
- d. Respondent shall not contact Petitioner, in person, in writing, by telephone; or by electronic means;
- e. Petitioner shall have custody of any minor children;
- f. Respondent shall be permitted to visit with the children as scheduled and supervised by the Kaw Nation Social Services Department;
- g. Respondent shall pay to Petitioner the amount ordered by the Court for support of their minor children;
- h. Respondent shall return to Petitioner any items ordered by the Court;
- i. Respondent shall not sell, remove, hide, destroy or damage any property owned by Petitioner or by both parties jointly;
- j. An Officer of the Kaw Nation Police Department shall accompany Petitioner to a residence occupied by the Respondent to:
  - i. obtain physical custody of the child(ren) listed on the Domestic Abuse Protection Order;
  - ii. collect personal belongings listed on the Domestic Abuse Protection Order;
  - iii. ensure that Respondent leaves the residence, if shared by the parties.
- k. Respondent shall pay to Petitioner the amount ordered by Court for the following:
  - i. lost earnings
  - ii. property taken or damaged
  - iii. travel expenses
  - iv. other expenses
- l. Respondent shall participate in domestic abuse counseling;
- m. Petitioner shall participate in domestic abuse counseling;
- n. Respondent shall participate in alcohol counseling, if required by the Court;
- o. Respondent shall pay to this Court the costs of this proceeding, in cash or a money order made out to Kaw Nation District Court;
- p. Other relief as ordered by the Court.

The Court shall inform respondent in writing of the prohibitions listed in subsection (a) of this section.

The Court shall inform respondent that it may modify the order of protection without notice and hearing in writing.

Section 2309. Mutual Order for Protection Discouraged

A protection order entered against both the petitioner and the respondent shall not be enforceable against the plaintiff unless:

the respondent files a written pleading, such as a cross or counter complaint seeking a protection

order, and

the court makes specific findings of harassment, stalking, assault, or domestic or family violence against both the plaintiff and defendant, and

determines that each party is entitled to such an order.

#### Section 2310. Duration of Protection Orders

A Temporary Ex Parte Protective Order is effective until full hearing with notice is conducted. Provided, if the defendant, after having been served, does not appear at the hearing, the temporary ex parte order shall remain in effect until the defendant is served with the permanent order. If the terms of the permanent order are the same as those in the emergency order, or are less restrictive, then it is not necessary to serve the defendant with the permanent order. Any temporary ex parte order shall have language similar to: "IF YOU FAIL TO APPEAR AT THE HEARING, A PERMANENT ORDER MAY BE ISSUED WITHOUT FURTHER NOTICE TO YOU."

#### Section 2311. Court Responsibilities

The court shall:

- a) not grant nor deny relief to the petitioner based on the employment, age, economic, educational, social, political, and/or mental and physical status of the petitioner or respondent.
- b) not deny a petitioner relief requested pursuant to this Code because of a reasonable time lapse between an act of domestic violence and the filing of the petition.
- c) inform the victim of domestic violence about local services and advocacy available through the Nation's program for victims of domestic violence.

#### Section 2312. Transmittal of Protective Orders

The court shall:

- a) Deliver the order to the Nation's program for victims of domestic violence or other appropriate person or agency
- b) Make reasonable efforts to ensure that the Protective Order is understood by the petitioner, and the respondent, if present;
- c) Transmit, by the end of the next business day after the order is issued, a copy of the Protective Order to local law enforcement agencies designated by the petitioner; and
- d) Transmit a copy of the order to the appropriate entity for placement in the tribal registry.

#### Section 2313. Tribal Registry for Orders of Protection

The District Court of the Kaw Nation shall maintain a registry of all Protective Orders issued by the Nation's District Court. The court clerk shall provide the Nation's Police Department and the program for victims of domestic violence with certified protective orders within 24 hours after

issuance.

The court clerk shall also provide the Nation's Police Department and the program for victims of domestic violence with any modifications, revocation, withdraws, and/or expiration or protective orders.

The Nation's Police Department shall transmit Protective Orders into the National Crime Information Center (NCIC) or provide them to national or regional law enforcement agency or law enforcement database that the Nation's Police Department utilizes or affiliates with.

Section 2314. Violations of Protection Orders.

A. Criminal. All violations of an order of protection, temporary or otherwise, shall be prosecuted pursuant to the Kaw Nation Code of Laws. The Prosecuting Attorney has the discretion to file additional charges depending on the circumstance of the violation.

B. Civil. In addition to any criminal penalties for failure to comply with the requirements of this Code, except where otherwise stated, failure to comply with the provisions of the Code shall subject the non-complying offender to a civil penalty of not more than \$2,500 per incident, as assessed by the Court after notice and hearing. Each day wherein the offender fails to come into compliance shall be a separate violation. The Prosecuting Attorney shall be authorized to assist in the enforcement of this provision.

Section 2315. Effect of Action by Petitioner or Respondent on Order

If the Court orders Respondent excluded from the residence of Petitioner or orders Respondent to stay away from Petitioner, an invitation by the Petitioner to visit or enter does not waive or nullify a Protective Order. Further, the Petitioner cannot violate or be arrested for a violation of his/her own Protective Order.

Section 2316. Vacating of Protective Orders

A party who wishes to have a protective order vacated must move the court, in writing, for such an order.

A protective order shall be vacated only by court order.

In determining whether or not to vacate a protection order, the court shall consider the following:

- a) whether the respondent has attended counseling and what type of counseling, if required by the order, and for how long and reports from the counseling program as to the attendance, success and any recommendations of the program regarding the respondent;
- b) whether the circumstances have changed so as to remove the danger to the petitioner from the respondent; and
- c) any other factors the court deems relevant.

The court clerk shall provide a copy of any subsequent order to all law enforcement departments to whom a copy of the original protective order was delivered under this Chapter.

All the Nation's law enforcement agencies shall enforce any protective order that has neither expired nor been vacated, regardless of the current status of the parties' relationship.

Section 2317. Full Faith and Credit for Valid Foreign Protection Order

Any valid protection order issued by a court of another tribe, state, or territory shall be accorded full faith and credit by the courts and law enforcement authorities of the Kaw Nation and enforced as if it were issued in this Nation.

Section 2318. Valid Foreign Protection Order

**Jurisdiction of issuing court.** A protection order issued by a Tribal, State, Federal, or Territorial court shall be deemed valid if the issuing court had jurisdiction over the parties and matter under the law of the Tribe, State, U.S. government, or Territory. There shall be a presumption in favor of validity where an order of protection appears authentic on its face.

**Notice and hearing by court.** A defendant must have been given reasonable notice and the opportunity to be heard before the order of the foreign tribe, state, or territory was issued. Provided, in the case of ex parte orders, notice and opportunity to be heard was given as soon as possible after the order was issued, consistent with due process.

**Defenses.** Failure to provide reasonable notice and opportunity to be heard shall be an affirmative defense of any charge or process filed seeking enforcement of a foreign protection order.

Section 2319. Exclusion from Full Faith and Credit

A protection order from a foreign jurisdiction entered against both the plaintiff and the defendant is presumptively not enforceable against the plaintiff unless:

the defendant filed a written pleading, such as a cross or counter complaint, seeking a protection order, and;

the issuing court made specific findings of violence, threats of violence, harassment, domestic or family violence against both the plaintiff and defendant and determined that each party was entitled to such an order.

Section 2320. Filing of Foreign Protection Order

A plaintiff who obtains a valid order of protection in another tribe, state, or territory may file that order by presenting a certified copy of the foreign order to the court clerk in the Nation's District Court.

Filings shall be in writing and no fee or cost shall be assessed for filing.

A clerk of court shall forward a copy of the foreign protection order to the Kaw Nation Police Department upon application of a plaintiff seeking enforcement.

The clerk shall provide the plaintiff with a copy bearing proof of filing with the court and entry into the tribal protection order registry.

Filing an entry of the foreign order in the Nation's protection order registry shall not be prerequisites for enforcement of a foreign protection order.

## CHAPTER FOUR POWERS AND DUTIES OF LAW ENFORCEMENT

### Section 2401. Investigating of Domestic Abuse Complaints

A. Complaints of Elderly Abuse - When investigating complaints of elder abuse or neglect the complaint shall be investigated and treated the same as any other domestic violence complaint. A custodial arrest should be made and all domestic violence response procedures should be followed and in accordance with sections 601, et seq. herein. If the victim is a "vulnerable adult" a report to Social Services shall be required.

B. Complaints of Abuse Perpetrated by a Minor Child - When investigating complaints of abuse by a minor child the complaint shall be investigated and treated the same as any other domestic violence complaint. A custodial arrest should be made and procedures for lodging a minor shall be followed.

### Section 2402. Mandatory Arrest

A law enforcement officer shall arrest a person, anywhere, with or without a warrant, including at the person's residence, if the officer has probable cause to believe:

- a) that an assault has occurred within the previous 72 (seventy-two) hours;
- b) an assault has occurred and has resulted in bodily injury to the victim, whether the injury is immediately visible to the officer or not; and/or
- c) that an incident of domestic violence has occurred in the last 72 (seventy-two) hours.

If the domestic violence incident is non-alcohol related, any person arrested under this section shall be held without bail, in custody of the Police Department for a period not to exceed twelve (12) hours, as a mandatory cooling-down period, provided that such person has posted bond.

If the domestic violence incident is alcohol related any person arrested under this section of this code shall be held for a period not to exceed twenty-four (24) hours. This shall also be construed as a cooling down period, provided that such person has posted bond.

### Section 2403. Duties of Law Enforcement Officer

A law enforcement officer who responds to a domestic abuse call shall use all reasonable means to protect the victim and children and prevent further violence, including but not limited to:

- a) Taking action necessary to assure the safety of the victims and children
- b) Confiscating any weapon involved in the alleged domestic abuse;

- c) Transporting or obtaining transportation of the victim and children to a shelter;
- d) Assisting the victim in removing essential personal effects;
- e) Assisting the victim and children in obtaining medical treatment including transportation to a medical facility;
- f) Giving the victim immediate and adequate notice of rights, remedies and services available.

If a law enforcement officer receives cross complaints of domestic abuse from two or more opposing persons, the officer shall arrest the primary aggressor. In determining whether a person was the primary aggressor, the officer shall consider:

- a) The Kaw Nation's intent to protect victims of domestic abuse;
- b) The history of domestic abuse between the persons involved;
- c) The relative severity of the injuries inflicted or serious threats creating fear of bodily injury;
- d) The likelihood of future injuries to each person;
- e) Whether one of the persons acted in self-defense; and
- f) The officer's experience in handling domestic abuse cases.

If the officer determines that one person was the primary aggressor, the officer is not required to arrest the other person believed to have caused physical harm or bodily injury. A law enforcement officer shall not threaten the arrest of all parties to discourage requests by any party for intervention from any law enforcement.

#### Section 2404. Filing Complaints

The officer making the arrest under this code shall sign a complaint against the alleged abuser on behalf of the Nation. He or she shall submit a detailed report of the circumstances of the arrest, along with statements from the victim and other witnesses.

The preliminary report shall be completed no more than eight (8) hours after the alleged abuser's arrest.

The final and complete report shall be completed within forty-eight (48) hours of the arrest.

The victim may be subpoenaed as the primary witness for the prosecution.

#### Section 2405. Liability of Law Enforcement Officers

A law enforcement officer shall not be held liable in any civil proceeding for an arrest based on probable cause, enforcement in good faith of a court order, or any other action or omission in good faith under this code arising from an alleged incident of domestic violence brought by any party to the incident.

Section 2406. Notice of Rights

The officer shall tell the victim of abuse whether a shelter for victims of abuse is available in the community and give the victim immediate notice of legal rights and remedies that are accessible to victims of abuse.

The notice should include the victim's right to the following:

- a) an order restraining the abuser from further acts of violence;
- b) an order directing the abuser to leave the household;
- c) an order preventing the abuser from entering the residence, school, workplace, or place of business;
- d) an order awarding custody or visitation with any minor children;
- e) an order directing the abuser to pay support to the victim and minor children when appropriate;
- f) an order prohibiting the abuser from harassing, annoying, telephoning, contacting, or otherwise communicating with the victim, either directly or indirectly;
- g) an order prohibiting the abuser from using or possessing a firearm or other weapon specified by the Court.

The forms a victim needs to obtain an order for protection can be obtained from the Kaw Nation District Court Clerk.

Section 2407. Reporting Statistics

A record of all reported cases of domestic abuse shall be kept by the police department. A semiannual report shall be made by the Police Department with the exact number of domestic abuse cases handled in a certain time frame. This will be public information and available to all agencies of the Nation.

Section 2408. Reporting By Officer

When an officer is called to the scene of a domestic abuse report and does not make an arrest, he or she shall file a written report explaining why no arrest was made. This report will be filed with the officer's supervisor.

CHAPTER FIVE LAW ENFORCEMENT OFFICER PROTOCOL

Section 2501. Officer Protocol

The Chief of the Kaw Nation police department will be responsible for developing officer protocols for officers responding to domestic violence, or elder abuse situations.

CHAPTER SIX PROSECUTION POLICIES & PROCEDURES

Section 2601. Prosecution Policy

It will be the policy of the Attorney General to work closely with the Tribal Police Department, Social Services Department and the Victims' Advocacy Specialist in addressing domestic violence issues. The prosecution of all domestic violence crimes shall be conducted within the framework in this Code and other applicable tribal laws.

Section 2602. Initial Case Review.

Referral and Accompanying Reports. In all cases that are referred for prosecution, the respective agency should provide all available information regarding the situation. The Prosecuting Attorney, with the assistance of the respective agencies, shall compile all police reports, accusatory instruments, medical reports, incident reports, photographs, victim and witness statements, Protective Orders, past criminal histories and all relevant evidence and information that may assist in the assessment and prosecution of the crime.

Initial Contact. Early contact with the victims shall be scheduled through the Victims' Advocacy Specialist or caseworker in order to establish an atmosphere of trust and cooperation. In addition to reviewing the incident, and obtaining statements and other evidence, the Prosecuting Attorney shall provide the victim with information about the court process and try to answer any questions that the victim may have. It shall be made clear to the victim that it is the Nation's case against the defendant and that while each case is different and has its own particular circumstances, decisions as to the ultimate prosecution of the case, plea bargaining, dismissal or withdrawal of charges are not decisions made by the victim. The victim will be informed of what shall be expected of him/her during the proceedings. The victim will be apprised of additional criminal and civil relief that may be available.

Contact Throughout Case. Following initial review of the case, and throughout the pendency of the proceedings as new information is learned, the prosecutor shall assess the possibility of need to amend the charges. In addition, past incidents of uncharged conduct shall be reviewed, occurring within the jurisdiction of the Court and within applicable statute of limitations, to determine if said offense could be provable as separate and new cases.

Section 2603. Subpoena for the Victim

The appearance of the victim at all stages of the prosecution shall be secured by subpoena.

Section 2604. Pre-Trial Procedure and Arraignment

Release. Pretrial release of all defendants shall be governed by the procedures as set forth by in this Code and all applicable sections of the Kaw Code of Laws.

Releasing a defendant on simply his/her own recognizance is strongly discouraged. If a defendant is released on his/her own recognizance, the court shall order that no further contact be had with the victim.

Orders of Protection shall be routinely sought from the Court if not already initiated prior to arraignment. The Prosecuting Attorney shall determine if the victim will be participating and cooperating in the case. The remaining evidence shall be evaluated to determine the strength of the case. Either the Prosecuting Attorney or the Victims' Advocacy Specialist will discuss with the

victim any reluctance to cooperate.

All victims not appearing for arraignment shall be contacted within five (5) business days by the Prosecuting Attorney or the Victims' Advocacy Specialist to address any special problems or concerns of the victim.

If both parties were arrested, the evidence will be reviewed and evaluated to determine if one was the primary aggressor, whether violence was of a defensive nature, or whether one party has been routinely victimized by the other. If it so appears, the Prosecuting Attorney will take whatever steps that justice requires, including amending the charges to reflect new evidence and recommending that the victimized party be referred to a victim's support group or other similar program in lieu of or in addition to other penalties.

#### Section 2605. Plea Bargaining

Plea bargaining is a discretionary tool available to the Prosecuting Attorney in the prosecution of crimes. Plea bargaining allows the Prosecuting Attorney to tailor sentences, punishments, treatment, conditions and other factors to a particular situation.

Many factors must be considered including, but not limited to the strength of the case, the sufficiency of evidence, and the impact on the victim in determining whether or not a plea bargain is justified under the circumstances.

While the victim may be consulted, his/her desire for, or opposition to, plea bargain is not determinative.

#### Section 2606. Case Dismissal

The Prosecuting Attorney shall determine all charges for which sufficient basis exists to pursue prosecution, and make that determination using prosecutorial discretion.

#### Section 2607. Sentencing Recommendations

Incarceration should be ordered to meet the needs of each particular case:

In those cases where the defendant provides support for the victim/family, weekends in jail or work release should be considered.

Split sentences and probation allow for increased supervision and monitoring of the defendant.

Incarceration should be considered in light of the victim's request, the seriousness of the crime and past criminal history of the defendant.

Unsupervised conditional releases are discouraged. This situation places primary responsibility for monitoring on the victim. If continued monitoring is needed, supervised probation should be sought.

The victim shall not be required to attend any joint counseling sessions.

All sentences should include if possible:

- Protection Order;
- completion of substance abuse treatment program, if evaluation indicates that it is needed or if otherwise required by law; and
- restitution for medical bills, damage to property and other expenses.

Section 2608. Violation of Treatment Plan

In all cases where treatment of some form is required for an offender, that offender shall be required to report to the court on a regular basis as ordered by the court, but no less often than monthly, with proof of compliance with all prescribed treatment. Failure to do so shall result in a fine of not more than \$5,000.00 for each element of a treatment plan with which an offender has failed to comply. Failure to correct such noncompliance by the next court date shall be deemed a repeat offense subject to an additional fine.

Section 2609. Violations of Probation.

All violations of probation for a domestic violence conviction shall be prosecuted as criminal contempt. The Prosecuting Attorney has the discretion to file additional charges depending on the circumstances of the violation.

CHAPTER SEVEN ELDER ABUSE PREVENTION AND PUNISHMENT

Section 2701. Mandatory Arrest Provision.

An officer shall:

- a) arrest and take into custody persons whom the officer has probable cause to believe assaulted an elderly person with whom he/she is residing with or has formerly resided with. No warrant is required to make an arrest under this section.
- b) arrest and take into custody a person whom the officer has probable cause to believe has violated an order for protection restraining the person or excluding the person from the residence if the existence of the order can be verified by the officer.
- c) arrest under probable cause even though it may be against the expressed wishes of the victim.
- d ) arrest if there was a threat with a dangerous weapon.

An officer may arrest when responding to a call if the officer has probable cause to believe that the alleged assailant has within the past twenty-four hours placed the alleged victim in immediate fear of bodily harm.

Whenever an officer investigates an allegation of an incident described in subsections (a) and (b), whether or not an arrest is made, the officer shall make a written report of the alleged incident and submit that report to the Attorney General.

The officer shall request that the jailer contact an Adult Services Worker, Domestic Violence

Specialist and Kaw Nation Domestic Violence Program immediately following the booking procedure and inform them that an arrest has been made.

Section 2702. Arrest

Anyone arrested under this ordinance shall be held until arraignment.

The victim, either personally or through the Adult Services Worker or Domestic Violence Specialist, shall communicate his/her concerns to the court.

If the defendant enters a plea other than guilty, the victim's advocate shall help the victim prepare a petition for protective order.

If the defendant pleads guilty, the court shall order a pre-sentence investigation report be produced.

Section 2703. Sentencing

Sentences for a violation of this Chapter shall be a minimum of six (6) months in jail and a fine of not less than \$500.00, plus court costs.

Substance Abuse and/or Drug Abuse Assessment & Treatment Plan

If alcohol or drugs play a part in the abuse, a chemical dependency evaluation and complete cooperation with any recommendations for treatment made can be ordered.

The assailant shall be ordered to participate in the appropriate domestic violence program and must:

- a) Attend an intake session for evaluation and placement in a group for domestic violence. This will be accomplished by an Adult Services Worker or a Domestic Violence Specialist or by a member of another domestic violence program not later than ten (10) calendar days after sentencing.
- b) Attend a minimum of 12 re-education sessions out of 14 consecutive sessions and attend a minimum of 12 counseling sessions out of 14 consecutive sessions. These sessions will begin immediately following the intake session. The counselor shall submit a record of attendance to the Clerk of Courts. The Clerk of Courts shall maintain a record of attendance.

In cases of failure to comply with this section the assailant may be found in contempt of court, given a jail sentence, and given a choice of completing the program or going to jail again.

Failure to attend counseling, violation of an order for protection, or commission of a crime of violence while an order for protection is in effect, will result in immediate review of the case by the court.

Upon any second or subsequent offense offenders shall be sentenced to a minimum of six (6) months in jail not to exceed the maximum penalty. While incarcerated or upon release, they must complete the domestic violence counseling as described above.

Section 2704. Order for Protection

A petition for an order of protection under this section may be made by any family or household member on behalf of himself/herself or on behalf of minors in the family or household.

A petition for an order of protection shall allege the existence of elder abuse, and shall be accompanied by an affidavit made under oath stating the specific facts and circumstances from which relief is sought.

A petition for an order of protection may be made regardless of whether or not there is a pending lawsuit, complaint, petition or other action between the parties.

The court shall provide simplified forms and clerical assistance to help with the writing and filing of a petition under this section.

The court shall advise a petitioner of the right to file a petition and affidavit and to sue without cost and shall assist with the writing and filing of the motion and affidavit.

Section 2705. Hearing on Application. Notice

Upon receipt of the petition, the court shall order a hearing, which shall be held not later than fourteen (14) days from the date of the order.

Personal services shall be made upon the respondent not less than five (5) days prior to the hearing. In the event that personal services cannot be completed in time to give the respondent the minimum notice required under this paragraph, the court may set a new hearing date.

Notwithstanding the provisions of paragraph (b) above, service may be made by one week published notice provided the petitioner files with the court an affidavit stating that an attempt at personal service made by a law enforcement official was unsuccessful and that a copy of the petition and notice of hearing has been mailed to the respondent at the respondent's residence or that the residence is not known to the petitioner. Service under this paragraph is complete seven (7) days after publication. The court shall set a new hearing date if necessary to allow the respondent the five (5) day minimum notice as required under paragraph (a) above.

Section 2706. Relief by the Court

Upon notice and hearing, the court may provide relief as follows:

- a) Restrain the abusing party from committing acts of elder abuse.
- b) Exclude the abusing party from the dwelling that the parties share or from the residence of the petitioner.
- c) Order the abusing party to participate in treatment or counseling services.
- d) Award temporary use and possession of property and restrain one or both parties from transferring, encumbering, concealing, or disposing of property except in the usual course of

business or for the necessities of life, and to account to the court for all such transfers, encumbrances, dispositions, and expenditures made after the order is served or communicated to the party restrained in open court.

e) Order, at its discretion, other relief as it deems necessary in the interests of justice for the protection of a family or household member, including orders or directives to the appropriate Kaw Nation tribal official(s).

Any relief granted by an order for protection shall be for a fixed period not to exceed one year, except when the Court determines a longer fixed period is appropriate. The Court shall make specific findings of fact on the record to support fixing such longer period of time.

#### Section 2707. Emergency Order for Protection

Where an application under this section alleges an immediate and present danger of domestic abuse, the court may grant an emergency order for protection, pending a full hearing, and granting relief as the court deems proper, including an order:

- a) Restraining the abusing party from committing acts of domestic abuse;
- b) excluding any party from the dwelling they share or from the residence of the petitioner, and from any contact with the petitioner except by further order of the court.

An emergency order for protection shall be effective for a fixed period not to exceed fourteen (14) days, except for good cause.

A full hearing, as provided by this section, shall be set for not later than seven (7) days from the issuance of the temporary order.

The respondent shall be served forthwith a copy of the standing order along with a copy of the petition and notice of the date set for the hearing.

When service must be made by published notice, as provided under section 705(c), the petitioner may apply for an extension of the period of the standing order at the same time the petitioner files the affidavit required under that section, the court may extend the standing order for an additional period not to exceed fourteen (14) days. The respondent shall be served forthwith a copy of the modified standing order along with a copy of the notice of the new date set for the hearing.

#### Section 2708. Service of Order for Protection.

Orders are to be served personally upon the respondent by the Nation's Police Department. If the respondent cannot be located the order for protection will be mailed by certified mail to the respondent's last known address.

#### Section 2709. Assistance of Public Safety in Service or Execution.

When an order for protection is issued, upon request of the petitioner, the court shall order the Nation's Police Department to accompany the petitioner and to assist in placing the petitioner in possession of the dwelling or residence, or otherwise assist in execution or service of the order for

protection.

Section 2710. Right to Apply for Relief.

A person's right to apply for relief shall not be affected by his/her leaving the residence or household to avoid abuse.

Section 2711. Modification of Order for Protection.

Upon application, notice to all parties, and hearing, the court may modify the terms of an existing order for protection.

Section 2712. Effect on Real Estate

Nothing in this ordinance shall affect the title to real estate.

Section 2713. Copy to Law Enforcement Agency.

An order for protection granted pursuant to this Chapter shall be forwarded by the clerk of courts within 24 hours to the Nation's Police Department and placed on the Tribal Registry for Orders of Protection.

Section 2714. Violation of an Order for Protection.

Criminal. All violations of an order of protection, emergency or otherwise, shall be prosecuted pursuant to the Kaw Nation Code of Laws. The Prosecuting Attorney has the discretion to file additional charges depending on the circumstance of the violation.

Civil. In addition to any criminal penalties for failure to comply with the requirements of this Code, except where otherwise stated, failure to comply with the provisions of the Code shall subject the non-complying offender to a civil penalty of not more than two thousand, five hundred dollars (\$2,500) per incident, as assessed by the Court after notice and hearing. Each day wherein the offender fails to come into compliance shall

be a separate violation. The Prosecuting Attorney shall be authorized to assist in the enforcement of this provision.

Section 2715. Reporting Abuse of Elder; Penalty for Failure to Report.

Any person or caretaker employed by a nursing home or charged with the care of the elderly who has reasonable cause to suspect or who witnesses abuse of an elder shall immediately report the abuse or suspected abuse to the Nation's Police Department, Domestic Violence Program Coordinator, or to the Nation's Social Services Department.

Any person or caretaker employed by a nursing home or charged with the care of the elderly who without good cause fails to report abuse or suspected abuse of elders shall be guilty of an offense and upon conviction for a violation of this section shall be sentenced to imprisonment for a minimum of 30 days in jail and to a fine of not less than \$150.00, plus court costs.

Section 2716. Reports.

Any report required to be made under this ordinance may be made in person, orally, or by writing to a member of the Nation's Police Department, Domestic Violence Program, or the Nation's Social Services Department. If a report is made in-person or orally, the recipient shall reduce the report to writing.

Once the report is reduced to a written form, it shall be forwarded to the Nation's Police Department for investigation of the allegations made in the report.

If the allegations are found to be true the Police Department shall forward a copy of their report to the Nation's Attorney General who shall take the appropriate court action. If the allegations in the report are without merit, the Nation's Police Department shall recommend that the case be closed.

Section 2717. Immunity.

Anyone participating in good faith in making of a report pursuant to this ordinance shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed, and shall have the same immunity with respect to participation in any court proceedings resulting from such report.

Section 2718. Contents of Report.

Any report required to be completed by this Chapter shall consist of at a

1. minimum: name, age and address of elder alleged to be abused;
2. name and address of person with legal responsibility for the elder that is the subject of the report if it is other than the said elder;
3. name and address of the alleged
4. perpetrator; nature and extent of the abuse;
5. persons who might have been aware of the abuse;
6. date(s) and location(s) of when and where the alleged abuse occurred;
7. findings and recommendations; and
8. any other pertinent information known to the person making the report.

Section 2719. Reimbursement.

Any person who is convicted of financial exploitation of an elder, shall be ordered by the Kaw Nation District Court to reimburse the elder in full as a part of any plea bargain, guilty plea, finding of guilty by a judge or jury or nolo contendere plea.

If the person has exploited property other than money from the elder, then the court shall order the exploiter to return the property immediately or to sign the necessary documents returning the property to the elder.

Section 720. Non-Disclosure.

The name of any person who reports suspected abuse as defined in this Chapter shall not be disclosed to any person unless the person who reported the abuse specifically requests such disclosure or a judicial proceeding results from such report.

Section 721. Follow-up Assessment.

Follow-up will be done at the end of the mandated fourteen (14) week sessions, six (6) months after initial sentencing, and one (1) year after initial sentencing.

Domestic Violence Specialist shall do the assessment and shall forward a written copy of findings to the Clerk of Courts and the Attorney General. The Clerk of Courts shall place the assessment in the case file.

Section 722. Appellate Review.

If the Supreme Court determines that legal grounds exist for review then it may stay the execution of sentence, pending its review.

The Supreme Court shall limit its review to questions of law, leaving factual questions to the court of original jurisdiction.