

TITLE 8E
DOMESTIC VIOLENCE

Chapter 1. General Provisions⁶

§8E.1.01 Purpose

The purpose of the Crow Tribal Legislature in enacting this Domestic Violence Code is to recognize:

- a. That all persons have a right to be respected, to maintain the sanctity of body and soul, and to be free of violence.
- b. That domestic violence is a serious and pervasive problem in our Reservation communities.
- c. That domestic violence has many faces —
Physical, intellectual, sexual, psychological, spiritual, and economic.
- d. That domestic violence is more pernicious than other forms of violence because of the special relationship between the abuser and the abused.
- e. That domestic violence within a relationship tends to escalate in frequency and severity, particularly when the victim tries to sever the relationship.
- f. That victims of domestic violence are often isolated, intimidated, and dispirited, losing the will and the ability to help themselves.
- g. That domestic violence cannot be excused by stress or poverty, by intoxicants or illegal substances, by weather or season, or by the victim's behavior.
- h. That today's domestic violence spawns tomorrow's domestic violence, perpetuating generations of abusers and abused.
- i. That domestic violence is not "cultural" and, indeed, is contrary to traditional Crow values holding the individual and the family sacred.
- j. That domestic violence is not just a "family matter" but, rather, a crime against the victim, the victim's family, the community, and the Crow Tribe.
- k. That the unity of our Tribe depends upon the unity of our families, and that a family wracked by domestic violence is neither strong nor stable.
- l. That the future of our Tribe depends upon the future of our children, and that a child who experiences domestic violence, as either victim or witness, carries deep emotional scars.
- m. That the compassion of our Tribe is measured by our treatment of the most vulnerable, and that domestic violence against elders and the disabled diminishes our collective humanity.

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- n. That domestic violence can be prevented, reduced, and deterred through increased awareness and zero tolerance and through prompt and firm intervention by law enforcement, the legal system, and social, educational, and health care institutions.

§8E.1.02 Intent

In view of the Purpose stated above, the intent of the Crow Tribal Legislature in enacting this Domestic Violence Code is:

- a. To prevent, reduce, and deter the incidence of domestic violence in our Reservation community.
- b. To afford victims of domestic violence maximum assistance, safety, and
- c. To hold perpetrators of domestic violence accountable for their actions and for changing their conduct.
- d. To establish an efficient, fair, and flexible system that encourages victims, both direct and indirect, to seek assistance and that discourages perpetrators, both current and potential, from committing acts of domestic violence.
- e. To enhance the ability of the Crow Police Department to prevent incidents of domestic violence, to aid victims, and to enforce the law.
- f. To enhance the ability of the Crow Tribal Court to assure that justice is served by fashioning effective remedies in domestic violence cases and by issuing orders that will be accorded full faith and credit by other tribal and non-tribal jurisdictions.
- g. To enhance the ability of social, educational, and health care institutions, working in conjunction with the Crow Police Department and the Crow Tribal Court, to identify instances of domestic violence and to facilitate healing.
- h. To encourage greater understanding of domestic violence, its causes and cures, through data collection, evaluation, and reporting.
- i. To encourage greater awareness of domestic violence, its many faces and consequences, through dissemination of information and public education programs.
- j. To foster an atmosphere of non-violence and mutual respect in our Reservation community, in keeping with traditional Crow values.

§8E.1.03 Liberal Construction

The Provisions of this Title shall be liberally construed in order to further the Purpose stated in CLOC 8E.1.01 and the Intent stated in CLOC 8E.1.02.

§8E.1.04 Definitions

Unless the context clearly requires otherwise, the definitions in this Section apply throughout this Title.

- a. "**Advocate**" means a person who is employed to provide services to victims of domestic violence or who volunteers to do so after receiving a minimum of forty hours training in the area.
- b. "**Business hours**" means from 8:00 a.m. until 5:00 p.m. on judicial days.

- c. **“CLOC”** means the Crow Law and Order Code.
- d. **"Court"** means the Crow Tribal Court.
- e. **“CPD”** means the Crow Police Department.
- f. **"Dating relationship"** means a social relationship of a romantic nature. In determining whether parties have a "dating relationship," the Court shall consider:
 - 1. The length of time the relationship has existed.
 - 2. The nature of the relationship.
 - 3. The frequency of interaction between the parties.
- g. **"Domestic violence"** means any one of the following when occurring between family or household members, as defined below:
 - 1. Commission of an act that constitutes a crime under CLOC Title 8, as now or hereafter amended.
 - 2. Commission of a crime listed under the Major Crimes Act, 18 U.S.C. §1153, as now or hereafter amended.
 - 3. Physical harm, bodily injury, assault, sexual assault, property damage, or injury to household pets or the infliction of reasonable fear of physical harm, bodily injury, assault, sexual assault, property damage, or injury to household pets.

"Domestic violence" also means:

 - 4. Violation of a restraint provision contained in an order entered under this Title or of a comparable provision contained in an order accorded full faith and credit by the court under CLOC _____, and of which the person had notice at the time of the alleged violation.

"Domestic violence" does not include acts of self-defense or in defense of another reasonably taken in response to acts of domestic violence.
- h. **"Essential personal effects"** means those items necessary for a person's immediate health, welfare, and livelihood, such as clothing, cribs, bedding, medications, personal documents, personal hygiene items, and tools of trade.
- i. **"Family or household members"** means any one of the following:
 - 1. Spouses.
 - 2. Former spouses.
 - 3. Persons who have a child in common or who are expecting a child in common, regardless of whether they have been married or have lived together at any time.
 - 4. Persons thirteen years of age or older who are related by blood or marriage.
 - 5. Persons thirteen years of age or older who are presently residing together or who have resided together in the past.

6. Persons thirteen years of age or older who have or have had a dating relationship.
 7. Persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.
 8. Physically or mentally disabled persons and their caregivers.
 9. Elders sixty years of age or older and their caregivers.
- j. "**Judicial days**" includes all calendar days, except Saturdays, Sundays, and holidays recognized by the Crow Tribal Court.
 - k. "**Notice**" means that a person has actual knowledge, whether such knowledge was acquired during court proceedings, through receipt of a written order, or through information provided orally or in writing by the Court, the CPD, the Prosecutor, or Social Services.
 - l. "**Probable cause**" means that a police officer, acting as a person with ordinary caution, has reasonable grounds to believe that the person to be arrested has committed a crime, based on all the facts known to the office, including the officer's personal observations, statements by parties involved in the incident, statements by witnesses, and any other reliable information.
 - m. "**Prosecutor**" means the Office of the Crow Tribal Prosecutor.
 - n. "**Reservation**" means all territory within the exterior boundaries of the Crow Indian Reservation.
 - o. "**Social Services**" means the Crow Social Services Department and/or BIA Social Services.
 - p. "**Tribe**" or "**Tribal**" refers to the Crow Indian Tribe, a sovereign nation.
 - q. "**Victim**" means a family or household member who has been subjected to domestic violence.

CHAPTER 2 Jurisdiction

§8E.2.01 Proceedings

The Court shall have jurisdiction over all proceedings under this Title.

§8E.2.02 Court Orders

Restraint provisions contained in orders entered under this Title and comparable provisions contained in orders accorded full faith and credit by the Court under CLOC _____ shall govern conduct both on and off the Reservation.

CHAPTER 3 Criminal Offenses

§8E.3.01 Domestic Violence

A person is guilty of domestic violence if the person commits an act of domestic violence, as defined in CLOC 8E.1.04.

The offenses shall be classified as follows:

- a. **CLOC 8E.1.04 (g) (1) (CLOC Title 8):**
Domestic violence as defined in subsection (1) of the CLOC 8E.1.4 (g) shall be deemed of a class one degree higher than the lesser included offense in CLOC Title 8.
- b. **CLOC 8E.1.04 (g) (2) (Major Crimes Act):**
Domestic violence as defined in subsection (2) of the CLOC 8E.1.04 (g) is a Class AA offense.
- c. **CLOC 8E.1.04 (g) (3) (Physical harm, etc.):**
Domestic violence as defined in subsection (3) of CLOC 8E.1.04 (g) is a Class A offense.
- d. **CLOC 8E.1.04 (g) (4) (Violation of order):**
Domestic violence as defined in subsection (4) of CLOC 8E.1.04 (g) is a Class A offense.

§8E.3.02 Interfering With the Reporting of Domestic Violence

A person is guilty of interfering with the reporting of domestic violence if the person:

- a. commits an act of domestic violence, as defined in CLOC 8E.1.04 (e); and
- b. prevents or attempts to prevent the victim of or a witness to such act of domestic violence from calling 911 emergency communications system, obtaining medical assistance, or making a report to any law enforcement official.

Interfering with the reporting of domestic violence is a Class B offense.

CHAPTER 4 Criminal Proceedings

§8E.4.01 Mandatory Court Appearance

A person arrested for a criminal offense under this Title shall not obtain release by posting bail or by any other means prior to a Court appearance.

§8E.4.02 In-Custody Hearing; Timing

A person arrested for a criminal offense under this Title shall appear before the Court at an in-custody hearing no later than thirty-six hours after arrest. If an arrest occurs during non-business hours then the thirty-six hour period shall begin to run at 8:00 a.m. on the next judicial day.

§8E.4.03 In-Custody Hearing; Probable Cause

When a person has been taken into custody based upon a warrantless arrest, the Prosecutor shall demonstrate probable cause for the arrest at the in-custody hearing. Upon a finding that there was probable cause, the Court shall proceed under CLOC 8E.4.04. Upon a finding that there was not probable cause, the Court shall order the person's prompt release.

§8E.4.04 In-Custody Hearing; Release Considerations

In determining whether to order release of a person lawfully arrested for a criminal offense under this Title and, if so, under what conditions, the Court shall consider:

- a. The likelihood that the defendant will appear for further criminal proceedings.
- b. The nature and severity of the offense.
- c. The safety of the alleged victim and others in the community.
- d. The likelihood that the defendant will commit a violent crime, seek to intimidate a witness, or unlawfully interfere with the administration of justice.
- e. The criminal history of the defendant.

§8E.4.05 In-Custody Hearing; Release Conditions

Unless the Court finds that the defendant should be held pending further criminal proceedings, the Court shall order release of the defendant upon one or more of the following conditions:

- a. **Personal Recognizance:** Upon his or her own personal recognizance.
- b. **Posting of Bail:** Upon the posting of bail in an amount deemed adequate to guarantee the appearance of the defendant throughout the criminal proceedings.
- c. **"Cooling-Off" Period:** After a further "cooling off" period not to exceed seventy-two hours.
- d. **Restraint Against Further Law Violations:** Subject to a restraint that the defendant commit no further acts of domestic violence and no further violations of Tribal, State, and Federal law.
- e. **No-Contact Order and Other Restraints:** Subject to a no-contact order, as described in CLOC 8E.4.06, along with such other restraints as the Court deems necessary to assure the safety and welfare of the victim and the victim's family and household members.
- f. **Restraint Against Possession and Use of Intoxicants and Drugs:** If the Court finds probable cause to believe that the alleged act of domestic violence was committed under the influence of alcoholic beverages or non-prescription controlled substances, subject to a restraint that the defendant not possess or consume such beverages or substances and not frequent places where such beverages are the main product sold or served. The Court may order physical, mechanical, chemical, or electronic testing to assure compliance.
- g. **Surrender of and Restraint Against Possession and Use of Dangerous Weapons:** If the Court finds probable cause to believe that the defendant used, displayed, or threatened to use a firearm or other dangerous weapon in the commission of the alleged act of domestic violence or in the presence of a police officer responding to the report of domestic violence, subject to a requirement that the defendant surrender firearms and other dangerous weapons owned by the defendant or in the defendant's possession to the Chief of Police, CPD, and the subject to a restraint against possession and use of firearms and other dangerous weapons.

§8E.4.06 No-Contact Order

A no-contact order may provide any of the following:

- a. **Contact Restraints:** Restrain the defendant from coming near and from having any contact, directly or indirectly, in person, in writing, by telephone, or through a third party, with the victim, with the victim's family or household members, or with a witness to the alleged act of domestic violence, except that essential contact may be made through application to the Court.

- b. **Geographic Restraints:** Restrain the defendant from frequently any well-defined geographic are, including but not limited to the residence, workplace, school, or daycare of the victim, of the victim's family or household members, or of a witness to the alleged act of domestic violence.

§8E.4.07 Criminal Complaint

- a. **Contents of Complaint:** A criminal complaint charging domestic violence under CLOC 8E.3.01, as defined in subsection (1) of CLOC 8E.1.04 (g), shall cite the lesser included offense under CLOC Title 8. A criminal complaint charging domestic violence under CLOC 8E.3.01, as defined in subsection (2) of CLOC 8E.1.04 (g), shall specify the crime under the Major Crimes Act, 18 U.S.C. §1153.
- b. **Limitation Periods:** CLOC 2.2.02 shall govern the limitation periods under this Title, except that a Class AA Offense charged under CLOC 8E.3.01, as defined in subsections (1) and (2) of CLOC 8E.1.04 (e), shall be subject to a two-year limitation period.
- c. **Timing of Complaint; Duration of Conditions of Release:** If a criminal complaint is not filed prior to the in-custody hearing or within twenty judicial days thereafter, then any condition of release ordered under CLOC 8E.4.05 shall expire unless the Prosecutor requests a hearing and presents good cause for delay. If a complaint is timely filed or if the Prosecutor presents good cause for delay, then all conditions of release, unless otherwise modified or vacated, shall remain in effect throughout the criminal proceedings.

§8E.4.08 Disposition of Criminal Case

- a. **Reasons for Dismissal:** when the Court dismisses or grants dismissal of a criminal charge under this Title, the specific reasons for the dismissal shall appear in the Court order or file, if no written order is made.
- b. **Prohibited Dispositions:** The Court shall neither dismiss nor grant dismissal of a criminal charge under this Title for the sole reason that the victim is uncooperative or unwilling to testify, unless no other means of prosecution exists. The Court shall neither dismiss nor grant dismissal of a criminal charge under this Title for the sole reason that a civil case has or will be filed or resolved. The Court shall neither order nor accept a plea of nolo contendere or a plea agreement providing for diversion, deferred prosecution, or deferred sentencing in a case charging a criminal offense under this Title.

§8E.4.09 Sentence

A defendant who pleads guilty to or is found guilty of a criminal offense under this Title shall be sentenced as follows:

- a. **Penalties:** The penalties set forth in CLOC Title 8, Chapter 8, shall apply to the offenses under this Title.
- b. **Restitution:** The Court shall order the defendant to compensate the victim for losses suffered as a direct result of the defendant's act of domestic violence, including but not limited to medical and counseling costs, loss of earnings or other income, cost of repair or replacement of real or personal property, cost of temporary shelter, and moving or travel expenses.
- c. **Probation:** The Court may order the defendant to serve a term of probation up to one year in length, subject to monitoring by the Adult Probation Officer.
- d. **Restraint Against Further Law Violations; No-Contact and Other Restraints:** "In addition to any other restraints deemed necessary to assure the safety and welfare of the victim and the victim's family and household members, the Court may impose the restraints described in CLOC 8E.4.05 (e) and (f) and CLOC 8E.4.06 as conditions of probation.

- e. **Restraint Against Possession and Use of Intoxicants and Drugs:** If the Court finds by clear and convincing evidence that the act of domestic violence was committed under the influence of alcoholic beverages or non-prescription controlled substances, the Court may impose the restraint described in CLOC 8E.4.05 (g) as a condition of probation.
- f. **Surrender of a Restraint Against Possession and Use of Dangerous Weapons:** If the Court finds by clear and convincing evidence that the defendant used, displayed, or threatened to use a firearm or other dangerous weapon in the commission of the act of domestic violence or in the presence of a police officer responding to the report of domestic violence, the Court may require the surrender and impose the restraint described in CLOC 8E.4.05 (h) as conditions of probation. Any firearm or other dangerous weapon surrendered to the Chief of Police, CPD, as a condition of probation shall be destroyed.
- g. **Counseling and Treatment Programs:** In every case in which a defendant either pleads guilty to or is found guilty of a criminal offense under this Title, the Court shall order the defendant to attend and successfully complete a domestic violence perpetrator program. The Court may also order the defendant to attend and successfully complete one or more other programs, including but not limited to anger management, mental health counseling, substance abuse treatment, and parenting classes, to execute all necessary forms and releases in connection with such programs, as conditions as probation.
- h. **Conditional Exclusion:** When a Tribal member has been convicted of two or more criminal offenses under this Title, arising out of at least two separate incidents involving the same victim, and the victim is also a Tribal member, the Court may exclude the defendant from the Reservation upon a finding by clear and convincing evidence that defendant's acts of domestic violence are likely to continue unless either the defendant or the victim leaves the Reservation. The exclusion may be subject to conditions, except deprivation of per capita payments, and may be for a period of (1) one-year.

§8E.4.10 Stay Pending Appeal

The Court shall not have authority to stay the execution of sentence pending appeal from a conviction of a criminal offense under this Title. The Court of Appeals may stay the execution of sentence upon a finding that defendant's notice of appeal presents a credible legal issue for review.

§8E.4.8E Emergency No-Contact Order

- a. **Procedure and Standard for Issuance:** The Court may issue an emergency no-contact order when a CPD officer or the Prosecutor states to the Court, in person or by telephone, and the Court finds probable cause to believe, that an act of domestic violence has occurred and that the victim, the victim's family, or household members, or a witness to the act of domestic violence is in immediate danger of further acts of violence. The Court's oral order shall be reflected in a written order prepared and signed by the Court or by the CPD officer Prosecutor on behalf of the Court. The CPD or the Prosecutor shall serve copies of the order upon the alleged perpetrator and deliver a copy to the Court by the end of the next judicial day.
- b. **Contents of Order:** An emergency no-contact order may contain the restraints described in CLOC 8E.4.06, along with such other provisions as the Court deems necessary to assure the immediate safety and welfare of the victim, of the victim's family or household members, or of a witness to the alleged act of domestic violence.
- c. **Duration of Order:** An emergency no-contact order shall be effective until vacated by the Court or for a period of ten judicial days from the issuance of the order, whichever occurs first.

CHAPTER 5 Petition for an Order for Protection

§8E.5.01 Civil Action

There shall exist a civil action known as a Petition for an Order for Protection.

§8E.5.02 Who May File

Any one of the following may file a petition under this Chapter:

- a. A victim on his or her own behalf.
- b. A family or household member on behalf of a minor victim, but a minor thirteen years of age or older may file a petition on his or her own behalf.
- c. A family or household member on behalf of a victim who is prevented from doing so by hospitalization, by physical or mental disability, or by fear.
- d. Social Services on behalf of a victim.
- e. Family and household members may jointly file a single petition.

§8E.5.03 Venue

A petition may be filed under this Chapter in any of the following circumstances:

- a. The petitioner resides on the Reservation.
- b. The respondent resides on the Reservation.
- c. The alleged act of domestic violence occurred on the Reservation.
- d. A communication that allegedly constitutes domestic violence was either made or received on the Reservation.

§8E.5.04 Contents of Petition

- a. **Captions:** Regardless of who files a petition under this Chapter, the victim shall be designated the petitioner. Petitions under CLOC 8E.5.02 (a) shall be captioned: (name of petitioner/victim vs. (name of respondent).
- b. **Allegation of Domestic Violence; Affidavit:** In addition to any other information required by the Court, a petition under this Chapter shall allege the existence of domestic violence and shall be supported by a written statement stating the specific facts and circumstances from which relief is sought.
- c. **Other Litigation or Orders; Continuing Duty:** In addition to any other information required by the Court, a petition under this Chapter shall disclose the existence, in any jurisdiction, of any other civil or criminal litigation involving the parties or concerning the custody or residential placement of a child of the parties and the existence of any other no-contact order, protection order, restraining order, stay-away order, anti-harassment order, and the like between parties. So long as the petition is pending or the Court's order for protection remains in effect, the petitioner or filing party shall have a continuing duty to inform the Court about such litigation and orders.
- d. **Petitioner's Whereabouts:** A petition under this Chapter need not include petitioner's address, telephone number, or other information that would reveal petitioner's whereabouts. If such information is omitted, the

Court shall inquire in camera and maintain the information under seal, to be used on a confidential basis to advance the proceedings.

§8E.5.05 Appointment of Guardian ad Litem

The Court may, if it deems necessary, appoint a guardian ad litem for any petitioner or respondent who is a party to an action under this Chapter. The Court need not appoint a guardian ad litem for a petitioner or respondent sixteen years of age or older simply by virtue of minority.

§8E.5.06 Fees, Costs, Bonds

No filing fees, process serving fees, photocopying costs, or bonds shall be charged to a petitioner or filing party under this Chapter. Forms, instructions, and brochures shall be provided free of charge.

§8E.5.07 Temporary Order for Protection

- a. **Standard for Issuance:** Where a petition alleges, and the Court finds reasonable grounds to believe, that there is an immediate danger of domestic violence to the petitioner, based on an allegation that an act of domestic violence has occurred or is about to occur, the Court may enter a temporary order for protection on an ex parte basis, without notice to the respondent, pending a full hearing.
- b. **Contents of Order:** A temporary order for protection may grant any of the relief listed under CLOC 8E.5.8E as the Court deems necessary to assure the immediate safety and welfare of the petitioner and petitioner's family and household members.
- c. **Duration of Order:** A temporary order for protection shall be effective for a period not to exceed ten judicial days, unless reissued for good cause. But if personal service on the respondent is not feasible, as described in CLOC 8E.5.08 (c), then a temporary order shall be effective for a period not to exceed twenty judicial days, unless reissued for good cause.
- d. **Ex Parte Hearing:** The Court may grant a temporary order for protection based solely upon the petition and affidavit or the Court may require the petitioner, the filing party, or both to appear at an ex parte hearing in person or by telephone on the day the petition is filed or on the next judicial day.

§8E.5.08 Service on Respondent and Scheduling of Hearing

- a. **Documents to be Served:** The Court shall cause the respondent to be served with a copy of the petition and affidavit and an order scheduling a order for protection issued pursuant to CLOC 8E.5.07.
- b. **Personal Service; Hearing Within 10 Days:** Where feasible, the respondent shall be personally served by a CPD officer, and the hearing shall be scheduled within ten judicial days after the petition is filed.
- c. **Service by Other Means; Hearing Within 20 Days:** Where personal service is not feasible or has failed after diligent effort, the Court shall order service by certified mail, return receipt requested, or by any other feasible means reasonably likely to notify the respondent. In such case, the hearing shall be scheduled within twenty judicial days after the petition is filed or the scheduling order is entered. A return receipt for certified mail, when received by Court, shall constitute prima facie evidence that the respondent received proper notice of the hearing.
- d. **Continuance of Hearing:** A respondent who, without fault, does not receive proper notice at least five calendar days prior to the hearing may request a continuance. Barring exceptional circumstances, the Court shall grant a continuance of no more than ten judicial days. At the same time, the Court may issue or reissue a temporary order for protection as appropriate under CLOC 8E.5.07.

§8E.5.09 Failure to Appear

- a. **Petitioner's Failure to Appear:** If neither the petitioner nor the filing party appears at the hearing, the Court may continue the hearing for no more than ten judicial days and, at the same time, issue or reissue a temporary order for protection as appropriate under CLOC 8E.5.07. Alternatively, the Court shall dismiss the petition without prejudice.
- b. **Respondent's Failure to Appear After Proper Notice:** If the respondent does not appear for the hearing after receiving proper notice, the hearing shall go forward.
- c. **Respondent's Failure to Appear After Eluding Service:** When the respondent has not received proper notice and all feasible means reasonably likely to notify the respondent have been exhausted, the hearing may go forward if the petitioner or the filing party demonstrates that the respondent has intentionally eluded service. Such a showing may be made through an affidavit by a CPD officer, by the petitioner or the filing party, or by any other person with personal knowledge. The affidavit shall plainly state the facts that lead the affiant to believe that respondent is avoiding service.

§8E.5.10 Hearing

- a. **In-Person or by Telephone:** The hearing shall be conducted in person, unless the Court finds that a telephone hearing is necessary, in whole or in part, to accommodate a party's disability or to protect a victim.
- b. **Evidentiary Standard:** In order to obtain relief, the petitioner or filing party must show that there is a present danger of domestic violence to petitioner, based on evidence that an act of domestic violence has occurred or is about to occur. If the Court finds by a preponderance of the evidence, after a full hearing, that there is a present danger of domestic violence, the Court shall enter an order for protection as described in CLOC 8E.5.8E.
- c. **Geographic Restraints:** Restrain the respondent from frequenting any well-defined area, including but not limited to the residence, workplace, school, or daycare of the petitioner or petitioner's family member or household members.
- d. **Care, Custody, and Control of Minor Children; Restraint Against Interference:** Provide for the care, custody, and control of the minor children of the parties, and restrain the respondent from interfering with the petitioner's care, custody, and control. In making provision for a minor child, the Court shall presume that the respondent is unfit to have care, custody, and control. The respondent may rebut the presumption by showing that he or she does not commit domestic violence against the child and that his or her acts of domestic violence do not adversely affect the child.
- e. **Residential Time or Visitation with Minor Children:** Grant the non-custodial parent residential time or visitation with the minor children of the parties, under such conditions as the Court deems necessary to assure the safety and welfare of the minor children, the custodial parent, and other family and household members.
- f. **Support and Maintenance:** Order the respondent to pay child support if the respondent is found to have a duty to pay such support. Order the respondent to pay maintenance or spousal support if the respondent is found to have a duty to pay such support.
- g. **Possession of Real Property:** Award the petitioner exclusive possession of the residence that the parties share, regardless of whether the residence is owned jointly or by the respondent alone, provided that nothing in this Chapter may affect the title to or legal ownership of real property.

- h. **Rent or Mortgage:** Order the respondent to make rent or mortgage payments on a residence occupied by the petitioner if the Court finds that the respondent has a duty to support the petitioner or another member of the household.
- i. **Possession of Essential Personal Effects:** Order possession and use of essential personal effects, regardless of ownership.
- j. **Possession of Personal Property:** Order the respondent to surrender possession of personal property to the petitioner, including but not limited to vehicles, keys, checkbooks, and documents, regardless of whether such property is owned jointly or by the respondent alone, provided that nothing in this Chapter may affect the title to or legal ownership of personal property.
- k. **Prohibition Against Transfer of Property:** Order the parties not to transfer, encumber, or otherwise dispose of real or personal property jointly owned or leased by the parties, except as authorized by the Court.
- l. **Special Provision for Elder or Disabled:** In the case of domestic violence against an elder or disabled person, appoint a caregiver, guardian, or designated payee.
- m. **Counseling and Treatment Programs:** Order the respondent to attend and successfully complete one or more programs, including but not limited to a domestic violence perpetrator program, anger management, mental health counseling, substance abuse treatment, and parenting classes, and to execute all necessary forms and releases in connection with such programs.
- n. **Exclusion of Non-Member:** Exclude a non-member respondent from the Reservation, without the necessity of a separate exclusion proceeding under CLOC Title 9.
- o. **Bond:** Order the respondent to post a bond assuring compliance with the terms of the order for protection.
- p. **Compensation for Losses:** Order the respondent to compensate the petitioner for losses suffered as a direct result of the respondent's acts of domestic violence, including but not limited to medical and counseling costs, loss of earnings or other income, cost of repair or replacement of real or personal property, cost of temporary shelter, and moving or travel expenses.
- q. **Court and Litigation Costs:** Order the respondent to pay Court costs and service fees, as established by the Court, and to reimburse the petitioner for costs incurred in bringing the action, including reasonable attorney fees.
- r. **Relief:** Grant such other relief as the Court deems necessary for the safety and welfare of the petitioner and petitioner's family and household members, including orders or directives to the CPD, the Prosecutor, Social Services, or other Tribal departments.

In addition, if the Court finds, by clear and convincing evidence, that the respondent displayed, or threatened to use a firearm or other dangerous weapon in the commission of an act of domestic violence or in the presence of a police officer responding to a report of domestic violence, the Court may order the following:

- s. **Surrender of Dangerous Weapons:** Order the respondent to surrender firearms and other dangerous weapons owned by the respondent or in the respondent's possession to the Chief of Police, CPD, under such conditions as the Court deems appropriate.
- t. **Restraint Against Possession and Use of Dangerous Weapons:** Restrain the respondent from the possession and use of firearms and other dangerous weapons.

§8E.5.12 Renewal of Order for Protection

- a. **Motion to Renew:** The petitioner or the filing party may file a written motion to renew an order for protection at any time within three months prior to expiration of the order. The motion shall be supported by an affidavit stating the reasons why the movant believes the order should be renewed. The motion shall be served and a hearing scheduled and conducted according to the procedures set forth in CLOC 8E.5.08, 8E.5.09, and 8E.5.10 (a), as applicable.
- b. **Disposition of Motion; Evidentiary Standard:** The Court shall grant the motion to renew unless the respondent proves by a preponderance of the evidence that the respondent will not resume acts of domestic violence against the petitioner and the petitioner's family and household members when the order expires. If there has been no violation of the order for protection, the Court shall take this fact as a presumption that the order has been effective in assuring the petitioner's safety. The Court shall not use this fact as the sole basis for concluding that the order is no longer necessary.
- c. **Duration of Renewed Order for Protection:** The Court shall renew an order for protection for a fixed period not to exceed one year, but the Court may exercise its discretion to make the order permanent if domestic violence has resulted in hospitalization, life-threatening injuries, or significant impairment.

§8E.5.13 Termination or Modification of Order for Protection

- a. **Motion to Terminate or Modify:** The petitioner, the filing party, or the respondent may file a written motion to terminate or modify the terms of an existing order for protection. The motion shall be supported by an affidavit stating why the movant believes the termination or modification is warranted due to changed or unanticipated circumstances.
- b. **Disposition of Motion:** The Court shall cause a motion to terminate or to modify to be served on the other party. At the same time, the Court may deny the motion outright but, if the motion appears to have merit, the Court shall order a written response or schedule a hearing, or both. Under exigent circumstances, the Court may temporarily grant a motion to modify on an ex parte basis, without notice to the other party, pending a written response, a hearing, or both.

§8E.5.14 Violation of Order for Protection

- a. **Motion by Petitioner or Filing Party:** If there is probable cause to believe that the respondent violated the terms of an order for protection, the petitioner or the filing party may file a written motion for an order to show cause, supported by an affidavit stating the specific facts and circumstances constituting the alleged violation. The Court shall cause the motion to be served on the respondent. At the same time, the Court may deny the motion outright but, if the motion appears to have merit, the Court shall proceed under CLOC Title 1, Chapter 15. The Court may also refer the matter to the Prosecutor for prosecution.
- b. **Action by Prosecutor:** Upon receipt of a Court referral, police report, or statement from any person with personal knowledge that the terms of an order for protection have been violated, the Prosecutor may proceed under CLOC 8E.3.01, under CLOC Title 1, Chapter 15, or under any other appropriate provision.

§8E.5.15 Realignment of Parties

In providing relief under this Chapter, the Court may realign the designation of the parties as "petitioner" and "respondent" if the Court finds that the original petitioner is the abuser and the original respondent is the victim of domestic violence and may issue a temporary order for protection on behalf of the victim, pursuant to CLOC 8E.5.07, until the victim is able to prepare a Petition for an Order for Protection.

§8E.5.16 Mutual Order for Protection

Except as provided in CLOC 8E.5.15, no order for protection shall grant relief to any party who has not filed a Petition for an Order for Protection and who has not met the necessary evidentiary standard.

§8E.5.17 Counseling or Treatment for Petitioner

The Court shall not order the petitioner to participate in counseling or treatment programs except that the Court may so in the following instances:

- a. As a condition for awarding petitioner care, custody, and control of a minor child.
- b. As a condition for granting petitioner's motion to terminate or to modify an order for protection.

§8E.5.18 Denial of Relief

- a. **Statement of Reasons:** When the Court declines to issue an order for protection, including a temporary order, or to renew, terminate, or modify an order for protection, or to issue an order to show cause under this Title, the court shall state in a written order the particular reasons for the Court's denial.
- b. **Improper Grounds:** Relief shall not be denied under this Chapter:
 1. Because the petitioner has previously filed a Petition for an Order for Protection and has withdrawn the petition or has sought to vacate a no-contact order or to terminate an order for protection.
 2. Because the petitioner has not filed for dissolution or sought other legal remedies.
 3. Because of other existing judgments or because of the possibility, pendency, or resolution of other proceedings.
 4. Because of a lapse of time between an act of domestic violence and the filing of a petition.

CHAPTER 6 Rules of Evidence

§8E.6.01 Confidential Communication Between Spouses

In proceedings under this Title where a spouse is the alleged victim of domestic violence, the privilege of confidential communication between spouses shall not apply to protect the defendant or the respondent.

§8E.6.02 Testimonial Privilege of Spouses

In proceedings under this Title where a spouse is the alleged victim of domestic violence, the testimonial privilege of spouses shall not apply to protect the defendant or the respondent.

§8E.6.03 Victim/Advocate Privilege

In proceedings under this Title, a victim of domestic violence may assert the victim/advocate privilege in order to prevent an advocate from disclosing confidential oral communications and written records and reports prepared or gathered by the advocate. The victim/advocate privilege shall not, however, relieve that advocate of the mandatory duty to report child abuse and shall not apply when the advocate is required to give evidence in child abuse proceedings.

§8E.6.04 Evidence Concerning Domestic Violence

In proceedings under this Title, the Court may admit into evidence, without regard to any hearsay rule, expert testimony, learned treatises, articles, videos, or other relevant and reliable evidence concerning the "battered woman syndrome" or otherwise examining the impact of domestic violence in its victims.

CHAPTER 7 Duties of Court

§8E.7.01 Availability of Judge

The Court shall insure that a judge is available twenty-four hours a day, seven days a week, to consider requests for emergency no-contact orders and temporary orders for protection.

§8E.7.02 Contents of Orders

Every order imposing one or more restraints under this Title shall include or be accompanied by the following information:

- a. The specific date on which the order is entered and either the specific date on which the order will expire or a clear statement regarding the duration of the order.
- b. A description of any prior orders of the Court that are modified or superseded by the order.
- c. A statement that any restraint provision contained in the order governs conduct both on and off the Reservation.
- d. A statement of the possible penalties for violation of the order.
- e. A statement that a person who violates the order shall be arrested and held accountable even if another person invites or permits the violation.

§8E.7.03 Full Faith and Credit

- a. **Procedure for Request; Eligible Orders:** Any person who is or will be present on the Reservation and who is or will be present on the Reservation and who is entitled to protection under a no contact order, protection order, restraining order, stay-away order, anti-harassment order, or the like, entered by a duly authorized tribal or non-Tribal court in a civil or criminal proceeding arising out of an incident of domestic violence, may file a certified, authenticated, or exemplified copy of the order with the Court, along with a request that the Court accord the foreign order full faith and credit. No fee shall be charged for this procedure.
- b. **Standard for Granting Request; Effect:** A foreign order filed with the Court pursuant to subsection (a) shall be presumed valid. Unless the Court finds that the issuing court lacked jurisdiction, that the issuing court did not afford the restraining party due process, or that the foreign order conflicts with or duplicates the Court's own order, the Court shall enter an order recognizing the foreign order and according it full faith and credit. Thereafter, the foreign order shall be enforced as if it were an order of the Court.

§8E.7.04 Distribution of Orders

- a. **Criminal Case:** Upon entry of an emergency no-contact order, an in-custody hearing order, or a sentencing order pertaining to a person arrested for, charged with, or convicted of a criminal offense under this Title, or of an order modifying or vacating such an order, the Court shall promptly deliver a copy of the order to the CPD, along with copies for service upon the defendant and the victim, if they have not otherwise received copies.

- b. **Civil Case:** Upon entry of an order for protection under this Title, including a temporary order, or of an order renewing, terminating, or modifying such an order, the Court shall promptly deliver a copy of the order to the CPD, along with copies for service upon the petitioner, the filing party, if any, and the respondent, if they have not otherwise received copies.
- c. **Orders Accorded Full Faith and Credit:** After recognition of an order under CLOC 8E.7.03, the Court shall promptly deliver copies of the Court's order and the foreign order to the CPD, along with copies for service upon the party requesting full faith and credit and upon the restrained party, if they have not otherwise received copies.

CHAPTER 8 Duties of CPD

§8E.8.01 Response to Report of Domestic Violence

When an CPD officer responds to a report of domestic violence, the officer shall do the following, as necessary and in the order appropriate to the circumstances:

- a. **Request Back-Up:** View a domestic violence call as a high risk situation, obtain as much information as possible from the dispatcher, and request back-up by at least one other officer.
- b. **Assure Safety:** Act to assure the safety of officers, the victim, the victim's family and household members, witnesses, and bystanders. Separate the alleged perpetrator, the victim, and the witnesses for safety and investigative purposes.
- c. **Confiscate Weapons:** Confiscate firearms or other dangerous weapons according to standard law enforcement procedures, and particularly firearms or other dangerous weapons involved in or threatened to be used in the alleged incident of domestic violence, regardless of ownership.
- d. **Arrest Alleged Perpetrator:** Arrest the alleged perpetrator according to standard law enforcement procedures and in accordance with CLOC 8E.8.02 or CLOC 8E.8.03, as appropriate.
- e. **Request Emergency No-Contact Order:** Request, prepare, and serve an emergency no-contact order pursuant to CLOC 8E.4.8E.
- f. **Render Emergency First Aid and Obtain Medical Treatment:** Render emergency first aid and obtain medical treatment for the victim and transport or arrange transportation for the victim to a medical facility. Obtain a signed medical release from the victim.
- g. **Transport to Shelter:** Transport or arrange transportation for the victim and the victim's family and household members to a place of safety or shelter, maintaining confidentiality.
- h. **Observe and Place Minor Children, Disabled Persons, and Elders:** Observe whether minor children, disabled persons, and elders in the household display physical signs of domestic violence, and report any such signs to Social Services. Notify Social Services if no parent or other reliable family or household member is available to care for minor children, disabled persons, or elders.
- i. **Remove Essential Personal Effects:** Assist the victim and the victim's family and household members in removing essential personal effects.
- j. **Inform Victim of Rights, Remedies, Services:** Provide the victim with oral and written information regarding legal rights, remedies, and local services for victims of domestic violence. Give the victim a Petition for an Order for Protection form and instructions.

- k. **Collect Evidence:** Secure the scene and collect and preserve physical evidence according to standard law enforcement procedures, remaining mindful of the possibility of a "victimless" prosecution. Photograph the scene, the victim, the injuries to the victim, alleged perpetrator, minor children in the household, and damage property. Promptly deliver to the Prosecutor a list of evidence collected and copies of photographs, retaining originals at the CPD. If injuries are more apparent at a later date, photograph them again and promptly deliver copies to the Prosecutor.
- l. **Obtain Victim and Witness Statements:** At the scene or as soon as practicable thereafter, assist the victim and witnesses, if any, to prepare detailed written statements regarding the alleged incident of domestic violence, remaining mindful of the possibility of a "victimless" prosecution. Each statement should be signed by both the officer and the victim or witness and dated. Obtain a phone number, address, or other means for contacting each victim or witness, maintaining confidentiality. Promptly deliver to the Prosecutor copies of statements and information, retaining originals at the CPD. When it is necessary to leave a statement form with a victim or witness, follow-up to be certain the form is completed and submitted.
- m. **Prepare Incident Report:** Prepare an incident report according to standard law enforcement procedures and deliver the report to the prosecutor within twenty-four hours after the incident. Include a description of the 911 call or other report to law enforcement; diagrams of the scene and of the victim's injuries, including those not visible; the names of all persons at the scene and their relationship to one another; the names of EMTs and other medical personnel treating the victim; a description of the physical and emotional condition of the victim and the alleged perpetrator; spontaneous statements by the victim, the alleged perpetrator, minor children, and others; a statement whether intoxicants or drugs were involved; and a statement of probable cause for each arrest. If no arrest occurred at the scene or if more than one arrest occurred, the report shall explain why. If an arrest occurs later, deliver a supplemental report to the Prosecutor within twenty-four hours after the arrest. When an arrest is based upon violation of an order, pursuant to CLOC 8E.1.04 (e) (4), the incident report shall include a copy of the order and a statement of the specific conduct that violated a restraint provision.

§8E.8.02 Arrest for Domestic Violence Under:

- CLOC 8E.1.04 (g) (1) (CLOC Title 8)
- CLOC 8E.1.04 (g) (2) (Major Crimes Act), or
- CLOC 8E.1.04 (g) (3) (Physical harm, etc.)

- a. **Mandatory Arrest:** An CPD officer who has probable cause to believe that a person has committed an act of domestic violence, as defined under CLOC 8E.1.04 (g) (1), (2), or (3), shall effect an arrest, although an arrest may be contrary to the expressed wishes of the victim. The officer shall not employ the citation in lieu of detention procedure under CLOC Title 2, Chapter 3.
- b. **48-Hour Rule:** A CPD officer who has probable cause to believe that a person has committed an act of domestic violence, as defined under CLOC 8E.1.04 (e) (1), (2), or (3) within the past forty-eight hours may arrest warrant, although the act was committed outside the officer's presence.
- c. **Cross-Complaints of Domestic Violence:** If a CPD officer receives cross-complaints of domestic violence from opposing parties, the officer shall arrest the primary aggressor. In determining who was the primary aggressor, the officer shall consider:
 - 1. The intent under CLOC 8E.1.02 to protect victims of domestic violence.
 - 2. The history of domestic violence between the parties involved.

3. The comparative demeanor and physical size of the parties involved and the relative severity of the injuries inflicted or threats made by each party.
4. The likelihood of future injuries to each party.
5. Whether one party acted in self-defense or in defense of another.
6. The officer's experience in handling domestic violence cases.

If the officer determines that one person was the primary aggressor, absent extraordinary circumstances, the officer shall not arrest any other person, although the officer may have probable cause to believe that such other person struck first or caused physical injury. In no event shall an officer arrest or threaten to arrest all parties in order to discourage future requests for intervention by law enforcement.

§8E.8.03 Arrest for Domestic Violence Under CLOC 8E.1.04 (e) (4) (violation of order)

- a. **Mandatory Enforcement:** The CPD shall enforce any current order entered under this Title and any order accorded full faith and credit by the Court under CLOC 8E.7.03, regardless of the current status of the parties' relationship and although such enforcement may be contrary to the expressed wishes of the party to be protected.
- b. **Mandatory Arrest:** A CPD officer who has probable cause to believe that a person has violated a restraint provision contained in an order entered under this Title or a comparable provision contained in an order accorded full faith and credit by the Court under CLOC 8E.7.03, and of which the person had notice at the same time of the alleged violation, shall effect an arrest. The officer shall not employ the citation in lieu of detention procedure under CLOC Title 2, Chapter 3.
- c. **48-Hour Rule:** A CPD officer who has probable cause to believe that, within the past forty-eight hours, a person has violated a restraint provision contained in an order entered under this Title or a comparable provision contained in an order accorded full faith and credit by the Court under CLOC 8E.7.03, and of which the person had notice at the time of the alleged violation, may arrest the person without first obtaining an arrest warrant, although the violation occurred outside the officer's presence and although the officer is not in possession of the order, so long as the officer first obtains verification of the order.

§8E.8.04 Service and Registry of Orders

- a. **Expedited Service:** The CPD shall expedite service of orders entered in proceedings under this Title, including orders renewing, terminating, modifying, or vacating such orders, and of orders accorded full faith and credit by the Court under CLOC 8E.7.03.
- b. **Registry:** The CPD shall maintain a registry of current orders imposing restraints under this Title, including orders renewing or modifying such orders, and of orders containing comparable provisions and accorded full faith and credit by the Court under CLOC 8E.7.03. The orders shall be indexed by the names of both the defendant and the victim or both the petitioner and respondent. Each order in the registry shall reflect or be accompanied by proof of service on the defendant or respondent. The Registry shall be accessible to all CPD officers and dispatchers, who shall regularly and routinely inform themselves of its contents.

§8E.8.05 Notice of Escape or Early Release

Upon the escape from custody of a person arrested for, charged with, or convicted of a criminal offense under this Title, the CPD shall immediately notify the victim of the crime, the Court, and the Prosecutor if a person who was convicted of a criminal offense under this Title is scheduled for early release, the CPD shall notify the victim of the crime, the Court, and the Prosecutor prior to such release.

CHAPTER 9 Duties of Prosecutor

§8E.9.01 Communication with Victim

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

- a. **No-Contact Order:** Prior to in-custody and sentencing hearings, the Prosecutor shall confer with the victim regarding the need for a no-contact order and other restraints to assure the safety of the victim and the victim's family and household members. In the victim's absence, the Prosecutor shall be prepared to advise the Court as to the victim's position.
- b. **Hearing Dates, Continuances, Sentencing:** The Prosecutor shall assure that the victim is informed of all hearing dates and continuances and of the right to address the Court, in person or in writing, at a sentencing hearing regarding the various impacts of the criminal offense on the victim, the risk officer acts of domestic violence, and the conditions of sentence necessary to insure the safety of the victim and the victim's family and household members.
- c. **Prosecutorial Decisions:** The Prosecutor shall inform the victim of every major prosecutorial decision, including a decision not to file a charge under this Title when the victim has reported or the defendant has been arrested for a criminal offense under this Title, or the decision to enter into a plea agreement regarding a charge under this Title.
- d. **Restitution:** The Prosecutor shall obtain information from the victim regarding costs and losses sustained as a result of the defendant's act of domestic violence and shall seek restitution for the victim.

§8E.9.02 Disposition of Criminal Case

- a. **"No-Drop" Policy:** The Prosecutor shall maintain a "no-drop" prosecution policy, prohibiting victims of domestic violence from "dropping" criminal charges under this Title.
- b. **"Victimless" Prosecution:** A victim of domestic violence shall be encouraged, but not required, to testify. When a victim is unwilling or unable to testify, the Prosecutor shall endeavor to proceed with a "victimless" prosecution, employing police witnesses, expert and other witnesses, written or recorded statements by the victim, photographs, 911 tapes, medical records, torn or bloodied clothing, ripped telephone cords, history of past abuse, and other evidence appropriate to the case.
- c. **Motion to Dismiss:** When making a motion to dismiss a criminal charge under this Title, the Prosecutor shall state in writing the specific reasons for the dismissal.
- d. **Prohibited Dispositions:** The Prosecutor shall not move to dismiss a criminal charge under this Title for the sole reason that the victim is uncooperative or unwilling to testify, unless no other means of prosecution exists. The Prosecutor shall not move to dismiss a criminal charge under this Title for the sole reason that a civil case has or will be filed or resolved. The Prosecutor shall not enter a plea agreement providing for a nolo contendere plea or for diversion, deferred prosecution, or deferred sentencing in a case charging a criminal offense under this Title.

CHAPTER 10 Immunity

§8E.10.01 CPD

No CPD officer, or person acting under the authority of the CPD, shall be held criminally or civilly liable for an arrest based on probable cause, for enforcement of a court order entered under this Title or accorded full faith and credit by the Court under CLOC 8E.7.03, or for any other action or omission under this Title, so long as such officer acted in good faith and without malice.

§8E.10.02 Persons and Departments

No other person or department shall be held criminally or civilly liable for any action or omission in connection with assisting or reporting victims under this Title, so long as such person or department acted in good faith and without malice.

§8E.10.03 Tribe

Nothing in this title shall be construed as a waiver of the Tribe's sovereign immunity from suit.

CHAPTER 11 Conflicts of Interest

§8E.11.01 Ethics; familial relationships.

- (a) All public servants shall perform their duties and proceed in accord with this Title regardless of any familial or clan relationship with the defendant or the victim, or the employment, social, or political status of either.
- (b) If a law enforcement officer responds to or participates in investigation of an incident under this Title and is related to either defendant or victim by marriage or blood, shall note the relationship prominently on the report and the officer's supervisor shall personally ensure that appropriate action is taken.
- (c) A failure of law enforcement to respond appropriately shall be grounds for disciplinary action.
- (d) Prosecutors and judges shall refrain from prosecuting or hearing cases involving alleged offenses under this Title if either party is related to the prosecutor or judge by blood or marriage.