

TITLE 13 - FAMILY
Chapter 9 - Domestic Abuse

GENERAL PROVISIONS

Section 9-01. Purpose

Domestic Abuse is a serious offense against the victim, society, the Sac and Fox Nation, and the family. This Act is to provide victims of domestic abuse the maximum possible protection from further abuse. The strength of the Sac and Fox Nation is founded on healthy families. Families and children damaged by domestic abuse, including children, must be healed by immediate intervention of law enforcement, prosecution, education, counseling, and other appropriate services.

[History: PUBLIC LAW SF-09-267, June 10, 2009; as amended by #SF-15-25, December 11, 2014.]

Section 9-02. Specific Applicability

The chapter herein applies specifically to the Domestic Abuse Act and takes precedence over any general laws of applicability.

[History: PUBLIC LAW SF-09-267, June 10, 2009.]

Section 9-03. Definitions

For purposes of this chapter, except as may be specifically provided otherwise, the following terms shall be defined as provided herein.

(a) **Advocate** means an employee or volunteer for a program that provides services to victims of domestic abuse who:

(1) has a primary function of rendering advice, counseling, or assistance to victims of domestic abuse; supervising the employees or volunteers of the program; or administering the program; and

(2) has undergone a minimum level of training as set by the Sac and Fox Nation Program for Victims of Domestic Abuse or its successor.

(b) **Domestic Abuse** shall mean any act of physical harm, threatened imminent physical harm, sexual abuse, emotional abuse, stalking or harassment by an adult, emancipated minor, or minor child thirteen (13) years of age or older against another adult, emancipated minor or minor child who is a protected person.

TITLE 13 - FAMILY
Chapter 9 - Domestic Abuse

(c) **Emotional Abuse** shall mean the repeated use of threats, intimidation, or extreme ridicule such that it would inflict humiliation and/or emotional suffering upon a reasonable person and does actually inflict such suffering upon a protected person. Emotional Abuse also includes the harm done to minors by domestic abuse committed in the presence of those minors.

(d) **Primary Aggressor** shall mean the person involved in a domestic abuse incident who is primarily responsible for the incident as indicated by, but not limited to the person:

- (1) who is not currently under the protection of court orders issued pursuant to this Act;
 - (2) of whom the other party is afraid;
 - (3) is determined to have inflicted the most severe injuries;
 - (4) who has tried to intimidate or negatively control the other party or parties;
 - (5) appears most likely to pose the larger threat of future violent behavior;
- and/or
- (6) who initiates the domestic abuse.

(e) **Program for Abusers** means a specialized program, recognized by the Sac and Fox Nation's program for victims of domestic abuse or courts as based on an effective model, which provides education or treatment for perpetrators of domestic abuse.

(f) **Protected Person** shall mean persons who are or were related to the perpetrator as spouses or those situated similarly to a spouse, family members, parents, foster parents, children, or persons otherwise related by blood or marriage, persons who are or were in a dating relationship, persons who are presently residing together or who have resided together in the past, persons who have a child in common regardless of their marital status, or whether they are or have lived together at any time, and, for the purposes of the issuance of a protection order, any other person with a sufficient relationship to the abusing person as determined by the Court and other relationships between people that under the traditions and customs of the Sac and Fox Nation are viewed as creating domestic or kinship relationships.

(g) **Program for Victims** means that program which the Sac and Fox Nation acknowledges as serving victims of domestic abuse, their children, and families by providing advocacy, shelter, crisis intervention, counseling, education or other appropriate services.

(h) **Department** means the Sac and Fox Nation's department, agency or program primarily responsible for oversight of domestic abuse services and recognized as such by the Business Committee of the Sac and Fox Nation.

TITLE 13 - FAMILY
Chapter 9 - Domestic Abuse

(i) **Sexual Violence** means those acts and outlawed in Title 10 Crimes, Sub-chapter 2a. Sexual Abuse.

[History: PUBLIC LAW SF-09-267, June 10, 2009; as amended by #SF-15-25, December 11, 2014.]

Section 9-04. Evidentiary Standards

(a) Testimonial Privileges

(1) In a proceeding where a spouse or other family or household member is allegedly the victim of domestic abuse, the following evidentiary privileges do not apply to protect the perpetrator:

- i. the privilege of confidential communication between spouses, and
- ii. the testimonial privilege of spouses.

(2) A victim of domestic abuse may prevent an advocate from disclosing confidential oral communication and the written records and reports of the program 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.

(b) **Evidence, Hearsay Exception.** The Court shall admit into evidence as an exception to the hearsay rule learned treatises or other reliable materials which describe and explain the "battered women's syndrome" or otherwise examine the impact of violence upon victims.

[History: PUBLIC LAW SF-09-267, June 10, 2009.]

Section 9-05. Duties of Law Enforcement Officer

(a) **Assistance by officers.** A law enforcement official who responds to an allegation of domestic abuse shall use all reasonable means to protect the victim and others present from abuse.

(b) **Verbal notice to victim(s).** Law enforcement officials shall give immediate and adequate notice of the rights of victims and/or the remedies and services available to victims of domestic abuse.

[History: PUBLIC LAW SF-09-267, June 10, 2009.]

TITLE 13 - FAMILY
Chapter 9 - Domestic Abuse

Section 9-06. Duty of Prosecutor

(a) A prosecutor shall make a reasonable effort to notify the victim when the prosecutor declines to prosecute or dismisses the domestic abuse charges, or enters into a plea agreement.

(b) A prosecutor shall notify the victim of the rights for victims of domestic abuse.

[History: PUBLIC LAW SF-09-267, June 10, 2009.]

Section 9-07. Reporting Requirements

(a) Any tribal official or employee, nurse, school teacher, social worker, probation officer, or community health representative knowing or suspecting that domestic abuse is occurring or has occurred shall report the matter within 48 hours by telephone or otherwise to the Sac and Fox Department.

(b) Any person, including individuals, corporations, governmental entities and their agents, who in good faith makes or participates in the making of a report shall have immunity from any liability, civil or criminal, which might otherwise arise from making that report, and shall have the same immunity with respect to participation in any court proceeding resulting from such a report.

[History: PUBLIC LAW SF-09-267, June 10, 2009.]

Section 9-08. Failure to Report Domestic Abuse

Any person who has a duty to report and fails, neglects, or refuses to report acts of domestic abuse known to him/her may, after notice and hearing and a finding of clear and convincing duty before the District Court, be assessed a civil penalty in an amount not to exceed \$500 and/or community service or domestic abuse education hours not to exceed 40 hours.

[History: PUBLIC LAW SF-09-267, June 10, 2009; as amended by #SF-15-25, December 11, 2014.]

Section 9-09. Standard of Proof, Defenses

(a) The civil standard of proof shall apply to proceedings under this Act, except as otherwise specified in this Act. 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 abuse has occurred

TITLE 13 - FAMILY
Chapter 9 - Domestic Abuse

or is about to occur. The order's purpose shall be to prevent the occurrence or recurrence of abuse.

- (b) A petitioner shall not be denied relief under this Act 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 respondent;
 - (3) the petitioner has not filed for a divorce; or
 - (4) the petitioner or the respondent is a minor.

(c) The neither intoxication nor spousal immunity shall be considered a defense in a proceeding for the issuance or enforcement of a protection order under this Act.

[History: PUBLIC LAW SF-09-267, June 10, 2009.]

Section 9-10. Severability

If any provision or portion of this Act is adjudged to be unconstitutional or invalid by a Court of competent jurisdiction, the remainder of the Act shall not be affected.

[History: PUBLIC LAW SF-09-267, June 10, 2009.]

Section 9-11. Criminal Sanctions

Nothing contained in this Act shall prevent the filing of criminal sanctions as defined in Title 10 of the Sac and Fox Nation Tribal Code *in addition* to consequences imposed for violation of provisions in the Domestic Abuse Act.

[History: PUBLIC LAW SF-09-267, June 10, 2009.]

SUB-CHAPTER 1 - DOMESTIC ABUSE SERVICES

Section 9-101. Domestic Abuse Services

The Sac and Fox Nation shall designate a tribal department or agency for provision and oversight of domestic abuse services. Said department shall arrange and supervise agreements to contract for shelter and such other services as are needed for victims of domestic abuse or

TITLE 13 - FAMILY
Chapter 9 - Domestic Abuse

sexual assault.

[History: PUBLIC LAW SF-09-267, June 10, 2009.]

Section 9-102. Confidentiality of Records

(a) Except as otherwise provided by Subsection (b) of this section, the case records, case files, case notes, client records, or similar records of a domestic abuse or sexual assault program certified by the Sac and Fox Nation's program for victims of domestic abuse or of any employee or trained volunteer of such program regarding an individual who is residing or has resided in the program or who has otherwise used or is using the services of a domestic abuse or sexual assault program or counselor in such program shall be confidential and shall not be disclosed. For purposes of this paragraph, the term "client records" shall include, but not be limited to, all communications, records and information regarding clients of domestic abuse and sexual assault programs.

(b) The records, files or notes of programs specified in Subsection (a) of this section shall be confidential and shall not be disclosed except:

(1) With the written consent of such individual, or in case of his/her death or disability, to law enforcement officials, attorney general's office, or his/her personal representative or other person authorized to sue on his/her behalf; or

(2) By court order for good cause shown.

(c) The district court shall not order the disclosure of the address of a domestic abuse shelter.

[History: PUBLIC LAW SF-09-267, June 10, 2009.]

Section 9-103. Service to Minor Domestic Abuse Victims

(a) A domestic abuse shelter facility may provide shelter and care to a minor parent, who is the victim of domestic abuse or is seeking relief from domestic abuse for themselves or on behalf of any of their children or both themselves and any of their children.

(b) A domestic abuse shelter facility may provide such shelter or care only during an emergency constituting an imminent danger to the physical health or safety of the minor parent or their child or both the minor parent and any of their children. Such shelter or care shall not extend beyond thirty (30) days unless the facility receives an order issued by the court to continue such services, or the parent or guardian of the minor parent consents to such services.

(c) No punishment for a complaint of contributing to delinquency of minors shall

TITLE 13 - FAMILY
Chapter 9 - Domestic Abuse

apply to any domestic abuse shelter facility and any person operating such facility who in good faith is providing shelter and care pursuant to the provisions of this section, to a minor parent and any of their children who is a runaway from her parent or legal guardian.

(d) The show cause hearing shall be provided for the minor parent who is seeking relief from domestic abuse for themselves or on behalf of any of the children.

(e) (1) For purposes of the Domestic Abuse Act, any minor, that is not a minor parent, shall be treated as a juvenile within the jurisdiction of the Juvenile Court pursuant to Title 20, Juvenile Procedure.

(2) Notwithstanding subsection (e)(1), a minor a minor thirteen (13) years of age or older may, pursuant to this act, either on their own or through a third party apply for a any relief available under this act, including protective orders, emergency protective orders, and *ex parte* orders.

[History: PUBLIC LAW SF-09-267, June 10, 2009; as amended by #SF-15-25, December 11, 2014.]

Section 9-104. Law Enforcement Reporting of Domestic Abuse Incidents

(a) **Records and reports.** Every law enforcement agency shall keep a record of each reported incident of domestic abuse as provided in Subsection (b) of this section and to submit a monthly report of such incidents as provided in Subsection (c) of this section.

(b) **Content of Records.** The record of each reported incident of domestic abuse shall consists of:

- (1) who was involved in the domestic abuse;
- (2) what type(s) of crime(s) were involved in the incident;
- (3) show the day of the week the incident occurred; and
- (4) show the time of day the incident occurred.

(c) **Monthly report.** A monthly report of the recorded incidents, minus any personally identifying information of the victims, of domestic abuse shall be submitted to the Chief of Police for the Sac and Fox Nation, who shall forward the report to the Domestic Abuse program.

[History: PUBLIC LAW SF-09-267, June 10, 2009; as amended by #SF-15-25, December 11, 2014.]

TITLE 13 - FAMILY
Chapter 9 - Domestic Abuse

SUB-CHAPTER 2 - CIVIL ORDERS FOR PROTECTION

Section 9-201. Jurisdiction

The Sac and Fox Nation District Court shall have jurisdiction over acts of stalking, assault, battery, harassment, or domestic abuse and associated causes of action:

- (a) committed by any person over whom the Court has jurisdiction; or
- (b) that are planned, initiated, transpire, occur, touch upon or are completed, within the tribal jurisdiction; or
- (c) that are threatened against or committed by any person over whom the court has jurisdiction, and
- (d) specifically includes all such civil enforcement actions arising anywhere in the Indian Country of the Nation or otherwise within the authority of the Nation.

[History: PUBLIC LAW SF-09-267, June 10, 2009; as amended by #SF-15-25, December 11, 2014.]

Section 9-202. Eligible Petitioners

- (a) Any person who is or has been an victim of:
 - (1) sexual violence;
 - (2) violent or threatening acts of harassment, contact, communication with, or physical proximity to another person; or
 - (3) stalking, assault, battery, or domestic abuse,

may seek protection by filing a Motion for or a Petition for Protective Order, whether in an independent action or as a pendent lite order in another proceeding. Provided, such Protective Order is issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection and/or seeking criminal charges. Provided further, such motion may be made orally in Court if memorialized by written motion within twenty-four (24) hours.

TITLE 13 - FAMILY
Chapter 9 - Domestic Abuse

(b) Any parent, guardian, or other representative may also seek a Protective Order on behalf of a minor, an incompetent or protected person.

[History: PUBLIC LAW SF-09-267, June 10, 2009; as amended by #SF-15-25, December 11, 2014.]

Section 9-203. Confidentiality

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

[History: PUBLIC LAW SF-09-267, June 10, 2009.]

Section 9-204. Forms of Petitions; Fee Waived

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

(b) The petitioner shall prepare the petition or, at the request of the petitioner, the clerk of the court, the domestic abuse program coordinator or other persons properly delegated shall assist the petitioner in preparing the same, in substantially the following form:

**IN THE DISTRICT COURT OF
THE SAC AND FOX NATION**

On Behalf of _____ *(If Filed By a Third Party)*

Petitioner,

vs

Case No. _____

Respondent,

PETITION FOR PROTECTIVE ORDER

Petitioner, being sworn, states:

1. (a)(Check one or more)

TITLE 13 - FAMILY
Chapter 9 - Domestic Abuse

Victim is a

- resident,
- employee, or
- is located

within the Sac and Fox Nation. Please state where: _____

Respondent is a

- resident,
- employee, or
- is located

within the Sac and Fox Nation. Please state where: _____

The action complained of occurred, or is threatened to occur within the Sac and Fox Nation.

(b) is the Petitioner:

- a member of the Sac and Fox Nation
- enrolled with another tribe? What tribe? _____

2. (Check one or more)

The Respondent caused or attempted to cause serious physical or emotional harm or sexual abuse to Petitioner or _____.

The Respondent threatened _____ with imminent serious physical harm.

The Respondent has stalked or harassed _____.

3. The incident(s) causing the filing of this petition occurred on or about _____.
[date(s)]

(Describe what happened and where.)

4. The victim and the respondent are related as follows: (check one)

- Married
- Divorced. Date & place of divorce: _____
- Parent and child
- Persons related by blood. Relationship: _____
- Persons related by marriage. Relationship _____
- Present spouse of a former spouse. Current spouse _____
- Persons living in same household
- Persons formerly living in the same household
- Biological parents of the same child. Child's name: _____
- Persons in a current or previous dating relationship. Please describe when and for how

TITLE 13 - FAMILY
Chapter 9 - Domestic Abuse

long, the type of relationship, frequency of interactions, etc.:

Not related. Briefly describe how the parties know each other. _____

Other. Briefly explain: _____.

5. (Answer this question only if the petitioner is filing on behalf of someone else, a minor or incompetent.) The petitioner and the victim are related as follows:

Married

Divorced. Place & date of divorce, if known: _____

Parent and child

Persons related by blood. Relationship _____

Persons related by marriage. Relationship _____

Present spouse of an former spouse. Current spouse _____

Persons living in same household

Persons formerly living in the same household

Persons in a current or previous dating relationship

Not related

Biological parents of the same child. Name of child _____

Other _____.

6. (Check A or B)

(A) The victim is in imminent danger of abuse from the respondent; therefore, an emergency *ex parte* order (without notice or hearing to Respondent) is necessary to protect the victim from serious harm. Please explain why: _____

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

7. Are there any other court actions pending between the parties? Yes ____ No ____.

If yes, in what court? _____

Briefly describe the nature of the case: _____

RELIEF REQUESTED:

The Petitioner requests the following relief in the emergency *ex parte* order (without notice or hearing to Respondent): (check one or more)

Order the respondent not to threaten the victim, directly or through third parties.

Order the respondent not to abuse or injure the victim.

TITLE 13 - FAMILY
Chapter 9 - Domestic Abuse

Order the respondent not to telephone, e-mail, text message or communicate through electronic, computer or digital means, visit, assault, batter, molest, stalk, harass or otherwise interfere with the victim or any designated protected person.

Order the respondent not to harass, stalk or annoy, through direct or indirect methods whether by electronic, digital or other means including posting malicious, threatening, intimidating, personal or embarrassing materials to computer web-sites or blogs regarding the respondent, or otherwise communicating directly or indirectly with the victim;

Order the respondent to leave the residence at _____ (location) on or before _____ (date).

Order suspension of child visitation due to physical violence or threat of abuse by the respondent or a threat to violate a custody order by the respondent. (If available, please attach a copy of the custody order.)

Order the respondent, who is a minor child, to leave the residence located at _____ by immediately placing the respondent in any type of care authorized for children taken into custody pursuant to Sac and Fox Juvenile Code.

Age of respondent: _____ years.

Describe other relief that petitioner requests: _____
_____.

Petitioner requests the following order to be made by the court following notice to the respondent and a hearing: (check one or more)

Order the respondent not to threaten the victim, directly or through third parties..

Order the respondent not to abuse or injure the victim.

Order the respondent not to telephone, e-mail, text message or communicate through electronic, computer or digital means, visit, assault, batter, molest, stalk, harass or otherwise interfere with the victim or any designated protected person.

Order the respondent not to harass, stalk or annoy, through direct or indirect methods whether by electronic, digital or other means including posting malicious, threatening, intimidating, personal or embarrassing materials to computer web-sites or blogs regarding the respondent, or otherwise communicating directly or indirectly with the victim;

Order the respondent to cease stalking the victim.

order suspension of child visitation orders due to physical violence or threat of abuse by the defendant or a threat to violate a custody order by the defendant.

Order the respondent to leave the residence at _____ (location) on or before _____ (date).

Order the respondent, a minor child, to leave the residence at _____ by immediately placing the respondent in any type of care authorized for children taken into custody pursuant to Sac and Fox Juvenile Code.

Describe other relief that petitioner requests: _____
_____.

TITLE 13 - FAMILY
Chapter 9 - Domestic Abuse

- [] Order the respondent to pay attorney fees of the petitioner in the sum of _____ on or before _____.
- [] Order the respondent to pay the court costs, service and police administrative fees of this action, in the sum of _____ on or before _____.

WARNING: Whoever makes a statement or allegation in this Petition for Protective Order but does not believe that the statement or allegation is true, or knows that it is not true, or intends thereby to avoid or obstruct the ascertainment of the truth, may be found guilty of perjury. Pursuant to Title 10 of the Sac and Fox Code, the penalty for perjury is a crime punishable by imprisonment for not more than one (1) year and/or a fine of not more than \$5000.

I, _____, Petitioner being of lawful age and duly sworn state that I have read the forgoing Petition and am familiar with its contents and know them to be true upon personal knowledge and observation, I verify the same on behalf of myself and (if appropriate) _____ (name of minor or ward).

Petitioner

Witness my hand and seal,
Affixed on the _____.
(date)

Court Clerk or Notary Public

<end document>

[History: PUBLIC LAW SF-09-267, June 10, 2009; as amended by #SF-15-25, December 11, 2014.]

Section 9-205. Service of process -- Hearings

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

(b) 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

TITLE 13 - FAMILY
Chapter 9 - Domestic Abuse

child to the caretaker of the place where such child is taken pursuant the Sac and Fox Juvenile code.

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

(d) Within fourteen (14) days of the filing of the petition the court shall schedule a full hearing on the petition, regardless of whether an emergency *ex parte* order has been previously issued, requested or denied. If the petitioner seeks further relief concerning an issue not outlined by the Emergency *Ex Parte* Protective Order, the court may continue the hearing and/or the Respondent may request a continuance.

[History: PUBLIC LAW SF-09-267, June 10, 2009; as amended by #SF-15-25, December 11, 2014.]

Section 9-206. Availability of Judge or Court Officer for Emergency Protection Orders

(a) If a plaintiff requests an emergency *ex parte* order pursuant to this Act, the court shall hold an *ex parte* hearing on the same day the petition is filed, or as soon thereafter as possible. The court's *ex parte* hearing may be by telephone or other electronic or digital means. The District Court of the Sac and Fox Nation may issue a written or oral emergency protection order *ex parte* when:

(1) based upon a statement of the Petitioner or a law enforcement official to the court, whether in person, by telephone or other electronic or digital means, the court finds reasonable grounds to believe that the petitioner is in immediate danger of domestic abuse; or

(2) when the abuse occurs or is threatened to occur when a judge is not available for a hearing with notice and the petitioner reasonably appears in immediate danger of domestic abuse.

(b) A law enforcement official who receives an oral order for protection from the court shall:

(1) Write and sign the order per the court's direction;

TITLE 13 - FAMILY
Chapter 9 - Domestic Abuse

- (2) Serve a copy on the respondent.
- (3) Immediately provide the petitioner with a copy of the order; and
- (4) Provide the order to the court by the end of the next business day.

(c) A judge or court official with authority to issue an emergency *ex parte* protective order, must be available 24 hour a day to hear petitions for emergency *ex parte* protective orders.

[History: PUBLIC LAW SF-09-267, June 10, 2009; as amended by #SF-15-25, December 11, 2014.]

Section 9-207. Emergency Protective Orders or Modifications of Emergency Protective Orders

Emergency Protective Orders or Modifications of Emergency Protective Orders may, without notice and hearing, order:

- (a) the respondent not to abuse or injure the victim or any designated protected person;
- (b) the respondent not to telephone, e-mail, text message or communicate through electronic, computer or digital means, visit, assault, batter, molest, stalk, harass or otherwise interfere with the victim or any designated protected person;
- (c) the respondent not to threaten the victim or any designated protected person, whether directly or by means of electronic, digital or computer aided threat, directly or through third parties;
- (d) the respondent not to annoy, telephone, contact or otherwise communicate with the victim or any designated protected person, directly or indirectly through friends, relatives or co-workers, or through direct or indirect methods whether by physical, electronic or digital means including posting malicious, threatening, intimidating, personal or embarrassing materials to computer web-sites or blogs regarding the respondent, or otherwise communicating directly or indirectly with the victim;
- (e) the respondent to leave the residence of the petitioner, regardless of ownership of the residence;
- (f) the respondent to stay away from the residence, school, place of employment of the victim, or any specified place frequented by the victim and any other designated person or family member or household or former household member;
- (g) An order removing the respondent who is a minor child from the residence by

TITLE 13 - FAMILY
Chapter 9 - Domestic Abuse

immediately placing the child in any type of care authorized for children taken into custody pursuant to the Sac and Fox Juvenile Code.

(h) seizing and prohibiting the respondent from using or possessing a firearm or other weapon specified by the court;

(i) the victim possession and use of an automobile, if the parties to the domestic abuse incident have shared access to an automobile, and/or other essential personal effects, regardless of the ownership between the victim and respondent;

(j) the appropriate law enforcement official to accompany the petitioner to the residence of the parties to ensure that the petitioner is safely restored to possession of the residence, automobile, and other essential personal effects, or to supervise the petitioner's or respondent's removal of personal belongings;

(k) prohibiting the destruction, liquidation, or disposal of any and all joint assets or property or specific assets or property of the petitioner;

(l) granting temporary custody of a minor child(ren) to the petitioner or suspending child visitation due to physical violence or threat of abuse by the respondent or a threat to violate a custody order by the defendant or an order requiring supervised visitation with the child in a neutral setting.

(m) directing the respondent to continue to meet all existing insurance obligations (i.e. medical, dental) for victim and/or any minor children; and

(n) any relief that the court deems necessary to protect and provide for the safety of the petitioner and any designated family member or household or former household member.

An emergency *ex parte* protective order authorized by this section shall include the name, sex, race, date of birth of the respondent, and the dates of issue and expiration of the protective order.

[History: PUBLIC LAW SF-09-267, June 10, 2009; as amended by #SF-15-25, December 11, 2014.]

Section 9-208. Protective Orders or Modifications of Protective Orders

A Protective Order or a Modified Protective Order after notice and hearing, may, whether or not the respondent appears, grant any relief available in accordance with Section 9-207 and order:

(a) Arrangements for visitation of any minor child(ren) by the respondent and requiring supervision of that visitation by an independent third party or denying visitation if necessary to protect the safety of the petitioner or child(ren). However, all costs of supervised

TITLE 13 - FAMILY
Chapter 9 - Domestic Abuse

visitation shall be born by the respondent. Indian Child Welfare shall not be required to provide supervised visitation under this Act. Visitation arrangements shall consider the respondent's overall lifestyle, especially as it pertains to alcohol, other drug or chemical use and history of violence.

(b) Respondent to

(1) Pay any attorney's fees, costs or other fees incurred by the petitioner in bringing the action;

(2) Pay any costs and fees incurred by the Sac and Fox Nation in detaining the respondent in response to the domestic abuse incident;

(3) Reimburse the petitioner or other person for any expenses associated with the domestic abuse incident, including but not limited to medical expenses, counseling, shelter, lost wages, and repair or replacement of damaged property;

(4) Continue to meet all existing insurance obligations (i.e. medical, dental) for the victim and/or any minor children;

(5) Pay rent or make payment on a mortgage on the petitioner's residence and pay for the support of the petitioner and minor child(ren) if the respondent is found to have a duty to support the petitioner or minor child(ren);

[History: PUBLIC LAW SF-09-267, June 10, 2009; as amended by #SF-15-25, December 11, 2014.]

Section 9-209. Duration of Orders

(a) **EPO's and Modified EPO's.** An Emergency *Ex Parte* Protective Order or Modified Emergency *Ex Parte* Protective Order is effective until a full hearing with notice 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, then it 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."

(b) **Protective Orders and Modified Protective Orders.** Protective Orders and Modified Protective Orders issued after notice and hearing shall remain in effect for a period of four (4) years, or until further order of the court, which ever comes first.

(c) The Court prior to the time a Protective Order or Modified Protective Order

TITLE 13 - FAMILY
Chapter 9 - Domestic Abuse

expires, may upon a showing of good cause extend the Protective Order or Modified Protective Order for another period of four (4) years, or until further order of the court, which ever comes first.

[History: PUBLIC LAW SF-09-267, June 10, 2009.]

Section 9-210. Transmittal of Protective Orders

The court shall:

(a) Deliver the order to the Sac and Fox Nation's program for victims of domestic abuse or other appropriate person or agency;

(b) Make reasonable efforts to ensure that the Protective Order is understood by the petitioner, and the respondent, if present;

(c) Transmit, by the end of the next business day after the order is issued, a copy of the Protective Order to local law enforcement agencies designated by the petitioner; and

(d) Transmit a copy of the order to the appropriate entity for placement in the tribal registry.

[History: PUBLIC LAW SF-09-267, June 10, 2009.]

Section 9-211. Custody Matters Take Precedent

In the event the petitioner requests relief or the court enters a temporary order(s) concerning custody of a minor child(ren), such a hearing determining the above cited relief must be given precedence over all matters, including older matters of the same character, involving the same petitioner and respondent.

[History: PUBLIC LAW SF-09-267, June 10, 2009.]

Section 9-212. Certification of Protective Orders

All protective orders shall be certified as true and correct copies of the order(s) entered in the accompanying case.

[History: PUBLIC LAW SF-09-267, June 10, 2009.]

TITLE 13 - FAMILY
Chapter 9 - Domestic Abuse

Section 9-213. Effect of Action by Petitioner or Respondent on Order

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

[History: PUBLIC LAW SF-09-267, June 10, 2009.]

Section 9-214. Court Responsibilities

The court shall:

(a) not grant nor deny relief to the petitioner based on the employment, age, economic, educational, social, political, and/or mental and physical status of the petitioner or respondent.

(b) not deny a petitioner relief requested pursuant to this Act because of a reasonable time lapse between an act of domestic abuse and the filing of the petition.

(c) inform the victim of domestic abuse about local services and advocacy available through the Sac and Fox Nation's program for victims of domestic abuse.

[History: PUBLIC LAW SF-09-267, June 10, 2009.]

Section 9-215. Mutual Order for Protection Discouraged

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

(a) the defendant files a written pleading, such as a cross 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 plaintiff and defendant and determines that each party is entitled to such an order.

[History: PUBLIC LAW SF-09-267, June 10, 2009.]

TITLE 13 - FAMILY
Chapter 9 - Domestic Abuse

Section 9-216. Court Ordered or Referred Mediation, Marriage Counseling, or Reconciliation of Domestic Abuse Cases Prohibited

The court shall not order parties into mediation or any type of counseling, alternative justice, restorative justice, or any other mediation type of situation that would put the petitioner in the position of dealing directly with the respondent for resolution of the issues contained in a petition for a protective order, even if the petitioner is given the option to refuse to participate in a mediation or similar process.

[History: PUBLIC LAW SF-09-267, June 10, 2009.]

Section 9-217. Other Court Proceedings. Effect of Other Proceedings

(a) At any hearing in a proceeding to obtain or amend an order for protection, each party has a continuing duty to inform the court of any other civil or criminal proceedings whether in civil, criminal, family, or juvenile court, involving the parties in any jurisdiction.

(b) An order for protection may be sought in addition to other available civil or criminal proceedings. A petitioner is not barred from applying for an order for protection because of other court proceedings. The court shall not delay granting relief merely because of other pending action between the parties. The court shall not dismiss or refuse to grant an order for protection because of the possibility, pendency, or existence of other court proceedings.

[History: PUBLIC LAW SF-09-267, June 10, 2009; as amended by #SF-15-25, December 11, 2014.]

Section 9-218. Omission of Petitioner's Address

(a) A petitioner may omit their home address from all court papers. If the petitioner does so, the court may inquire *in camera* to determine information sufficient to establish jurisdiction over the petition, but shall thereafter maintain the address of petitioner under sealed record, not to be accessible unless authorized by the court. The petitioner must provide the court with information to allow proper service to be attainable under the Civil Procedure Code of the Sac and Fox Nation.

(b) Service upon Petitioners with sealed address shall be made by service upon the Court in lieu of Petitioner. Any computation of time in which to answer or reply by the Petitioner after service by Respondent pursuant to this section shall be enlarged by three days. Service shall otherwise comply with the Civil Procedure Code.

[History: PUBLIC LAW SF-09-267, June 10, 2009.]

TITLE 13 - FAMILY
Chapter 9 - Domestic Abuse

Section 9-219. Tribal Registry for Orders of Protection

(a) The District Court of the Sac and Fox Nation shall maintain a registry of all Protective Orders issued by the Sac and Fox Nation District Court. The court clerk shall provide Sac and Fox Nation Police Department and the Program for victims of domestic abuse with certified protective orders within 24 hours after issuance.

(b) The court clerk shall also provide the Police and the Program with any modifications, revocations, withdrawals, and/or expiration of protective orders.

(c) The Sac and Fox Police Department shall enter Protective Orders into the National Crime Information Center (NCIC) or other national or regional law enforcement database that the Police Department utilizes.

[History: PUBLIC LAW SF-09-267, June 10, 2009; as amended by #SF-15-25, December 11, 2014.]

Section 9-220. Vacating of Protective Orders

(a) A party who wishes to have a protective order vacated must move the court for such an order.

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

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

(1) whether the respondent has attended counseling and what type of counseling, if required by the order, and for how long and reports from the counseling program as to the attendance, success and any recommendations of the program regarding the respondent;

(2) whether the respondent has complied with the terms of the protective order or modified protective order;

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

(4) any other factors the court deems relevant.

(d) The court clerk shall provide a copy of any subsequent order to all law enforcement departments to whom a copy of the original protective order was delivered under Sections 210 and 219.

TITLE 13 - FAMILY
Chapter 9 - Domestic Abuse

(e) All Sac and Fox law enforcement agencies shall enforce any protective order that has neither expired nor been vacated, regardless of the current status of the parties' relationship.

[History: PUBLIC LAW SF-09-267, June 10, 2009; as amended by #SF-15-25, December 11, 2014.]

Section 9-221. Civil Penalties for Violating Protective Orders

In addition to any criminal penalties for failure to comply with the requirements of this Act, except where otherwise stated, failure to comply with the provisions of this Act shall subject the non-complying offender to a civil penalty of not more than \$2500 per incident, as assessed by the Court after notice and hearing. Each day wherein the offender fails to come into compliance shall be a separate violation. The Attorney General shall be authorized to assist in enforcement of this section.

[History: PUBLIC LAW SF-09-267, June 10, 2009.]

Section 9-222. Civil Seizure of Property used in Furtherance of Violating a Protective Order

(a) All property, used in violating a Protective Order or Modified Protective Order (whether permanent or temporary), or Emergency Protective Order issued, registered or valid under this title, which is:

(1) found in the possession, custody, or control of any person, for the purpose of assisting, furthering violation of this title or transporting the perpetrator, for the purpose of violating the provisions of this title, or with intent to avoid apprehension for violations hereunder, and

(2) any automobile, truck, conveyance, or other vehicle whatsoever used in violating this Act, whether by or for transporting the respondent, harassment of the victim, or other purposes, and

(3) all cash, weapons, cell phones, computers, paraphernalia, mechanical, electronic or digital equipment or other tangible personal property incident to violating a Protective Order or Modified Protective Order (whether permanent or temporary), or Emergency Protective Order,

found on or in the control of the perpetrator or any person assisting in knowing violation of this Act, may be seized by any authorized law enforcement officer, without process. The same shall be, from the time of such seizure, forfeited to the Sac and Fox Nation, and a proper proceeding filed to maintain such seizure and prosecute the forfeiture as herein provided.

TITLE 13 - FAMILY
Chapter 9 - Domestic Abuse

(b) Any and all such vehicles and property seized pursuant to Section 9-222(a) shall be listed and appraised by the officer making such seizure and the property turned over to the Police Department and a receipt made. The officer making the seizure shall promptly file a written report to the Court Clerk and Attorney General, showing the name of the officer making the seizure, the place where and the person from whom the property was seized, and an inventory and appraisal thereof, at the estimated usual and ordinary retail price of such articles received, to the best of the officer's knowledge.

(1) Unless the seized property is being held as evidence for an ongoing civil or criminal action, the Attorney General shall within thirty (30) days of seizure file in the District Court forfeiture proceedings in the name of the Sac and Fox Nation, as plaintiff, and in the name of the owner or person in possession, as defendant, if known, and if unknown in the name of the property seized. The clerk of the court shall issue summons to the owner or person in whose possession such property was found, directing the owner or person to answer within ten (10) days.

(A) If by a preponderance of the evidence the property is found to have been used in violation of or assisting in violating this Act, the property shall be declared forfeited by the Court and ordered sold for the benefit of the victim, or if the property is of a de minimis value it shall be donated to the Domestic Abuse Program for their use or disposal.

(B) If the property is shown to belong to a third party not involved in, nor assisting or aware of the property's use in violating this Act and that the property will not likely be used in further violation of this Act, the seized property shall be returned to the third party owner.

(C) If the defendant or owner proves at the forfeiture hearing that the conduct giving rise to the seizure was justified, the seized property shall be returned to the owner.

Notice of the sale shall be posted in three public places in the Nation not less than ten (10) days before the date of sale.

(2) The proceeds of the sale shall be deposited with the Court Clerk who shall, after reimbursing any costs to the Nation of seizure and sale, remit any amount due the victim from the respondent for restitution for violating this Act, including penalties and interest due. The Nation shall deposit any remaining balance to the Victim's Fund.

(c) The seizure of property shall not be credited to the person from whom it was seized and shall not relieve the person from any prosecution, payment of any fines or penalties, or compliance with other court orders provided for under this title.

[History: PUBLIC LAW SF-09-267, June 10, 2009; as amended by #SF-15-25, December 11, 2014.]

TITLE 13 - FAMILY
Chapter 9 - Domestic Abuse

Section 9-223. Criminal Penalties for Violating Protective Orders

Criminal penalties for violating Protective Orders issued under this Act, or by other jurisdictions that comply with the Violence Against Women Act or where such foreign Protective Order otherwise complied with the requirements of Due Process shall be as set in the Nation's Criminal Code at Title 10 §207.8 Violation of a Protective Order.

[History: PUBLIC LAW SF-09-267, June 10, 2009; as amended by #SF-15-25, December 11, 2014.]

SUB-CHAPTER THREE - FULL FAITH AND CREDIT

Section 9-301. Full Faith and Credit for Valid Foreign Protection Order

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

[History: PUBLIC LAW SF-09-267, June 10, 2009.]

Section 9-302. Valid Foreign Protection Order

(a) **Jurisdiction of issuing court.** A protection order issued by a state, tribal or territorial court shall be deemed valid *if* the issuing court had jurisdiction over the parties and matter under the law of the tribe, state, or territory. There shall be a presumption in favor of validity where an order appears authentic on its face.

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

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

[History: PUBLIC LAW SF-09-267, June 10, 2009.]

TITLE 13 - FAMILY
Chapter 9 - Domestic Abuse

Section 9-303. Exclusion from Full Faith and Credit

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

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

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

[History: PUBLIC LAW SF-09-267, June 10, 2009.]

Section 9-304. Filing of Foreign Protection Order

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

(b) Filing shall be without fee or cost.

(c) A clerk of court shall forward a copy of the foreign protection order to the Sac and Fox Nation Police Department upon application of a plaintiff seeking enforcement.

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

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

[History: PUBLIC LAW SF-09-267, June 10, 2009.]

Section 9-305. Law Enforcement Immunity

A law enforcement officer may rely upon a copy of any foreign protection order which has been provided to the officer by any source and may also rely upon the statement of any person protected by a foreign order that the order remains in effect. A law enforcement officer acting in good faith shall be immune from civil and criminal liability in any action arising in connection with a court's finding that the foreign order was not enforceable.

[History: PUBLIC LAW SF-09-267, June 10, 2009.]

TITLE 13 - FAMILY
Chapter 9 - Domestic Abuse

SUB-CHAPTER FOUR - CRIMINAL PROCEDURES

Section 9-401. Mandatory Detention for Incidents Involving Domestic Abuse; Determination of Primary Aggressor; Required Report

(a) A law enforcement official shall have up to 24 hours after the incident, without a warrant, to detain and charge a person if the official has probable cause to believe the person has committed a violation involving domestic abuse, whether the offense was committed in or out of the presence of the official.

(b) If a law enforcement official receives complaints of domestic abuse from two or more opposing persons, the official shall evaluate each complaint separately to determine if one party was the primary aggressor. If the official determines that one person was the Primary aggressor, the official need not detain the second person if the second person is primarily the victim of domestic abuse.

(c) In determining whom to detain, the law enforcement official is not required to base the decision on who hit whom first, but shall consider the dynamics of domestic abuse, self-defense actions and the definition of primary aggressor.

(d) The use or abuse of alcohol by either party shall not be a factor as to whether or not domestic abuse has been committed.

(e) The employment, economic, educational, social, political, and/or the mental or physical status of the alleged perpetrator and/or victim shall not be considered in detention of the perpetrator.

(e) A law enforcement official shall not threaten, suggest, or otherwise indicate the possible detention of all parties to discourage requests for intervention by any party.

[History: PUBLIC LAW SF-09-267, June 10, 2009.]

Section 9-402. Required Reports

(a) In addition to any other report required, a law enforcement official who does not make a detention after investigating a complaint of domestic abuse or who detains two or more persons for a violation of the domestic abuse code must submit a written report setting forth the grounds for not detaining or, in instances where both parties are detained, describe how the determination was made that both parties acted primarily as aggressors and that neither party acted primarily in self-defense.

TITLE 13 - FAMILY
Chapter 9 - Domestic Abuse

(b) All reports shall be forwarded to the Attorney General's office within 72 hours of domestic abuse incidents, regardless of whether or not a detention was made.

[History: PUBLIC LAW SF-09-267, June 10, 2009.]

Section 9-403. Warrantless Arrests for Certain Violations of Protective Orders

(a) When a law enforcement official has probable cause to believe that a respondent has violated a Protective Order, either:

- (1) issued by the Sac and Fox Nation Court; or
- (2) valid under the Sac and Fox Domestic Abuse Act regardless of issuing jurisdiction, and verifies the existence of the order,

the official may, without a warrant, detain the apparent violator whether the violation was committed in or outside the presence of the official if the orders are in accordance with the Sac and Fox Domestic Abuse Act.

(b) A copy of a protective order shall be *prima facie* evidence that such order is valid when such documentation is presented to a law enforcement officer by the plaintiff, defendant, or another person on behalf of a person named in the order. Any law enforcement officer may rely on such evidence to make an arrest for a violation of such order, if there is reason to believe the defendant has violated or is then acting in violation of the order without justifiable excuse. When a law enforcement officer relies upon the evidence specified in this subsection, such officer and the employing agency shall be immune from liability for the arrest of the defendant if it is later proved that the evidence was false.

(c) Any person who knowingly and willfully presents any false or materially altered protective order to any law enforcement officer to effect an arrest of any person shall, upon conviction, be guilty of a Class III Misdemeanor, and shall, in addition, be liable for any civil damages to the person sought to be harmed by such alteration.

[History: PUBLIC LAW SF-09-267, June 10, 2009.]

Section 9-404. Authority of Law Enforcement to Seize Weapons

Incident to a detention for a violation of the Domestic Abuse Act, a law enforcement official:

(a) Shall seize all weapons or instruments that the official has probable cause to believe have been involved or threatened to be used in the commission of a domestic abuse violation.

TITLE 13 - FAMILY
Chapter 9 - Domestic Abuse

(b) Shall seize a weapon or instrument that is in the plain view or which is located during a search authorized by a person entitled to consent to the search. The seizure of such weapons or instruments is without regard to ownership of the weapons or instruments; weapons or instruments owned by a third party are subject to confiscation when officials conclude that the weapon or instrument poses a safety threat through the intentional use against law enforcement, victims of domestic abuse, or others.

(c) The provisions of Section 9-222 of this Act shall be followed for any seizure and forfeiture of property. Provided, third party owners of seized weapons may have them returned if it is shown the weapons will not pose an ongoing threat to the protected person(s). No weapon or instrument forfeited pursuant to this section or monies from the sale of any such seized weapon or instrument shall be turned over to the person from whom such property was seized if a forfeiture action has been filed within the time required by Section 9-222 of this Act.

[History: PUBLIC LAW SF-09-267, June 10, 2009.]

Section 9-405. Conditions of Release

(a) There shall be a mandatory detainment period of not less than 8 hours prior to the release of any suspect arrested for any crime involving domestic abuse, including violation of an order for protection.

(b) In making a decision as to pretrial release of a person arrested for and/or charged with domestic abuse, or the amount of cash bond for such person, the Court shall review the facts of the arrest and determine whether the person is a threat to the victim or family members, to public safety, and is reasonably likely to appear in court.

(c) Before releasing a person charged with domestic abuse or violation of an order for protection the Court may impose conditions to assure the safety of the victim and family, and to assure the defendant's appearance at subsequent court proceedings including, but not limited to:

(1) An order directing the defendant to vacate or stay away from the home of the victim and to stay away from any other location where the victim is likely to be:

(2) An order enjoining the defendant from threatening to commit or committing acts of domestic abuse against the victim of other family or household member;

(3) An order prohibiting the defendant from harassing or annoying, contacting, telephoning, e-mailing, text messaging or otherwise communicating through electronic or digital means with the protected person such as posting malicious, threatening, intimidating, personal or embarrassing materials regarding the victim to computer web-sites or blogs, or otherwise communicating directly or indirectly with the

TITLE 13 - FAMILY
Chapter 9 - Domestic Abuse

victim;

(4) An order prohibiting the defendant from using or possessing a firearm or other weapon specified by the Court;

(5) An order prohibiting the defendant from possession or consumption of alcohol or controlled substances;

(6) Any other order required to protect the safety of the victim and to ensure the appearance of the defendant in Court.

(b) The Court shall issue a written order for condition of release and distribute copies to the defendant, to the police department, to the domestic abuse program and to the victim. Failure to provide the defendant with a copy of the conditions of release does not invalidate the conditions if the person has notice through oral order or other means.

[History: PUBLIC LAW SF-09-267, June 10, 2009.]

Section 9-406. Mandatory Arrest for Violation of Conditions of Release

If a law enforcement officer has probable cause to believe that a person has violated a condition of release imposed in accordance with Section 9-405, the officer shall, without a warrant, arrest the alleged violator whether the violation was committed in or outside the presence of the officer.

[History: PUBLIC LAW SF-09-267, June 10, 2009.]

Section 9-407. Criminal Case May Not be Dismissed Because Civil Compromise is Reached

A court shall not dismiss a criminal complaint charging domestic abuse for the sole reason that a civil compromise or settlement is reached between the alleged perpetrator and respondent.

[History: PUBLIC LAW SF-09-267, June 10, 2009.]

Section 9-408. Reserved

TITLE 13 - FAMILY
Chapter 9 - Domestic Abuse

Section 9-409. Conditions of Probation for Perpetrator Convicted of Crime Involving Domestic Abuse; Required Reports by Probation Department; Conditions of Probation

(a) Before placing a perpetrator who is convicted of a crime involving domestic abuse or violation of a Protective Order on probation, the court shall consider the safety and protection of any victim(s) of the perpetrator.

(b) The court may condition the granting of probation to a perpetrator in compliance with one or more orders of the court, including but not limited to remedies provided in this Act.

(c) The court shall establish policies and procedures for responding to a perpetrators violation of probation conditions imposed pursuant to Subsection (b).

(d) The court may impose a 1 - 5 year probation requirement on a perpetrator of domestic abuse. The court shall consider the pre-sentence investigation report and the recommendations contained therein. Domestic abuse repeat offenses and/or other violent crime shall classify the perpetrator as a repeat offender and shall substantiate the imposition of a minimum of a 3 - 5 year probation with more stringent requirements including urine analysis testing, alternative treatment therapies, and possible electronic monitoring.

(e) The probation department shall set conditions of probation that will give priority to the safety of the victim. In developing the conditions of probation, the probation officer shall consider past history of violence, potential for lethality and history of alcohol and/or substance abuse, whether or not alcohol was involved in the assault that led to being placed on probation. In addition, the victim's personal impact statement, concerns and perspective shall be considered in the development of conditions for probation.

(f) The probation department shall inform the victim, in writing, that the perpetrator has been placed on probation. Such notification shall also include the conditions of probation, the process for notifying the probation officer in the event of further violence, and information regarding on-going victim safety monitoring.

(g) The probation department shall immediately report to the court and the victim any assault by the perpetrator, any threat of harm made by the perpetrator and the perpetrator's failure to comply with conditions imposed by the court or the probation department.

[History: PUBLIC LAW SF-09-267, June 10, 2009.]

Section 9-410. Probation Violations, Process for Revocation, Consequences

(a) The court shall recognize the signed report of the probation department and accompanying documentation outlining any violation of probation conditions as probable cause to issue a warrant for the perpetrator's arrest.

TITLE 13 - FAMILY
Chapter 9 - Domestic Abuse

(b) Upon arrest for a probation violation, the person on probation shall be held, without bond, until a court appearance regarding the probation violation takes place. The probation department shall make recommendations to the court regarding further sentencing for the probation violation.

(c) The jail shall be requested to notify the probation department and the probation department shall notify the jail of any person on probation who is arrested for any crime pursuant to the procedures outlined in the Law Enforcement Policies and Procedures.

(d) In the event the person on probation is charged with a subsequent offense of domestic abuse and/or any other charge, the probation department shall file a report and accompanying documents that shall include recommendations to the court regarding the person's probation.

[History: PUBLIC LAW SF-09-267, June 10, 2009.]