

WYANDOTTE NATION CODE OF LAWS

TITLE 7

DOMESTIC VIOLENCE

WYANDOTTE NATION CODE OF LAWS I
TITLE 7 I
WYANDOTTE NATION CODE OF LAWS 1
TITLE 7 1
CHAPTER ONE 1
DOMESTIC ABUSE REPORTING ACT 1
Section 101. Short Title..... 1
Section 102. Definitions. 1
Section 103. Victim – Notice of Rights. 3
Section 104. Victims Not To Be Discouraged From Pressing Charges; Warrantless Arrest
of Certain persons; Emergency Temporary Order of Protection. 3
Section 105. Record of Incidents of Domestic Abuse; Reports..... 5
Section 106. Expert Testimony; Admissibility. 5
Section 107. Certification of Domestic Violence Shelters, Domestic Violence Programs, and
Sexual Assault Programs and Shelters. 5
Section 108. Forms for Reporting Domestic Abuse; Report of Incidents..... 6
CHAPTER TWO 7
PROTECTION FROM DOMESTIC ABUSE ACT 7
Section 201. Short Title..... 7
Section 202. Definitions. 7
Section 203. Petition for Protective Order..... 7
Section 204. Emergency Ex Parte Order and Hearing; Emergency Temporary Ex Parte
Order of Protection..... 11
Section 205. Service of Process; Ex Parte Orders; Hearings; Protective Orders; Period of
Relief..... 12
Section 206. Access to Protective Orders By Law Enforcement Agencies. 14
Section 207. Violation of Ex Parte or Final Protective Order - Penalty..... 14
Section 208. Validity of Orders in Indian Country..... 15
Section 209. Seizure and Forfeiture of Weapons Used to Commit Act of Domestic Abuse. 15
Section 210. Warrantless Arrest..... 16
Section 211. Protective Order; Statement Required; Validity. 16
Section 212. Full Faith and Credit for Protective Orders..... 17
Section 213. Protective Order Registry..... 17
Section 214. Filing Foreign Order in Nation’s Court. 18
Section 215. Law Enforcement Officer Immune from Liability..... 18
CHAPTER THREE 19
ELDER ABUSE PREVENTION AND PUNISHMENT ACT..... 19
Section 301. Short Title..... 19
Section 302. Definitions. 19
Section 303. Mandatory Arrest Provision. 19

Section 304. Role of the Court in Regard to Mandatory Arrest Provision.	20
Section 305. Punishable Offense.	21
Section 306. Order for Protection.	21
Section 307. Hearing on Application, Notice.	22
Section 308. Relief by the Court.	22
Section 309. Standing Order for Protection.	22
Section 310. Service of Order for Protection.	23
Section 311. Assistance of Public Safety in Service or Execution.	23
Section 312. Right to Apply for Relief.	23
Section 313. Modification of Order for Protection.	23
Section 314. Copy to Law Enforcement Agency.	23
Section 315. Violation of an Order for Protection.	24
Section 316. Reporting Abuse of Elder; Penalty for Failure to Report.	24
Section 317. Reports.	24
Section 318. Immunity.	24
Section 319. Contents of Report.	24
Section 320. Reimbursement.	25
Section 321. Non-Disclosure.	25
Section 322. Follow-up Assessment.	25
Section 323. Appellate Review.	25

WYANDOTTE NATION CODE OF LAWS

TITLE 7

DOMESTIC VIOLENCE

CHAPTER ONE DOMESTIC ABUSE REPORTING ACT

Section 101. Short Title.

- A. This Chapter shall be known and may be cited as the “Domestic Abuse Reporting Act.”
- B. The purpose of this Title is to protect all persons, especially women, children, the elderly, disabled persons, and other vulnerable persons, who are within the jurisdiction of the Wyandotte Nation District Court, from all forms of domestic abuse as defined in this section. This Title shall be liberally construed and interpreted in order to achieve its purpose. This Title embodies the intent of the Nation to promote the following goals:
 - To recognize the illegal nature of domestic abuse;
 - To provide victims of domestic abuse with the maximum protection from 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 individual, the family, culture, and society.

Section 102. Definitions.

- These definitions shall be liberally construed so as to protect all persons who are subjected to domestic abuse. This Title also incorporates all definitions that may be contained

in Title __, Criminal Offenses. As used in this Chapter, and subject to additional definitions contained in Title __ (Criminal Code), the term:

A. "Rape" means an act of sexual intercourse accomplished by force or by the threat of imminent death, serious bodily injury, extreme pain, or kidnapping to be inflicted on that person or anyone else or engage in sexual intercourse with a person under the age of fourteen (14) regardless of consent;

B. "Deviate sexual intercourse" means sexual intercourse per os or per anum between human beings who are not husband and wife, or any form of sexual intercourse with an animal, or compelling another to participate in such deviate sexual intercourse by force or by threat of imminent death, serious bodily injury, extreme pain or kidnapping, to be inflicted upon anyone;

C. "Domestic abuse" means any act of physical harm, or the threat of imminent physical harm which is committed by an adult, emancipated minor, or minor age sixteen (16) or seventeen (17) years against another adult, emancipated minor or minor child who are family or household members; and

D. "Family or household members" means spouses, ex-spouses, present spouses of ex-spouses, parents, children, persons otherwise related by blood or marriage, persons living in the same household or who formerly lived in the same household, or persons who are the biological parents of the same child, regardless of their marital status, or whether they have lived together at any time. This shall include the elderly and handicapped.

E. "Domestic violence program" or "sexual assault program" means a facility, agency or organization which offers or provides or a person who engages in the offering of shelter, residential services or support services to:

(1) victims or survivors of domestic abuse as defined in Section 100 of the Code of Criminal Offenses of the Wyandotte Nation, any dependent children of said victims or survivors and any other member of the family or household of such victim or survivor,

(2) victims or survivors of sexual assault, and

(3) persons who are homeless as a result of domestic or sexual violence or both domestic and sexual violence,

and which may provide other services, including, but not limited to, counseling, case management, referrals or other similar services to victims or survivors of domestic abuse or sexual assault.

• F. "Victim" means any of the following persons who have been directly affected by domestic abuse as defined in Section 102(C):

- (1) Any member or former member of the abuser's household or immediate residence area;
- (2) Any person involved in, or formerly involved in, an intimate relationship with the abuser;
- (3) Any person who interacts with the abuser in an employment, academic, recreational, religious, social or other setting;
- (4) Any offspring of the abuser;
- (5) Any relative of the abuser;
- (6) Any elderly person; or
- (7) Any vulnerable person. Examples of vulnerability which give rise to the protection of this code include, but are not limited to, emotional and physical disabilities and impairments.

Section 103. Victim – Notice of Rights.

Upon the preliminary investigation of any rape or deviate sexual intercourse, it shall be the duty of the officer who interviews the victim of the rape or deviate sexual intercourse to give notice to the victim of certain right. The notice shall consist of handing such victim the following statement:

"As a victim of the crime of rape or deviate sexual intercourse, you have certain rights. These rights are as follows:

- The right to request that charges be pressed against your assailant;
- The right to request protection from any harm or threat of harm arising out of your cooperation with law enforcement and prosecution efforts as far as facilities are available and to be provided with information on the level of protection available;
- The right to be informed of financial assistance and other social services as a result of being a victim, including information on how to apply for the assistance and services; and
- The right to a free medical examination for the procurement of evidence to aid in the prosecution of your assailant."

Section 104. Victims Not to Be Discouraged from Pressing Charges; Warrantless Arrest of Certain persons; Emergency Temporary Order of Protection.

A. A peace officer shall not discourage a victim of rape, deviate sexual intercourse or domestic abuse from pressing charges against the assailant of the victim.

B. A peace officer may arrest without a warrant a person anywhere, including his place or residence, if the peace officer has probable cause to believe the person within the preceding seventy-two (72) hours has committed an act of domestic abuse as defined by Section 102(C) of this Chapter, although the assault did not take place in the presence of the peace officer. A peace officer may not arrest person pursuant to this section without first observing a recent physical injury to, or an impairment of the physical condition of, the alleged victim.

C. When an arrest has been made pursuant to subsection (B) of this section and the court is not open for business, the victim of domestic abuse may request a petition for an emergency temporary order of protection. The peace officer making the preliminary investigation shall:

(1) Provide the victim with a petition for an emergency temporary order of protection and, if necessary, assist the victim in completing the petition form. The petition shall be in substantially the same form as provided by Section 203 of Chapter 2 of this Title for a petition for protective order;

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

(3) Inform the victim whether the judge has approved or disapproved an emergency temporary order. If an emergency temporary order has been approved, the officer shall provide the victim with a copy of the petition and a statement signed by the officer that the judge has approved the emergency temporary order of protection and notify said victim that the emergency temporary order shall be effective only until the close of business on the next day that the court is open for business;

(4) Notify the person subject to the emergency temporary protection order of the issuance and conditions of the order. Notification pursuant to this paragraph may be made personally by the officer or in writing. A copy of the petition and the statement of the officer attesting to the order of the judge shall be made available to said person; and

(5) File a copy of the petition and the statement of the officer with the district court of the county immediately upon the opening of the court on the next day the court is open for business.

D. The forms utilized by law enforcement agencies in carrying out the provisions of this Section may be substantially similar to those used under Section 203 of Chapter 2 of this Title.

Section 105. Record of Incidents of Domestic Abuse; Reports.

A. It shall be the duty of every law enforcement agency to keep a record of each reported incident of domestic abuse as provided in subsection (B) of this Section.

B. The record of each reported incident of domestic abuse shall:

(1) Show the type of crime involved in the domestic abuse;

(2) Show the day of the week the incident occurred; and

(3) Show the time of day the incident occurred.

Section 106. Expert Testimony; Admissibility.

In an action in a court of the Wyandotte Nation, if a party offers evidence of domestic abuse testimony of an expert witness concerning the effects of such domestic abuse on the beliefs, behavior and perception of the person being abused, such testimony shall be admissible as evidence.

Section 107. Certification of Domestic Violence Shelters, Domestic Violence Programs, and Sexual Assault Programs and Shelters.

A. The Wyandotte Nation shall adopt and promulgate rules and standards for certification of domestic violence programs and for private facilities and organizations which offer domestic and sexual assault services for the Nation. These facilities shall be known as "Certified Domestic Violence Shelters" or "Certified Domestic Violence Programs" or "Certified Sexual Assault Programs", as applicable.

B. Applications for certification as a certified domestic violence shelter, domestic violence program or sexual assault program, pursuant to the provisions of this section, shall be made to the Board of Directors of the Wyandotte Nation on prescribed forms. The Nation may certify the shelter or program for a period of three (3) years subject to renewal as provided in the rules promulgated by the Nation. Nothing in this section shall preclude the Nation from making inspection visits to a shelter or program to determine contract or program compliance.

C. Excepted from certification regulations are licensed physicians, licensed psychologists, licensed social workers, individual members of the clergy and licensed professional counselors; provided, these exemptions shall only apply to individual professional persons in their private practice and not to any domestic violence program or sexual assault program operated by such person.

D. Beginning July 1, 2012, any facility providing services for victims or survivors of domestic abuse or sexual assault and any dependent children of such victims or survivors shall comply with standards adopted by the Nation; provided, that the certification requirements and standards adopted by the Nation shall not apply to programs and services offered by the State of Oklahoma Department of Health and the Department of Human Services. The domestic violence or sexual assault programs certified pursuant to the provisions of this section shall cooperate with inspection personnel of the Nation and shall promptly file all reports required by the Nation. Failure to comply with regulations and standards promulgated by the Nation shall be grounds for revocation of certification, after proper notice and hearing.

E. The Nation is hereby authorized to collect from each applicant the sum of One Hundred Dollars (\$100.00) annually to help defray the costs incurred in the certification procedure.

Section 108. Forms for Reporting Domestic Abuse; Report of Incidents.

A. The Wyandotte Nation Police Department shall provide forms for the reporting of domestic abuse to each person required to submit such reports and shall establish guidelines for the collection and reporting of domestic abuse incident information pursuant to the provisions of the Domestic Abuse Reporting Act.

B. The Chief of Police of the Wyandotte Nation shall compile a monthly and annual statistical report which shall include the number of reported incidents of domestic abuse in Wyandotte Nation Indian Country, the types of crime involved in the domestic abuse, the days of the week the incidents occurred, and the hours of the day the incidents occurred. The statistical reports shall not include the names of any of the persons involved in an incident of domestic abuse or any information which could serve to identify such persons as individuals.

C. Copies of the monthly and annual statistical reports shall be available to the public upon request.

**CHAPTER TWO
PROTECTION FROM DOMESTIC ABUSE ACT**

Section 201. Short Title.

This Chapter shall be known and may be cited as the "Protection from Domestic Abuse Act."

Section 202. Definitions.

As used in this Chapter:

A. "Domestic abuse" means any act of physical harm, or the threat or imminent physical harm which is committed by an adult, emancipated minor, or minor age thirteen (13) years or older against another adult, emancipated minor or minor child who are family or household members or who are or were in a dating relationship;

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

C. "Harassment" means a knowing and willful course or pattern of conduct by an adult, emancipated minor, or minor thirteen (13) years of age or older, directed at a specific person which seriously alarms or annoys the person, and which serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial distress to the person. "Harassment" shall include, but not be limited to, harassing or obscene telephone calls in violation of Section 143 of the Code of Criminal Offenses of the Wyandotte Nation, fear of death or bodily injury;

D. "Family or household members" means spouses, ex-spouses, present spouses of ex-spouses, parents, foster parents, children, persons otherwise related by blood or marriage, persons living in the same household or who formerly lived in the same household, persons who are the biological parents of the same child, regardless of their marital status, or whether they have lived together at any time. This shall include the elderly and handicapped; and

E. "Dating relationship" means a courtship or engagement relationship. For purposes of this act, a casual acquaintance or ordinary fraternization between persons in a business or social context shall not constitute a dating relationship.

Section 203. Petition for Protective Order.

A. A victim of domestic abuse, a victim of stalking, a victim of harassment, any adult or emancipated minor household member on behalf of any other family or household member who is a minor or incompetent, or any minor age sixteen (16) or seventeen (17) years may seek relief under the provisions of this Act by filing a petition for protective order with the Nation's district court if either the victim or the defendant resides in Wyandotte Nation

Indian Country.

B. When the abuse occurs when the court is not opened for business, such person may request an emergency temporary order of protection as provided by Section 104 of Chapter 1 of this Title.

C. The petition forms shall be provided by the clerk of the court and shall be in the following form approved by the court:

In the District Court of the
Wyandotte Nation

Plaintiff

vs.

CaseNo. _____

Defendant.

PETITION FOR
PROTECTIVE ORDER

Plaintiff, being sworn, states:

1. (Check one or more)

- The defendant caused or attempted to cause serious physical harm to _____.
- The defendant threatened _____ with imminent serious physical harm.
- The defendant has stalked or harassed _____.

2. The incident causing the filing of this petition occurred on or about _____, 20__

(Describe what happened:)

3. The victim and the defendant are related as follows: (check one)

- married

- divorced
- parent and child
- persons related by blood
- persons related by marriage
- present spouse of an ex-spouse
- persons living in the same household
- persons formerly living the in the same household
- biological parents of the same child
- not related

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

The plaintiff and the victim are related as follows:

- married
- divorced
- parent and child
- persons related by blood
- persons related by marriage
- present spouse of an ex-spouse
- persons living in the same household
- persons formerly living the in the same household
- biological parents of the same child

5. (Check A or B)

(A) The victim is in immediate and present danger of abuse from the defendant and an emergency *ex parte* order is necessary to protect the victim from serious harm. The plaintiff requests the following relief in the emergency *ex parte* order (check one or more):

- order the defendant not to abuse or injure the victim
- order the defendant not to visit, assault, molest, or otherwise interfere with the victim
- order the defendant not to threaten the victim
- order the defendant to cease stalking the victim
- order the defendant to cease harassment of the victim
- order the defendant to leave the residence located at _____ on or before _____
- _____

_____ (describe other relief plaintiff requests).

(B) The plaintiff does not request an emergency *ex parte* order.

6. Plaintiff requests the following order to be made by the court following notice to the defendant and a hearing: (Check one or more)

- order the defendant not to abuse or injure the victim;
- order the defendant not to visit, assault, molest, or otherwise interfere with the victim
- order the defendant not to threaten the victim
- order the defendant to cease stalking the victim
- order the defendant to cease harassment of the victim
- order the defendant to leave the residence located at _____ on or before _____
- order the defendant who is a minor to leave the residence located at _____ by immediately placing the defendant in any type of care authorized for children taken into custody pursuant to Section 305 or 306 of the Code of Juvenile Procedure of the Wyandotte Nation. Circle age of _____

defendant: Thirteen (13), Fourteen (14), fifteen (15), sixteen (16), or seventeen (17) years.

- _____

_____(describe other relief plaintiff requests).
- order the defendant to pay attorney fees of the plaintiff in the sum of _____ on or before _____
- order the defendant to pay the court costs of this action in the sum of _____ on or before _____

7. Check one:

- Victim is a resident of the Indian country wherein this petition is filed.
- Defendant is a resident of the Indian country wherein this petition is filed.

8. WARNING: Whoever makes a statement or allegation in this Petition for Protective Order but does not believe that the statement or allegation is true, or knows that it is not true, or intends thereby to avoid or obstruct the ascertainment of the truth, may be found guilty of perjury. Pursuant to Section 129 of the Wyandotte Nation Criminal Code, the penalty for perjury, or subornation of perjury is imprisonment not to exceed one (1) year.

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

Plaintiff

Witness my hand and seal, affixed on the _____ day of _____,
20__

Court Clerk, Deputy Court Clerk,
or Notary Public

C. No filing fee shall be charged the plaintiff at the time the petition is filed. The court may assess court costs and filing fees to either party at the hearing on the petition.

D. The plaintiff shall prepare the petition or, at the request of the plaintiff, the clerk of the court shall prepare or assist the plaintiff in preparing the same.

Section 204. Emergency Ex Parte Order and Hearing; Emergency Temporary Ex Parte Order of Protection.

A. If a plaintiff requests an emergency ex parte order pursuant to Section 203 of this Chapter, the court shall hold an ex parte hearing on the same day the petition is filed. The court may, for good cause shown at the hearing, issue any emergency ex parte order that it finds necessary to protect the victim from immediate and present danger of domestic abuse, stalking, or harassment. The emergency ex parte order shall be in effect until after the full hearing is conducted. An emergency ex parte order authorized by this section may include the following:

- (1) An order to the defendant not to abuse or injure the victim;
- (2) An order to the defendant not to visit, assault, molest, harass or otherwise interfere with the victim;
- (3) An order to the defendant not to threaten the victim;
- (4) An order to the defendant not to stalk the victim;
- (5) An order to the defendant not to harass the victim;
- (6) An order to the defendant to leave the residence; or
- (7) An order removing the defendant who is a minor child from the residence by immediately placing the child in any type of care authorized for children taken into custody pursuant to Sections 305 or 306 of the Code of Juvenile Procedure of the Wyandotte Nation.

B. If a plaintiff requests an emergency temporary ex parte order of protection as provided by Section 104 of Chapter 1 of this Title the judge who is notified of the request by a peace officer may issue such order verbally to the officer or in writing when there is reasonable cause to believe that the order is necessary to protect the victim from immediate and present danger of domestic abuse. When the order is issued verbally the judge shall direct the officer to complete and sign a statement attesting to the order. The emergency temporary ex parte order shall be in effect until the close of business on the next day the court is open for business after the order is issued.

Section 205. Service of Process; Ex Parte Orders; Hearings; Protective Orders; Period of Relief.

A. A copy of the petition, notice of hearing and a copy of any ex parte order issued by

the court shall be served upon the defendant in the same manner as a summons. Ex parte orders shall be given priority for service by the Nation's 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 Section 201 of the Code of Juvenile Procedure of the Wyandotte Nation.

B. Within fifteen (15) days of the filing of the petition the court shall schedule a full hearing on the petition, regardless of whether an emergency ex parte order has been previously issued, requested or denied. Provided, however, when the defendant is a minor child who has been removed from the residence pursuant to Section 201 of the Code of Juvenile Procedure of the Wyandotte Nation, the court shall schedule a full hearing on the petition within seventy-two (72) hours, regardless of whether an emergency ex parte order has been previously issued, requested or denied.

C. At the hearing, the court may grant any protective order to bring about the cessation of domestic abuse against the victim or stalking or harassment of the victim. If the court grants a protective order and the defendant is a minor child, the court shall order a preliminary inquiry in a juvenile proceeding to determine whether further court action pursuant to the Code of Juvenile Procedure of the Wyandotte Nation should be taken against a juvenile defendant.

D. Protective orders authorized by this section may include the following:

- (1) An order to the defendant not to abuse or injure the victim;
- (2) An order to the defendant not to visit, assault, molest, harass or otherwise interfere with the victim;
- (3) An order to the defendant not to threaten the victim;
- (4) An order to the defendant to cease stalking the victim;
- (5) An order to the defendant to cease harassment of the victim;
- (6) An order to the defendant to leave the residence;
- (7) An order awarding attorney fees;
- (8) An order awarding court costs; and

(9) An order requiring a preliminary inquiry in a juvenile proceeding pursuant to the Code of Juvenile Procedure of the Wyandotte Nation.

E. After notice and hearing, protective orders authorized by this section may require the plaintiff or the defendant or both to undergo treatment or participate in the counseling services necessary to bring about cessation of domestic abuse against the victim. Either party or both may be required to pay all or any part of the cost of such treatment or counseling services. The court shall not be responsible for such cost.

F. When necessary to protect the victim and when authorized by the court, protective orders granted pursuant to the provisions of this section may be served upon the defendant by the Wyandotte Nation Tribal Police or other Nation officer whose duty it is to preserve the peace.

G. Any protective order issued pursuant to subsection (C) of this Section shall not be for a fixed period but shall be continuous until modified or rescinded upon motion by either party or if the court approves any consent agreement entered into by the plaintiff and defendant. If a child has been removed from the residence of a parent or custodial adult because of domestic abuse committed by the child, the parent or custodial adult may refuse the return of such child to the residence, unless upon further consideration by the court, in a juvenile proceeding, it is determined that the child should be allowed to return to the residence.

H. No order issued under this Chapter, shall in any manner affect title to real property, purport to grant to the parties a divorce or otherwise purport to determine the issues between the parties as to child custody, visitation, child support or division of property or any other like relief obtainable in the laws of the Wyandotte Nation.

Section 206. Access to Protective Orders By Law Enforcement Agencies.

A. Within twenty-four (24) hours of the return of service of any ex parte or final protective order, the court clerk shall send certified copies thereof to all appropriate law enforcement agencies designated by the plaintiff. A certified copy of any modification, cancellation or consent agreement concerning a final protective order shall be sent by the clerk of the issuing court to those law enforcement agencies receiving the original orders pursuant to this section.

B. Any law enforcement agency requesting copies of the documents listed in subsection (A) of this section shall be required to ensure that other law enforcement agencies have access twenty four (24) hours a day to the information contained in the documents.

Section 207. Violation of Ex Parte or Final Protective Order - Penalty.

A. Except as otherwise provided by this section, any person who:

(1) Has been served with an ex parte or final protective order and is in violation of such protective order, upon conviction, shall be guilty of a criminal offense and shall be punished by a fine of not more than Five Hundred Dollars (\$500.00) or by a term of imprisonment of not more than one (1) year, or both such fine and imprisonment; and

(2) After a person with a previous conviction of a violation of a protective order is convicted of a second or subsequent offense pursuant to the provisions of this section, he shall, upon conviction of the subsequent offense, be deemed guilty of a criminal offense and shall be punished by a term of imprisonment of not less than ten (10) days and not more than one (1) year. In addition to the term of imprisonment, the person may be punished by a fine not to exceed One Thousand Dollars (\$1,000.00).

B. (1) Any person who has been served with an ex parte or final protective order who violates the protective order and without justifiable excuse causes physical injury or physical impairment to the plaintiff or to any other person named in said protective order shall, upon conviction, be guilty of a criminal offense and shall be punished by a term of imprisonment for not less than twenty (20) days nor more than one (1) year. In addition to the term of imprisonment, the person may be punished by a fine not to exceed One Thousand Dollars (\$1,000.00).

(2) In determining the term of imprisonment required by this section, the jury or sentencing judge shall consider the degree of physical injury or physical impairment to the victim.

C. The minimum sentence of imprisonment issued pursuant to the provisions of paragraph (2) of subsection (A) and subsection (B) of this section shall not be subject to statutory provisions for suspended sentences, deferred sentences or probation, provided the court may subject any remaining penalty under the jurisdiction of the court to the statutory provisions for suspended sentences, deferred sentences or probation.

D. In addition to any other penalty specified by this section, the court may require a defendant to undergo the treatment or participate in the counseling services necessary to bring about the cessation of domestic abuse against the victim or to bring about the cessation of stalking or harassment of the victim.

E. Ex parte and final protective orders shall include notice of these penalties.

F. When a minor child violates the provisions of any protective order, the violation shall be heard in a juvenile proceeding and the court may order the child and the parent or parents of the child to participate in family counseling services necessary to bring about the cessation or domestic abuse against the victim and may order community service hours to be performed in lieu of any fine or imprisonment authorized by this section.

Section 208. Validity of Orders in Indian Country.

All orders issued pursuant to this Chapter shall have validity throughout Wyandotte Nation Indian Country, unless specifically modified or terminated by a judge of the Wyandotte Nation District Court.

Section 209. Seizure and Forfeiture of Weapons Used to Commit Act of Domestic Abuse.

A. Each peace officer of this Nation shall seize any weapon or instrument when such officer has probable cause to believe such weapon or instrument has been used to commit an act of domestic abuse as defined by Section 202 of this Chapter, provided an arrest is made, if possible, at the same time.

B. After any such seizure the Nation's Prosecuting Attorney shall file a forfeiture action within ten (10) days of such seizure or any weapon or instrument seized pursuant to this Section shall be returned to the owner.

C. The seizure and forfeiture provisions of Section 1101 of the Code of Civil Procedure of the Wyandotte Nation shall be followed for any seizure and forfeiture of property pursuant to this section. Provided however, no weapon or instrument seized pursuant to this Section or monies from the sale of any such seized weapon or instrument shall be turned over to the person from whom such property was seized if a forfeiture action has been filed within the time required by subsection (B) of this Section, unless authorized by this Section. Provided further the owner may prove at the forfeiture hearing that the conduct giving rise to the seizure was justified, and if the owner proves justification, the seized property shall be returned to the owner.

Section 210. Warrantless Arrest.

A. A Wyandotte Nation police officer, without a warrant, may arrest and take into custody a person if the police officer has reasonable cause to believe that

(1) An emergency ex parte or final protective order has been issued and served upon the person pursuant to this Chapter;

(2) A true copy and proof of service of the order has been filed with the law enforcement agency having jurisdiction of the area in which the plaintiff or any family or household member named in the order resides;

(3) The person named in the order has received notice of the order and has had a reasonable time to comply with such order; and

(4) The person named in the order has violated the order or is then acting in violation of the order.

B. A person arrested pursuant to this Section shall be brought before the court

within twenty four (24) hours after arrest to answer to a charge for violation of the order, at which time the court shall do each of the following:

- (1) Set a time certain for a hearing on the alleged violation of the order within seventy-two (72) hours after arrest unless extended by the court on the motion of the arrested person;
- (2) Set a reasonable bond pending a hearing of the alleged violation of the order; and
- (3) Notify the party who has procured the order and direct the party to appear at the hearing and give evidence on the charge.

Section 211. Protective Order; Statement Required; Validity.

In addition to any other provisions required by the Protection from Domestic Abuse Act, or otherwise required by law, each ex parte or final protective order issued pursuant to the Protection from Domestic Abuse Act shall have the following statement printed in bold-faced type or in capital letters:

"THE FILING OR NONFILING OF CRIMINAL CHARGES AND THE PROSECUTION OF THE CASE SHALL NOT BE DETERMINED BY A PERSON WHO IS PROTECTED BY THIS ORDER, BUT SHALL BE DETERMINED BY THE PROSECUTOR. NO PERSON, INCLUDING A PERSON WHO IS PROTECTED BY THIS ORDER, MAY GIVE PERMISSION TO ANYONE TO IGNORE OR VIOLATE ANY PROVISION OF THIS ORDER. DURING THE TIME IN WHICH THIS ORDER IS VALID, EVERY PROVISION OF THIS ORDER IS IN FULL FORCE AND EFFECT UNLESS A COURT CHANGES THE ORDER."

Section 212. Full Faith and Credit for Protective Orders.

Any valid protection order related to domestic or family violence, issued by a court of another state, tribe or territory shall be accorded full faith and credit by the courts of the Wyandotte Nation and enforced as if it were issued by the Nation's courts.

Section 213. Protective Order Registry.

A. The Wyandotte Nation Police shall establish a registry of protection orders related to domestic or family violence, and shall maintain a complete and systematic record and index of all valid temporary and final civil and criminal court orders of protection.

B. The data fields of the registry shall include, but need not be limited to the following:

- The names of the Plaintiff and any protected parties.
- The name and address of the defendant.

- The date the order was entered.
- The date the order expires.
- The relief granted under Wyandotte Nation jurisdiction.
- The judicial district and contact information for court administration for the court in which the order was entered.
- Where furnished, the social security number, date of birth, and description of the defendant.

C. The clerk of the issuing court or the clerk of the court where a foreign order of protection is filed shall send, on a form prescribed by the Wyandotte Nation Police, a copy of the protection order to the protection order registry so that it is received within 24 hours of the entry of an order issued within the Nation's jurisdiction or the filing of a foreign order. The Wyandotte Nation Police shall enter orders in the registry within eight hours of receipt.

D. The protection order registry shall be available at all times to inform courts, dispatchers and law enforcement officers of any valid protection order issued within the Nation or filed as a foreign order for purposes of enforcement.

Section 214. Filing Foreign Order in Nation's Court.

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

B. Filing shall be without fee or cost.

C. The clerk of court shall forward a copy of the foreign protection order to the Wyandotte Nation Tribal Police Department and the protection order registry upon application of a plaintiff seeking enforcement.

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

E. Filing and entry of the foreign order in the protection order registry shall not be prerequisites for enforcement of the foreign protection order.

Section 215. Law Enforcement Officer Immune from Liability.

A law enforcement officer may rely upon a copy of any foreign protection order which has been provided to the officer by any source, and may also rely upon the statement of any person protected by a foreign order that the order remains in effect. A law enforcement officer acting in good faith shall be immune from civil and criminal liability in any action

arising in connection with a court's finding that the foreign protection order was not enforceable.

**CHAPTER THREE
ELDER ABUSE PREVENTION AND PUNISHMENT ACT**

Section 301. Short Title.

This Chapter shall be known and cited to as the “Elder Abuse Prevention and Punishment Act.”

Section 302. Definitions.

As used in this Chapter, unless the context clearly indicates otherwise:

- A. "abuse" means the willful infliction of physical injury or pain, sexual abuse, mental anguish, unreasonable confinement, intimidation, financial exploitation, the willful deprivation by a caretaker of the basic necessities of life - such as but not limited to food, shelter, clothing, and medical and personal care -which are necessary to avoid physical harm, mental anguish, or mental illness, or any other type of maltreatment. However, no person shall be deemed to be abused for the sole reason they are being furnished nonmedical remedial treatment by spiritual means through prayer alone in accordance with a recognized religious method of healing in lieu of medical treatment;
- B. "elderly" means any person who has attained the age of fifty-five (55) years;
- C. "caretaker" means an individual who has the responsibility for the care of an elder, 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;
 - D. "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;
 - E. "physical injury" means bodily pain, harm, impairment, or disease;
 - F. "mental anguish" means to subject an elder to fear, agitation, confusion, severe depression, or other forms of serious emotional distress, through threats, harassment, or other forms of intimidating behavior;

Section 303. Mandatory Arrest Provision.

- A. An officer shall 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.

(1) For the purpose of this section, probable cause is defined as follows: Based on the officer's observations and statements made by the parties involved and witnesses (if any) the officer using reasonable judgment believes an assault did occur and the person to be arrested committed the assault. This mandatory arrest provision means that the victim

need not sign a complaint for an arrest to occur. Further, under the provisions of (A) above, an officer shall arrest under probable cause even though it may be against the expressed wishes of the victim.

- B. An officer shall 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. Regardless whether or not the person violating the order was invited back into the home, an arrest shall be made. Thus, when the court issues such an order it should inform the excluded party that the court must formally change the order in order for him/her to return to the residence.

- C. An officer shall arrest if there was a threat with a dangerous weapon.

- D. 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.

- E. Whenever an officer investigates an allegation of an incident described in (A), (B), (C) or (D) above, whether or not an arrest is made, the officer shall make a written report of the alleged incident and submit that report to the Prosecutor.

- F. The officer shall request that the jailer contact an Adult Services Worker, Domestic violence Specialist and the Department of Social Services immediately following the booking procedure and inform them that an arrest has been made.

Section 304. Role of the Court in Regard to Mandatory Arrest Provision.

A. Anyone arrested under this ordinance shall be held until arraignment.

B. Prior to the release of the defendant a community volunteer will talk with him/her and discuss the availability of domestic violence groups.

- C. The defendant is arraigned.

- D. If he/she enters a plea other than guilty, an advocate for the victim will assist him/her in the preparation of an order for protection temporarily excluding the other from the home and restraining the defendant from any contact with the victim. If he/she pleads guilty, a pre-sentence investigation is ordered and the victim, either personally or through the Adult Services Worker or Domestic Violence Specialist, communicates his/her concerns to the court.

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

- F. If alcohol or drugs play a part in the abuse, a chemical dependency

evaluation and complete cooperation with any recommendations for treatment made will be ordered.

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

- 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 or by a member of another domestic violence program not later than 10 calendar days after sentencing.

- (2) 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 (see (1) above). The counselor shall submit a record of attendance to the Clerk of Courts. The Clerk of Courts shall maintain a record of attendance.

- H. In cases of failure to comply 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 during the order for protection period, will result in immediate review of the case by the court.

- I. Upon any second or subsequent offense offenders shall be sentenced to at least six months in jail not to exceed the maximum penalty. After serving their sentence they must complete the domestic violence counseling as described in (G)(2) above.

Section 305. Punishable Offense.

Any person or caretaker who abuses or knowingly allows another to abuse any elder is guilty of an offense. Any person or caretaker who is convicted for a violation of this section shall be sentenced to imprisonment for a minimum of six (6) months in jail and to a fine of not less than five hundred (\$500.00) dollars plus court costs.

Section 306. Order for Protection.

There shall exist an order for protection in cases of elder abuse.

- A. A petition for relief under this section may be made by any family or household member on behalf of himself/herself or on behalf of minor family or household members.

- B. A petition for relief 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.

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

- D. The court shall provide simplified forms and clerical assistance to help

with the writing and filing of a petition under this section.

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

Section 307. Hearing on Application, Notice.

- A. Upon receipt of the petition, the court shall order a hearing, which shall be held not later than 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.

- B. Notwithstanding the provisions of paragraph (a) 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 required under paragraph (a) above.

Section 308. 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 which 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 for the protection of a family or household member, including order or directives to the appropriate Wyandotte Nation official(s). Any relief granted by the 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.

Section 309. Standing Order for Protection.

- A. Where an application under this section alleges an immediate and present

danger of domestic abuse, the court may grant a standing order for protection, pending a full hearing, and granting relief as the court deems proper, including an order:

- (1) restraining the abusing party from committing acts of domestic abuse;
- (2) excluding any party from the dwelling they share or from the residence of the other, and from any contact with the victim except by further order of the court.

- B. A standing order for protection shall be effective for a fixed period not to exceed 14 days, except for good cause as provided under paragraph (C) below. 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.

- C. When services is made by published notice, as provided under Section 307(B) above, 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 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 310. Service of Order for Protection.

Orders are to be served personally upon the respondent by a law enforcement officer of the Wyandotte Nation 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 311. 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 Wyandotte Nation 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 312. 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 313. 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.

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

Section 314. Copy to Law Enforcement Agency.

An order for protection granted pursuant to this ordinance shall be forwarded by the clerk of courts within 24 hours to the Wyandotte Nation Police Department or appropriate law enforcement agency with jurisdiction over the residence of the applicant.

Section 315. Violation of an Order for Protection.

- - A. Violation of an order by a respondent who has had notice of the order for protection is an offense.
 - B. A Nation law enforcement officer shall arrest without a warrant and take into custody a person whom the officer has probable cause to believe has violated an order for protection, if the existence of the order can be verified by the officer.
 - C. A violation of an order for protection shall also constitute contempt of court and be subject to attendant penalties.
 - D. In the event of violation of a protection order the mandatory arrest provision, Section 303(B) above, applies.

Section 316. Reporting Abuse of Elder; Penalty for Failure to Report.

Any person or caretaker who has reasonable cause to suspect or who witnesses abuse of an elder shall report the abuse or suspected abuse to the Wyandotte Nation Police Department, the Domestic Violence Program Coordinator, or to a prosecutor of the Wyandotte Nation immediately. Any person or caretaker 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 317. Reports.

Any report required to be made under this ordinance shall be made in person and orally to a member of the Tribal Police Department, the Domestic Violence Program, or the Prosecutor who shall reduce the report to writing. Once the report is reduced to a written form, it shall be forwarded to the Wyandotte Nation Police Department for investigation of the allegations made in the report. If the allegations are found to be true the Wyandotte Nation Police Department shall forward a copy of their report to the Prosecutor 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 318. 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 319. Contents of Report.

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

- A. Name, age and address of elder alleged to be abused.
- B. 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;

- C. Name and address of the alleged perpetrator;
- D. Nature and extent of the abuse;
- E. Persons who might have been aware of the abuse;
- F. Date(s) and location(s) of when and where the alleged abuse occurred;
- G. Findings and recommendations; and
- H. Any other pertinent information known to the person making the report.

Section 320. Reimbursement.

Any person who is convicted of financial exploitation of an elder, shall be ordered by the Wyandotte Nation 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 resources other than money from the elder, then the court shall order the exploiter to return the resources immediately or to sign the necessary documents returning the resources to the elder.

Section 321. 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 322. Follow-up Assessment.

- A. Follow-up will be done at the end of the mandated 14 week sessions, six (6) months after initial sentencing, and one year after initial sentencing.
- B. A Domestic Violence Specialist shall do the assessment and shall forward a written copy of findings to the Clerk of Courts and the Prosecutor. The Clerk of Courts shall place the assessment in the case file.

Section 323. Appellate Review.

Appellate Court shall not stay the execution of sentences under this Chapter but may review legal issues under its review powers. EXCEPTION: If the Appellate Court determines that legal grounds exist for review then and only then may it stay the execution of sentence, pending its review. The Appellate Court shall limit its review to questions of law, leaving factual questions to the court of original jurisdiction.