

ABSENTEE SHAWNEE TRIBE
DOMESTIC VIOLENCE CODE

§1. Statement of Purpose

It is the purpose of this code to assist in preventing family violence within the jurisdiction of the Absentee Shawnee Tribe and to promote the healing of families where possible. Domestic violence is a serious crime against society and this code seeks to guarantee to the victim of domestic violence the maximum protection from abuse that the law can provide.

§2. Definitions

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

- a. "Abuse" and domestic violence" mean any act of physical harm, bodily injury, sexual assault or the threat of imminent physical harm, bodily injury or sexual assault which is committed by an adult, emancipated minor or a minor child thirteen (13) years or older against another adult, emancipated minor or a minor child thirteen (13) years or older who are family or household members or who are of were in a dating relationship.
- b. "Court" means the Absentee Shawnee Tribal Court, unless otherwise specified.
- c. "Family" or household member means:
 - i. Children, including grandchildren, step-children, adopted children, and foster children;
 - ii. Spouses;
 - iii. Ex-spouses;
 - iv. Present partners of ex-spouses;
 - v. Parents, including grandparents, step-parents, adoptive parents and foster parents;
 - vi. Persons living in the same household or who formerly lived in the same household;

- vii. Persons otherwise related by blood or marriage;
- viii. Persons who are the biological parents of the same child, regardless of their marital status or whether they have lived together at any time;
- d. “Dating relationship” means a courtship or engagement relationship. For purposes of this code, a casual acquaintance or ordinary fraternization between persons in a business or social context shall not constitute a dating relationship.
- e. “Foreign protective order” means any valid order of protection issued by a court of another tribe or state.
- f. “Harassment” means a knowing and willful course or pattern of conduct by an adult, emancipated minor, or a minor thirteen years of age or older, directed at a specific person that seriously alarms or annoys the person, and in which there is no lawful 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 and fear of death or bodily injury.
- g. “Officer” means a police officer of the Absentee Shawnee Tribe, or police officer of another jurisdiction authorized under a joint powers agreement with the Absentee Shawnee Tribe to enforce federal, tribal, state, or municipal laws within the jurisdiction of the Absentee Shawnee Tribe.
- h. “Perpetrator” means a person who has committed an act of abuse on his or her family member, household member or person with whom he or she is in a dating relationship.
- i. “Sexual assault” or “Rape” means the unlawful and intentional causing of a person to engage in sexual intercourse, cunnilingus, fellatio, anal intercourse or the causing of penetration of the genital or anal openings of another, to any extent and with any object whether or not there is any emission. Rape does not include medically indicated procedures.
- j. “Stalking” means pursuing a pattern of conduct that would cause a reasonable person to feel frightened, intimidated or threatened. The alleged stalker must intend to place another person in reasonable apprehension of death, bodily harm, sexual assault, confinement or restraint or the alleged stalker must intend to cause a reasonable person to fear for his safety or the safety of a household member. In furtherance of the stalking, the alleged stalker must commit one or more of the following acts on more than one occasion:
 - i. Following another person, in a place other than the residence of the alleged stalker;

- ii. Placing another person under surveillance by being present outside that person's residence, school, workplace, or motor vehicle or any other place frequented by that person, other than the residence of the alleged stalker; or
- iii. Harassing another person.

§3. Crimes of Domestic Violence

- a. Any person who shall knowingly commit an act of domestic violence as defined in this code shall be deemed guilty of the offense of domestic violence and upon conviction thereof shall be sentenced to confinement not to exceed twelve (12) months or to a fine not to exceed \$5,000 to both such confinement and fine as codified in the Absentee Shawnee Tribe Code of Criminal Offenses § _____.
- b. In addition to or in lieu of such confinement and/or fine, the court shall order the person convicted of the offense of domestic violence to participate in a domestic violence treatment program.
- c. Prosecution for the offense of domestic violence shall not preclude prosecution for any other offense under the Absentee Shawnee Tribal Code arising from the same circumstances.

§4. Mandatory and Warrantless Arrest

- a. Without regard to any other requirements imposed by the Absentee Shawnee Tribal Code, including the limitations imposed by Criminal Procedure, Sections 602 and 604, an officer shall arrest an alleged perpetrator of domestic violence if a warrant has been issued or without a warrant within 72 hours of the offense if:
 - 1) the offense occurs in the presence of the officer; or ,
 - 2) the officer has reasonable cause to believe that the person to be arrested has committed domestic violence; or ,
 - 3) the officer has reasonable cause to believe than an emergency ex parte, final protective order or foreign protective order has been issued against the alleged perpetrator and the officer has reasonable casue to believe that:
 - i. The person named in the order has received noticed of the order and has had reasonable time to comply with such order;
 - ii. 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 victim or any family or household member named in the order resides or a certified copy of the order and

proof of service is presented to the peace officer at the time of the arrest;

- iii. the person named in the order has violated the order or is then acting in violation of the order. The officer is expressly authorized to arrest a person in his or her home if the officer has probable cause to believe that the person has committed domestic violence.
- b. If the conditions for arrest established by this section are present, the officer shall arrest the alleged perpetrator of domestic violence whether or not the alleged victim signs a complaint and whether or not the arrest is against the expressed wishes of the alleged victim.
- c. Any challenge perpetrator arrested under this section shall be held in custody for a period not less than twelve (12) hours, or such longer period as is necessary to conduct a hearing before the court, as a mandatory cooling off period. Prior to the court hearing, the alleged perpetrator shall not be released on bail or on his/her own recognizance.
- d. Any person arrested pursuant to this section shall be brought before the court within forty-eight (48) hours or if holiday next business day after arrest to answer to a charge for violation of the protective order or the criminal charge of domestic violence.
- e. In the event the Absentee Shawnee Tribe does not have criminal jurisdiction over the perpetrator, the officer may take the alleged perpetrator into custody for the purpose of excluding him from the jurisdiction of the Absentee Shawnee Tribe and delivering him to an appropriate law enforcement agency.

§5. Special Court Rules.

In addition to the rules of court generally applicable to criminal proceedings, the Court is authorized to take the following actions in a proceeding involving alleged domestic violence offenses.

At the commitment hearing, if the alleged perpetrator is to be released from custody, the Court, in its discretion and as a condition of release, may issue an order for protection

temporarily excluding the alleged perpetrator from the home of the alleged victim and restraining the alleged perpetrator from any contact with the alleged victim.

- a. If the alleged perpetrator pleads guilty, a pre-sentence report may be ordered at the discretion of the Court prior to sentencing.
- b. If it appears to the Court that alcohol or drugs played a part in the abuse, a chemical dependency evaluation with a treatment plan may be ordered, at the discretion of the Court, prior to sentencing.
- c. Upon a guilty plea or conviction, the perpetrator shall be ordered to participate in an appropriate domestic violence program consisting of at least the following:
 - i. The perpetrator shall attend and cooperate in an intake session for evaluation.
 - ii. The evaluation system shall be completed by the domestic violence program not later than ten (10) calendar days after entry of the order requiring evaluation, unless the Court extends that time period.
 - iii. A copy of the evaluation and recommended treatment plan shall be provided to the court.
 - iv. In the discretion of the Court, the perpetrator's participation in treatment sessions based on the domestic violence program's treatment plan may be in lieu of confinement and/or fine, or the execution of any such penalty may be suspended pending completion of the treatment ordered by the Court.
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§6. Protective Order – Petition; Forms; Fees; Preparation

- a. Victims of domestic violence, stalking, harassment or sexual assault, any adult of emancipated minor or household member on behalf of any other family member or household member who is a minor or incompetent or any minor age 16 or 17 years, and/or the tribal prosecutor or social services program may seek a protective order under this code.
 - i. The person seeking a protective order may file a petition with the Absentee Shawnee Tribal Court if either the victim or alleged perpetrator resides within the jurisdiction of the Absentee Shawnee Tribe.
 - ii. A petition may be filed regardless of the pendency of any other civil or criminal proceeding related to the allegations in the petition.
 - iii. No filing fee shall be required for the filing of a petition under this section. If an alleged perpetrator has been arrested for the offense of domestic violence, the court or the arresting officer shall advise the alleged victim of the right to file a petition under this section without cost.
 - iv. The petitioner shall prepare the petition or at the request of the petitioner, the court clerk or a domestic violence coordinator, if applicable, shall prepare or assist the petitioner in preparing the petition. The Court may

adopt such forms as may be useful to assist in the preparation of a petition.

§7. Emergency Ex Parte Petitions, Orders and Hearings

- a. If a petitioner requests an emergency ex parte order by phone, 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, sexual assault, stalking, or harassment. The emergency ex parte order shall be in effect until after the full hearing is conducted. Provided, if the defendant, after having been served, does not appear at the hearing, the emergency 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, the nit is not necessary to serve the defendant with the permanent order. Any emergency ex parte order entered shall state: “IF YOU FAIL TO APPEAR AT THE HEARING, A PERMANENT ORDER MAY BE ISSUED WITHOUT FURTHER NOTICE TO YOU”. An emergency ex parte order authorized by this section may include the following:
 - b.
 - i. An order to the defendant not to abuse or injure the victim;
 - ii. An order to the defendant not to telephone, visit, assault, molest, stalk, harass or otherwise interfere with the victim;

- iii. An order suspending child visitation due to physical violence or threat of abuse by the defendant or a threat to violate a custody order by the defendant or an order requiring supervised visitation with the child in a neutral setting.
 - iv. An order to the defendant not to threaten the victim;
 - v. An order to the defendant not to stalk the victim;
 - vi. An order to the defendant not to harass the victim;
 - vii. An order to the defendant to leave the residence of the victim;
 - viii. 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 the Absentee Shawnee Juvenile Code.
 - ix. An order excluding the defendant from all or part of the jurisdiction of the Absentee Shawnee Tribe as may be necessary to enforce the protective order.
 - x. An order granting other relief as requested by the victim.
- b. An emergency ex parte protective order authorized by this section shall include the name, sex, race, date of birth of the defendant, and the dates of issue and expiration of the protective order.
- c. If a plaintiff requests an emergency temporary ex parte order of protection, the judge who is notified of the request by an 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.

§8. Service of Emergency Ex Parte Order, Petition for Protective Order, and Notice of Hearing – Full Hearing – Final Protective Order

- a. A copy of the petition, notice of hearing and a copy of any emergency ex parte order issued by the court shall be served upon the defendant in the same manner as a summons. Emergency ex parte orders shall be given priority for service and can be served twenty-four (24) hours a day when the location of the defendant is known. An emergency 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. 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.
- b. Within fifteen (15) days of the filing of the petition for a protective order, 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, 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. The court may schedule a full hearing on the petition for a protective order within seventy-two (72) hours when the court issues an emergency ex parte order suspending child visitation rights due to physical violence or threat of abuse. If service has not been made on the defendant at the time of the hearing, the court shall continue the hearing. A petition for a protective order shall automatically renew every fifteen (15) days until the defendant is served. A petition for a protective order shall not expire and must be dismissed by court order. Failure to serve the defendant shall not be grounds for dismissal of a petition or an ex parte order unless the victim requests a dismissal.

- c. At the hearing, the Court may impose any terms and conditions in the protective order that the court reasonably believes are necessary to bring about the cessation or domestic abuse against the victim of stalking or harassment of the victim or the victim's immediate family including, but not limited to, counseling or treatment in a domestic violence or anger management program at the defendant's expense. 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 should be taken regarding a juvenile defendant.
- d. Final protective orders authorized by this section may include the following in addition to any other order specified by the court:
 - i. Any order to the defendant not to abuse or injure the victim;
 - ii. An order to the defendant not to telephone, visit, assault, molest, stalk, harass or otherwise interfere with the victim.

- iii. An order suspending child visitation rights due to physical violence or threat of abuse by the defendant, or a threat to violate a custody order, or an order requiring supervised visitation with the child in a neutral setting;
- iv. An order to the defendant not to threaten the victim;
- v. An order to the defendant to cease stalking the victim;
- vi. An order to the defendant to cease harassment of the victim;
- vii. An order to the defendant to leave the residence;
- viii. An order awarding attorneys' fees
- ix. An order requiring payment of court costs and service of process fees;
- x. An order requiring a preliminary inquiry in a juvenile proceeding; and
- xi. An order excluding the defendant from some or all of the jurisdiction of the Absentee Shawnee Tribe as may be necessary to effect the order.
- xii. An order granting excluding the defendant from some or all of the jurisdiction of the Absentee Shawnee tribe as may be necessary to effect the order.

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