

DELAWARE TRIBE OF INDIANS

DOMESTIC VIOLENCE CODE

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CHAPTER ONE INTRODUCTION

8-101. Short Title

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

8-102. Legislative Findings

The Delaware Tribal Council finds that:

- (a) Domestic violence is a serious offense against the victim, family, community and the Delaware Tribe of Indians;
- (b) All persons have the right to live free from domestic violence;
- (c) Domestic violence in all forms poses a significant health and welfare problem to the Delaware Tribe of Indians;
- (d) Domestic violence can be reduced and deterred through intervention of law; and
- (e) There is a need to provide the victims of domestic violence with all protections under the law.

8-103. Purpose

(a) The purpose of this code is to protect all persons, especially women, children, the elderly, persons with disabilities, and other vulnerable individuals, who are within the jurisdiction of the Delaware Tribe of Indians, from all forms of domestic abuse, as defined herein. This code shall be liberally construed and interpreted to achieve its purpose. This code embodies the intent of the Delaware Tribe of Indians to promote and achieve the following goals:

- (1) To recognize the illegal and detrimental effects of domestic abuse on the health and welfare of the Delaware Tribe of Indians;
- (2) To provide victims of domestic abuse with the maximum protection under the law;
- (3) To establish legal remedies that discourages domestic abuse in any form;
- (4) To facilitate the reporting of domestic abuse;
- (5) To reduce the incidence of domestic abuse.

8-104. Specific Applicability

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

8-105. Definitions

These definitions shall be liberally construed to protect all persons who are subjected to domestic violence or family violence. As used in this Title:

(a) “Abuse” means the purposeful infliction of physical harm, bodily injury or sexual assault or the infliction of fear of imminent physical harm.

(b) “Advocate” means a person who is employed by the Delaware Tribe of Indians Domestic Violence Program to provide services to victims of domestic violence and/or sexual assault, or a trained individual recognized by the Tribe as competent to provide services in the area.

(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 familial relationship, or by an order of a court of competent jurisdiction.

(d) “Coercion” means to restrain, compel or dominate by force or threat.

(e) “Contact” includes but is not limited to:

(1) Repeatedly coming into and/or remaining in the visual or physical presence of the other person;

(2) Following the other person;

(3) Waiting outside the home, property, place of employment or educational institution of the other person;

(4) Sending or making written communications in any form;

(5) Speaking with the other person by any means, including voice messages;

(6) Communicating with the other person through a third party;

(7) Committing a crime against the other person;

(8) Communicating with a third party who has some relationship with the person with the intent of affecting the third party’s relationship with the person;

(9) Communicating with business entities with the intent of affecting some right or interest of the person;

(10) Causing damage to the person’s home, property, place of employment or educational institution;

(11) Delivering directly, or causing the delivery of, any object to the person's home, property, place of employment or educational institution;

(f) "Court" means the judiciary of the Delaware Tribe of Indians.

(g) "Domestic Violence" means any act or attempt to commit an offense, if any of the following applies:

(1) The relationship between the victim and the defendant is one of marriage or former marriage or of persons residing or having a history of residing 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;

(4) The victim and the defendant are or have been in a social relationship of a romantic or intimate nature;

(h) "Elderly" means any person who has attained the age of fifty-five (55) years.

(i) "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;

(j) "Family Violence" means the same or similar acts committed in domestic violence when such act is directed towards a family or household member instead of an intimate partner. Family violence is committed when the offense is directed at:

(1) A victim who is related to the perpetrator or the perpetrator's spouse by blood or court order as a parent, grandparent, child, grandchild, sibling or by marriage as a parent-in-law, step-parent, step-child, step-grandchild, step-sibling 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 perpetrator and is related by blood to a former spouse of the perpetrator and is related by blood to a former spouse of the perpetrator or to a person who resided or who has resided in the same household as the perpetrator.

(k) "Indian" means a person who is a member of an Indian tribe, band, nation, 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 by the United States because of their status as Indians.

(l) "Intimate relationship" means spouses, former spouses, persons who are or have been in a marital-like relationship including same-sex relationships, persons who have a child in

common, regardless of whether they have been married or have lived together at in any time in a romantic relationship.

(m) “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 consistent with this chapter even though the arrest may be against the expressed wishes of the victim.

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

(o) “Probable cause” is means based upon a law enforcement officer’s observation and statements made by the parties involved and witnesses (if any) causes the officer, using reasonable judgment, to believe an assault did occur and the person to be arrested committed the assault.

(p) “Prosecuting Attorney” means the Delaware Tribe of Indians’ designated attorney.

(q) “Protection Order” is a temporary or permanent Court order, injunction or other related to domestic violence or family violence, harassment, sexual abuse, or stalking granted for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with, or physical proximity to another person, who is a victim or alleged victim of domestic violence or family violence, dating violence, sexual assault or stalking. 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.

CHAPTER TWO GENERAL PROVISIONS

8-201. Domestic Violence Court Established

There is hereby created and established within the Delaware Tribe of Indians judiciary, a Domestic Violence Division whose powers and duties are set forth in this Code.

8-202. General Jurisdiction

(a) Jurisdiction over domestic violence and family violence matters shall be in accordance with the Constitution of the Delaware Tribe of Indians, these Codes of Law, and any applicable federal laws.

(b) The Delaware Tribe of Indians 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 and service area of the Delaware Tribe where such orders are entitled to recognition as a matter of full faith and credit.

8-203. Evidentiary Standards

(a) Testimonial Privileges

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

- (A) the privilege of confidential communications between spouses; and
- (B) the testimonial privilege of spouses.

(2) A victim of domestic violence may prevent an advocate from disclosing confidential oral and written communications, including records and reports maintained in accordance with the advocate's employment, if the victim claims the advocate-victim privilege. The advocate-victim privilege does not relieve the advocate of the mandatory duty to report child abuse, and does not apply when the advocate is required to give evidence in child abuse court proceedings.

8-204. Obligation to Report Domestic Violence and Family Violence

(a) The following individuals 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 in imminent risk of harm: any medical or mental health professional, including but not limited to assistants, aids or administrative personnel; school administrators, teachers, or other school personnel; social worker; child care providers or day care staff; foster parents, residential care or institutional personnel; peace officer or other law enforcement official; and judge, any officers of the court, including an attorney, if not prevented by the attorney-client privilege.

The suspected domestic violence or family violence shall be reported immediately to law enforcement.

(b) Any person subject to mandatory reporting who fails, neglects, or refuses to report acts of domestic violence known to him/her, after notice and hearing, will be assessed a civil penalty in an amount not to exceed \$500.00 and/or community service or domestic violence education hours not to exceed 40 hours.

8-205. Standard of Proof, Defenses

(a) 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 or reoccurrence of domestic violence or family violence.

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

- (1) the petitioner used reasonable force in self-defense against the respondent;
- (2) the petitioner has previously filed for a protection order and subsequently reconciled with the alleged perpetrator;
- (3) the petitioner has not filed for a divorce; or
- (4) the petitioner or the alleged perpetrator is a minor.

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

8-206. Criminal Sanctions

Nothing in this Title shall prevent the filing of criminal sanctions in addition to the consequences imposed by the provisions of the Domestic Violence Code.

8-207. Statute of Limitations

For purposes of this chapter, the statute of limitations for the issuance or enforcement of orders of protection shall be three (3) years, unless otherwise specified herein.

8-208. Non-Waiver of Sovereign Immunity

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

8-209. Effective Date

The provisions of this Code shall become effective immediately upon passage and approval by the Delaware Tribal Council.

CHAPTER THREE PROTECTION ORDERS

8-301. Orders of Protection, Who May File

- (a) Persons who may file a petition for protective order
 - (1) for herself or himself;
 - (2) on behalf of a minor child;
 - (3) a minor child;

(4) on behalf of any person prevented by a physical or mental incapacity from filing a protective order on their own;

(5) on behalf of a client in the case of social services, 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.

8-302. Appointment of Guardian Ad Litem or Attorney for Minor Child or Incapacitated Adult

If a Petition for Protective Order is filed by or on behalf of a minor child or an incapacitated adult, the Court shall appoint a guardian ad litem or attorney to represent the child's interests.

8-303. Notice to the Delaware Domestic Violence Prevention Program

The Court shall, within eight (8) hours, or as soon as practicable, provide notice to the Delaware Domestic Violence Prevention Program of all petitions for protective order.

8-304. Confidentiality

A petitioner seeking protection shall not be required to disclose their address of residence or place of employment except to the judge. Such information shall be used exclusively for the purposes of determining jurisdiction.

8-305. Forms of Petitions; Fee Waived

(a) There shall be no filing fee charged for a petition for protective order, nor shall there be a fee charged for service of process of the petition for protective order. However, the Court may assess fees and or court costs, and order the respondent to pay same if an order of protection, temporary or permanent, is granted. The Court may also assess a fee and court costs to any individual who files a false petition or report.

(b) The petitioner shall prepare the petition or, at the request of the petitioner, the court clerk, staff from the Delaware Domestic Violence Prevention Program, or other persons may assist the petitioner in preparing the petition.

8-306 Temporary Ex Parte Protective Orders

(a) Petition, Motion and Order

(1) Upon the filing of a Petition for Domestic Abuse Protective Order and Motion for Temporary Protective 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) 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 order.

(B) 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.

(C) The Temporary Order of Protection may include any and all relief as permitted by this Code and other relief necessary to prevent further domestic abuse.

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

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

(2) If the Court finds that an emergency does not exist, the Court shall deny the petitioner's Motion for a Temporary Order of Protection and schedule a time and date for hearing on the Petition for Domestic Abuse Protection Order.

(A) The hearing for an Order of Protection shall be set within fifteen (15) days (excluding holidays and weekends) of the filing of the petition.

(B) The Court shall provide notice to the respondent according to the provisions of the Delaware Civil Procedure Code.

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

8-307 Protection Order Service of Process

(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 respondent in the same manner as a summons. Ex parte orders shall be given priority for service and may be served at hour of the day or night.

(b) A protection order issued against a minor child who is removed from the home of the victim, shall be provided to the caretaker of the child's subsequent placement.

(c) When service cannot be made upon the defendant in the usual manner, the Court may transfer service of process to any authorized law enforcement or private process server for the purpose of effecting service upon the respondent. If service cannot be completed within five (5) days, the Court shall notify the respondent by regular mail, postage prepaid thereon, of the date and time of the hearing. The Court shall also notify the petitioner by regular mail, postage prepaid

thereon, of the lack of service of process by law enforcement or private process server, and shall advise the petitioner that respondent has been notified by regular US mail.

8-308. Protection Order Hearing

(a) Within fifteen (15) days 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.

(1) The Court may continue the hearing if the petitioner seeks further relief concerning an issue not outlined by the Order of Protection, or for good cause shown.

(2) The respondent may request a continuance and the Court shall have discretion to determine if the request is made for good cause, and if so, the Court may grant a continuance for a period not to exceed fifteen (15) additional days.

(3) During the pendency of time between filing and the full hearing, the respondent may motion the Court to dissolve or modify any Temporary Order of Protection.

(A) The respondent must give at least five (5) days notice of the motion to the petitioner. The Court shall give priority to such motions.

(b) If the petitioner fails to appear at the hearing, the Court may continue the hearing for up to fifteen (15) days, or dismiss the petition without prejudice. Any previously granted Temporary Order of Protection shall remain in effect during time granted for a continuance.

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

(d) If, after hearing the evidence, 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 the Court deems necessary and appropriate.

8-309 Standard of Proof

(a) 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 purpose of the order is to prevent the occurrence or recurrent of abuse.

(b) A petition for protection order shall not be denied for any of the following:

(1) the petitioner used reasonable force in self-defense against the respondent;

(2) the petitioner has previously filed a petition for protection order and subsequently reconciled with the respondent;

- (3) the petitioner has not filed for a divorce; or
- (4) the petitioner or the respondent is a minor.

(c) The following shall not be considered a defense in a proceeding for the issuance of a protection order:

- (1) intoxication;
- (2) spousal immunity; or
- (3) provocation.

8-310 Protection Order Relief

(a) Upon issuing an order of protection, temporary or otherwise, the respondent shall abide by the following:

- (1) Respondent shall not abuse, harass, or threaten the petitioner, or commit any other domestic abuse;
- (2) Respondent shall immediately vacate petitioner's residence;
- (3) Respondent shall stay at least 100 yards away from places where the petitioner may be, including but not limited to the petitioner's residence, school, place of employment, or any other locations as ordered by the Court;
- (4) Respondent shall not contact petitioner, in person, in writing, by telephone, or through a third party unless the Court's order contains a provision allowing the third party contact.
- (5) Respondent shall not sell, remove, hide, destroy or damage any property owned by the petitioner or by both parties jointly;
- (6) Respondent shall abide by any other conditions or directives as ordered by the Court, including but not limited to, orders to participate in domestic violence counseling, drug and alcohol abuse counseling, psychological examination, or parenting classes.

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

8-311 Mutual Order for Protection Discouraged

A protection order against both parties shall not be enforceable against the petitioner unless:

- (a) the respondent files a written pleading, such as a cross-claim or counter complaint seeking a protection order, and
- (b) the Court makes specific findings of harassment, stalking, assault, or domestic or family violence against both the petitioner and the respondent, and
- (c) determines that each party is entitled to such an order.

8-312 Duration of Protection Orders

(a) A temporary ex parte order of protection shall be effective until a full hearing, with notice to the respondent, is held. Provided, if the respondent, after having been served, does not appear at the hearing, the temporary order shall remain in effect until such time as the respondent is served with the permanent order. If the terms of the permanent order are the same or less restrictive than those in the temporary order, then it is not necessary to serve the respondent but rather a copy of the order may be mailed to the respondent's last known address. Any temporary ex parte order shall state: "IF YOU FAIL TO APPEAR AT THE HEARING, A PERMANENT ORDER MAY BE ISSUED WITHOUT FURTHER NOTICE TO YOU."

(b) Orders of protection issued after notice shall remain in effect for a period of four (4) years, or until further order of the Court, whichever comes first.

(c) The Court may extend the duration of the order of protection for good cause shown. The extension of time shall not exceed four (4) years; however, the Court may extend the order as many times as necessary provided there remains good cause to do so.

8-313 Transmittal of Orders of Protection

The Court shall:

(a) Provide a copy of the Order of Protection to the Delaware Domestic Violence Prevention Program or other appropriate person or agency.

(b) Cause to be transmitted, by the end of the next business day after the order is issued, a copy of the protection order to local law enforcement agencies as designated by the petitioner.

8-314 Tribal Registry for Orders of Protection

The Court shall maintain a registry of all orders of protection issued by the Delaware Tribal Court.

8-315 Violation of Protection Orders

(a) Criminal. All violations of an order of protection, temporary or otherwise, shall be prosecuted pursuant to applicable criminal codes.

(b) Civil. In addition to any criminal penalties for failure to comply with the requirements of this Code, except as 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 hearing.

8-316 Effect of Action by Petitioner or Respondent On Order

An invitation by the petitioner to visit, communicate, or otherwise act in a manner that is contrary to the provisions of the Order does not waive or nullify the protection order. Further, the petitioner cannot violate or be arrested for a violation of his/her own protection order.

8-317 Vacating a Protection Order

(a) A party who wishes to have a protection order vacated must move the Court, in writing, for such an order.

(b) A protective order shall only be vacated by Court order.

(c) In determining whether a protection order is to be vacated, the Court shall consider the following:

(1) whether the respondent has substantially complied with the order including any ordered provisions for counseling or treatment;

(2) whether the circumstances have changed so as to remove the danger to the petitioner from the respondent;

(3) any other factors the Court deems relevant.

(d) Upon vacating an order, the Court shall cause to be transmitted a copy of the order vacating the protection order to any and all law enforcement departments to whom a copy of the protection order was delivered.

8-318 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 Delaware Tribe of Indians, and enforced as if it were issued by the Delaware Tribe.