Iowa Tribe of Oklahoma
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RESOLUTION I-08-92

A RESOLUTION ADOPTING THE DOMESTIC ABUSE REPORTING ACT TO BE CODIFIED IN THE IOWA STATUTES AS SECTION 103 OF TITLE 5

WHEREAS: The Iowa Tribe of Oklahoma is a federally recognized Indian Tribe, organized pursuant to the Thomas-Rogers Oklahoma Indian Welfare Act, and has a constitution approved by the Secretary of Interior; and

WHEREAS: The Business Committee of the Iowa Tribe is empowered to speak and otherwise act on behalf of the Iowa Tribe of Oklahoma; and

WHEREAS: The Business Committee of the Iowa Tribe of Oklahoma has determined it to be in the best interest of the Iowa Tribe that it adopt provisions to address the issue of domestic abuse in Iowa Indian Country; and

WHEREAS: To accomplish this, the Business Committee of the Iowa Tribe of Oklahoma hereby amends its codes to read as follows:

SECTION 1. RECODIFICATION. Section 104 of Title 5 of the Statutes of the Iowa Tribe of Oklahoma shall be recodified as Section 106 of Title 5, unless there is created a duplication in numbering. Section 103 of Title 5 of the Statutes of the Iowa Tribe of Oklahoma shall be recodified as Section 105 of Title 5, unless there is created a duplication in numbering.

SECTION 2. NEW LAW. A new section of law to be codified in the Iowa Statutes as Section 103 of Title 5, unless there is created a duplication in numbering, reads as follows:

Sections 103.1 through 103.5 of this act shall be known and may be cited as the "Domestic Abuse Reporting Act."

SECTION 3. NEW LAW. A new section of law to be codified in the Iowa Statutes as Section 103.1 of Title 5, unless there is created a duplication in numbering, reads as follows:
As used in Sections 103.2 through 103.6 of this title:

(A) "Rape" means an act of sexual intercourse accomplished with a person pursuant to Sections 231 and 232 of Title 4 of the Iowa Statutes;

(B) "Deviate sexual intercourse" means the act of forcing another person to engage in the detestable and abominable crime against nature pursuant to Section 233 of Title 4 of the Iowa Statutes;

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

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

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

(1) victims or survivors of domestic abuse as defined in Section 104.1 of Title 5 of the Iowa Statutes, any dependent children of said victims or survivors and any other member of the family or household of such victim or survivor,

(2) victims or survivors of sexual assault, and

(3) persons who are homeless as a result of domestic or sexual violence or both domestic and sexual violence, and which may provide other services, including, but not limited to, counseling, case management, referrals or other similar services to victims or survivors of domestic abuse or sexual assault.

SECTION 4. NEW LAW. A new section of law to be codified in the Iowa Statutes as Section 103.2 of Title 5, unless there is created a duplication in numbering, reads as follows:

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

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

1. The right to request that charges be pressed against your assailant;

2. The right to request protection from any harm or threat of harm arising out of your cooperation with law enforcement and prosecution efforts as far as facilities are available and to be provided with information on the level of protection available;

3. The right to be informed of financial assistance and other social services as a result of being a victim, including information on how to apply for the assistance and services; and

4. The right to a free medical examination for the procurement of evidence to aid in the prosecution of your assailant."

SECTION 5. NEW LAW. A new section of law to be codified in the Iowa Statutes as Section 103.3 of Title 5, unless there is created a duplication in numbering, reads as follows:

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

(B) A peace officer may arrest without a warrant a person anywhere, including his place of residence, if the peace officer has probable cause to believe the person within the preceding seventy-two (72) hours has committed an act of domestic abuse as defined by Section 103.1 of this title, although the assault did not take place in the presence of the peace officer. A peace officer may not arrest a person pursuant to this section without first observing a recent physical injury to, or an impairment of the physical condition of, the alleged victim.

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

(1) Provide the victim with a petition for an emergency
temporary order of protection and, if necessary, assist the victim in completing the petition form. The petition shall be in substantially the same form as provided by Section 104.2 of this title for a petition for protective order;

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

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

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

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

(D) The forms utilized by law enforcement agencies in carrying out the provisions of this section may be substantially similar to those used under Section 103.7 of this title.

SECTION 6. NEW LAW. A new section of law to be codified in the Iowa Statutes as Section 103.4 of Title 5, unless there is created a duplication in numbering, reads as follows:

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

(B) The record of each reported incident of domestic abuse shall:

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

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

SECTION 7. NEW LAW. A new section of law to be codified in the Iowa Statutes as Section 103.5 of Title 5, unless there is created a duplication in numbering, reads as follows:

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

SECTION 8. NEW LAW. A new section of law to be codified in the Iowa Statutes as Section 103.6 of Title 5, unless there is created a duplication in numbering, reads as follows:

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

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

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

(D) Beginning January 1, 1999, any facility providing services for victims or survivors of domestic abuse or sexual assault and any dependent children of such victims or survivors shall comply with standards adopted by the Tribe; provided, that the certification requirements and standards adopted by the Tribe shall not apply to programs and services offered by the State of Oklahoma Department of Health and the Department of Human Services. The domestic violence or sexual assault programs certified pursuant to the provisions of this section shall cooperate with inspection
personnel of the Tribe and shall promptly file all reports required by the Tribe. Failure to comply with regulations and standards promulgated by the Tribe shall be grounds for revocation of certification, after proper notice and hearing.

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

SECTION 9. NEW LAW. A new section of law to be codified in the Iowa Statutes as Section 103.7 of Title 5, unless there is created a duplication in numbering, reads as follows:

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

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

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

SECTION 10. NEW LAW. A new section of law to be codified in the Iowa Statutes as Section 104 of Title 5, unless there is created a duplication in numbering, reads as follows:

Sections 104.1 through 104.10 of this act shall be known and may be cited as the "Protection from Domestic Abuse Act."

SECTION 11. NEW LAW. A new section of law to be codified in the Iowa Statutes as Section 104.1 of Title 5, unless there is created a duplication in numbering, reads as follows:

As used in Section 104 et seq. of this title:

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

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

3. "Harassment" means a knowing and willful course or pattern of conduct by an adult, emancipated minor, or minor thirteen (13) years of age or older, directed at a specific person which seriously alarms or annoys the person, and which serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial distress to the person. "Harassment" shall include, but not be limited to, harassing or obscene telephone calls in violation of Section 504 of Title 4 of the Iowa Statutes and fear of death or bodily injury;

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

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

SECTION 12. NEW LAW. A new section of law to be codified in the Iowa Statutes as Section 104.2 of Title 5, unless there is created a duplication in numbering, reads as follows:

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

(B) When the abuse occurs when the court is not opened for business, such person may request an emergency temporary order of protection as provided by Section 103.3 of this title.

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

In the District Court of the Iowa Tribe of Oklahoma

Plaintiff

Case No. _____

Defendant.
PETITION FOR PROTECTIVE ORDER

Plaintiff, being sworn, states:

1. (Check one or more)

☐ The defendant caused or attempted to cause serious physical harm to ______.

☐ The defendant threatened _____ with imminent serious physical harm.

☐ The defendant has stalked or harassed _____.

2. The incident causing the filing of this petition occurred on or about ______ , 19____.

(Describe what happened:)

____________________________________________________________________________________
____________________________________________________________________________________
____________________________________________________________________________________

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

☐ married

☐ divorced

☐ parent and child

☐ persons related by blood

☐ persons related by marriage

☐ present spouse of an ex-spouse

☐ persons living in the same household

☐ persons formerly living the in the same household

☐ biological parents of the same child

☐ not related
4. (Answer this question only if the plaintiff is filing on behalf of someone else, minor or incompetent.) The plaintiff and the victim are related as follows:

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

5. (Check A or B)

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

☐ order the defendant not to abuse or injure the victim
☐ order the defendant not to visit, assault, molest, or otherwise interfere with the victim
☐ order the defendant not to threaten the victim
☐ order the defendant to cease stalking the victim
☐ order the defendant to cease harassment of the victim
☐ order the defendant to leave the residence located at _____ on or before _______.
☐ ______ (describe other relief plaintiff requests).

(B) ☐ The plaintiff does not request an emergency ex parte order.
6. Plaintiff requests the following order to be made by the court following notice to the defendant and a hearing: (Check one or more)

☐ order the defendant not to abuse or injure the victim

☐ order the defendant not to visit, assault, molest, or otherwise interfere with the victim

☐ order the defendant not to threaten the victim

☐ order the defendant to cease stalking the victim

☐ order the defendant to cease harassment of the victim

☐ order the defendant to leave the residence located at _____ on or before _____.

☐ order the defendant who is a minor to leave the residence located at _____ by immediately placing the defendant in any type of care authorized for children taken into custody pursuant to Section 201 of Title 14 of the Iowa Statutes.

Circle age of defendant: Thirteen (13), fourteen (14), fifteen (15), sixteen (16), or seventeen (17) years.

☐ _____ (describe other relief plaintiff requests).

☐ order the defendant to pay attorney fees of the plaintiff in the sum of _____ on or before _____.

☐ order the defendant to pay the court costs of this action in the sum of _____ on or before _____.

7. ☐ Victim is a resident of the Indian country wherein this petition is filed.

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

8. WARNING: Whoever makes a statement or allegation in this Petition for Protective Order but does not believe that the statement or allegation is true, or knows that it is not true, or intends thereby to avoid or obstruct the ascertainment of the truth, may be found guilty of perjury. Pursuant to Section _____ of Title 4 of the Iowa Statutes, the penalty for perjury, or subornation of perjury, is imprisonment for not more than one (1) year.
9. Plaintiff, being first duly sworn on oath states: That I have read the above and foregoing document, understand the meaning thereof, and declare, under penalty of perjury, that the facts and statements contained herein are believed to the best of my knowledge to be the truth, and nothing but the truth.

__________________________
Plaintiff

Witness my hand and seal,
affixed on the ___ day of __________, 19__

Court Clerk, Deputy Court Clerk, or Notary Public

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

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

SECTION 13. NEW LAW. A new section of law to be codified in the Iowa Statutes as Section 104.3 of Title 5, unless there is created a duplication in numbering, reads as follows:

A. If a plaintiff requests an emergency ex parte order pursuant to Section 104.2 of this title, the court shall hold an ex parte hearing on the same day the petition is filed. The court may, for good cause shown at the hearing, issue any emergency ex parte order that it finds necessary to protect the victim from immediate and present danger of domestic abuse, stalking, or harassment. The emergency ex parte order shall be in effect until after the full hearing is conducted. An emergency ex parte order authorized by this section may include the following:

1. An order to the defendant not to abuse or injure the victim;

2. An order to the defendant not to visit, assault, molest, harass or otherwise interfere with the victim;

3. An order to the defendant not to threaten the victim;

4. An order to the defendant not to stalk the victim;

5. An order to the defendant not to harass the victim;

6. An order to the defendant to leave the residence; or
7. An order removing the defendant who is a minor child from the residence by immediately placing the child in any type of care authorized for children taken into custody pursuant to Section 201 of Title 14 of the Iowa Statutes.

B. If a plaintiff requests an emergency temporary ex parte order of protection as provided by Section 103.3 of this title, the judge who is notified of the request by a peace officer may issue such order verbally to the officer or in writing when there is reasonable cause to believe that the order is necessary to protect the victim from immediate and present danger of domestic abuse. When the order is issued verbally the judge shall direct the officer to complete and sign a statement attesting to the order. The emergency temporary ex parte order shall be in effect until the close of business on the next day the court is open for business after the order is issued.

SECTION 14. NEW LAW. A new section of law to be codified in the Iowa Statutes as Section 104.4 of Title 5, unless there is created a duplication in numbering, reads as follows:

(A) A copy of the petition, notice of hearing and a copy of any ex parte order issued by the court shall be served upon the defendant in the same manner as a summons. Ex parte orders shall be given priority for service by the tribal police office and can be served twenty-four (24) hours a day. When the defendant is a minor child who is ordered removed from the residence of the victim, in addition to those documents served upon the defendant, a copy of the petition, notice of hearing and a copy of any ex parte order issued by the court shall be delivered with the child to the caretaker of the place where such child is taken pursuant to Section 202 of Title 14 of the Iowa Statutes.

(B) Within fifteen (15) days of the filing of the petition the court shall schedule a full hearing on the petition, regardless of whether an emergency ex parte order has been previously issued, requested or denied. Provided, however, when the defendant is a minor child who has been removed from the residence pursuant to Section 201 of Title 14 of the Iowa Statutes, the court shall schedule a full hearing on the petition within seventy-two (72) hours, regardless of whether an emergency ex parte order has been previously issued, requested or denied.

(C) At the hearing, the court may grant any protective order to bring about the cessation of domestic abuse against the victim or stalking or harassment of the victim. If the court grants a protective order and the defendant is a minor child, the court shall order a preliminary inquiry in a juvenile proceeding to determine whether further court action pursuant to the Title 14 of the Iowa Statutes should be taken against a juvenile defendant.
(D) Protective orders authorized by this section may include the following:

(1) An order to the defendant not to abuse or injure the victim;

(2) An order to the defendant not to visit, assault, molest, harass or otherwise interfere with the victim;

(3) An order to the defendant not to threaten the victim;

(4) An order to the defendant to cease stalking the victim;

(5) An order to the defendant to cease harassment of the victim;

(6) An order to the defendant to leave the residence;

(7) An order awarding attorney fees;

(8) An order awarding court costs; and

(9) An order requiring a preliminary inquiry in a juvenile proceeding pursuant to Title 14 of the Iowa Statutes.

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

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

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

(H) No order issued under the Protection from Domestic Abuse Act, Section 104 et seq. of this title, shall in any manner affect title to real property, purport to grant to the parties a divorce
or otherwise purport to determine the issues between the parties as to child custody, visitation, child support or division of property or any other like relief obtainable in the Iowa Statutes.

SECTION 15. NEW LAW. A new section of law to be codified in the Iowa Statutes as Section 104.5 of Title 5, unless there is created a duplication in numbering, reads as follows:

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

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

SECTION 16. NEW LAW. A new section of law to be codified in the Iowa Statutes as Section 104.6 of Title 5, unless there is created a duplication in numbering, reads as follows:

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

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

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

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

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

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

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

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

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

SECTION 17. NEW LAW. A new section of law to be codified in the Iowa Statutes as Section 104.7 of Title 5, unless there is created a duplication in numbering, reads as follows:

All orders issued pursuant to the provisions of the Protection from Domestic Abuse Act, Section 104 et seq. of this title, shall have validity throughout Iowa Indian Country, unless specifically modified or terminated by a judge of the district court.

SECTION 18. NEW LAW. A new section of law to be codified in the Iowa Statutes as Section 104.8 of Title 5, unless there is created a duplication in numbering, reads as follows:

(A) Each peace officer of this Tribe shall seize any weapon or instrument when such officer has probable cause to believe such weapon or instrument has been used to commit an act of domestic
abuse as defined by Section 104.1 of Title 5 of the Iowa Statutes, provided an arrest is made, if possible, at the same time.

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

(C) The seizure and forfeiture provisions of Section 931 et seq. of Title 2 of the Iowa Statutes shall be followed for any seizure and forfeiture of property pursuant to this section. Provided, however, no weapon or instrument seized pursuant to this section or monies from the sale of any such seized weapon or instrument shall be turned over to the person from whom such property was seized if a forfeiture action has been filed within the time required by subsection (B) of this section, unless authorized by this section. Provided further the owner may prove at the forfeiture hearing that the conduct giving rise to the seizure was justified, and if the owner proves justification, the seized property shall be returned to the owner.

SECTION 19. NEW LAW. A new section of law to be codified in the Iowa Statutes as Section 104.9 of Title 5, unless there is created a duplication in numbering, reads as follows:

(A) A Tribal police officer, without a warrant, may arrest and take into custody a person if the Tribal police officer has reasonable cause to believe that:

(1) An emergency ex parte or final protective order has been issued and served upon the person, pursuant to Section 104.1 et seq. of Title 5 of the Iowa Statutes;

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

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

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

(B) A person arrested pursuant to this section shall be brought before the court within twenty-four (24) hours after arrest to answer to a charge for violation of the order, at which time the court shall do each of the following:

(1) Set a time certain for a hearing on the alleged violation of the order within seventy-two (72) hours after arrest, unless
extended by the court on the motion of the arrested person;

(2) Set a reasonable bond pending a hearing of the alleged violation of the order; and

(3) Notify the party who has procured the order and direct the party to appear at the hearing and give evidence on the charge.

SECTION 20. NEW LAW. A new section of law to be codified in the Iowa Statutes as Section 104.10 of Title 5, unless there is created a duplication in numbering, reads as follows:

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

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

SECTION 21. NEW LAW. A new section of law to be codified in the Iowa Statutes as Section 205 of Title 4, unless there is created a duplication in numbering, reads as follows:

Any person who commits any assault and battery against a current or former spouse, a present spouse of a former spouse, parents, a foster parent, a child, a person otherwise related by blood or marriage, a person with whom the defendant is in a dating relationship as defined by Section 104.1 of Title 5 of the Iowa Statutes, an individual with whom the defendant has had a child, a person who formerly lived in the same household as the defendant, or a person living in the same household as the defendant shall be guilty of domestic abuse. Upon conviction, the defendant shall be punished by imprisonment not exceeding six (6) months, or by a fine of not more than One Thousand Dollars ($1,000.00), or by both such fine and imprisonment. Any second or subsequent conviction of domestic abuse shall be punishable by imprisonment for not more than one (1) year, or by a fine of not more than One Thousand Dollars ($1,000.00), or by both such fine and imprisonment. Every conviction of domestic abuse shall require as a condition of a suspended sentence that the defendant participate in counseling or treatment to bring about the cessation of domestic abuse. The defendant may be required to pay all or part of the cost of the counseling or treatment, in the discretion of the court. For the
purposes of this subsection, any conviction for assault and battery against a current or former spouse, a present spouse of a former spouse, parents, a foster parent, a child, a person otherwise related by blood or marriage, a person with whom the defendant is in a dating relationship as defined by Section 104.1 of Title 5 of the Iowa Statutes, an individual with whom the defendant has had a child, a person who formerly lived in the same household as the defendant, or any person living in the same household as the defendant, shall constitute a sufficient basis for a criminal charge:

(1) If that conviction is rendered in any state, county or parish court of record of any state; or

(2) If that conviction is rendered in any municipal court of record of any state for which any jail time was served; provided, no conviction in a municipal court of record entered prior to November 1, 1998, shall constitute a prior conviction for purposes of a felony charge.

SECTION 22. NEW LAW. A new section of law to be codified in the Iowa Statutes as Section 323a of Title 26, unless there is created a duplication in numbering, reads as follows:

(A) Unless there is an objection the chief judge of the district court, the court clerk is authorized to dispose of the judicial records enumerated in this subsection by first offering all or part of the records to the Archives and Records Division of the Iowa Tribe for preservation as historical research materials, and by destroying all those which are not accepted. The judicial records subject to disposal or destruction shall be:

(1) Domestic relations cases. This shall include, but not be limited to, cases filed concerning divorce, separate maintenance, annulment, reciprocal actions for enforcement of support, child custody, domestic abuse, foreign judgments in domestic relations cases, income assignments relating to an order of support, paternity, appeal on administrative order relating to support or paternity, habeas corpus relating to children, and other domestic-related filings:

(a) domestic relations cases that have been dismissed and no pleading has been filed or any action taken in the case for more than five (5) years, and

(b) all domestic relations cases after a twenty-year period has elapsed since any pleading has been filed or any action taken in the case;

(2) Probate cases. This shall include, but not be limited to, cases filed concerning the probating of estates, guardianships,
conservatorships, protective services to the elderly, powers of attorney, and trusts:

(a) probate cases that have been dismissed and no pleading has been filed or any action taken in the case for more than five (5) years, and

(b) all probate cases after a twenty-year period has elapsed since any pleading has been filed or any action taken in the case;

(3) Actions brought for money judgment only in which a dismissal or release and satisfaction has been filed for more than ten (10) years;

(4) Civil records of unadjudicated cases and adjudicated cases:

(a) civil cases that have been dismissed and no pleading has been filed or any action taken in the case for more than five (5) years, and

(b) all adjudicated civil cases after a ten-year period has elapsed since any pleading has been filed or any action taken in the case;

(5) Criminal records of unadjudicated cases and adjudicated cases:

(a) criminal cases that have been dismissed and no pleading or any action taken in the case for more than five (5) years,

(b) criminal records of adjudicated cases after a ten-year period has elapsed since any pleading has been filed or any action taken in the case, and

(6) Juvenile cases. This shall include, but not be limited to, cases filed concerning delinquents, children in need of supervision, deprived children, children in need of treatment, children in need of shelter, and other related juvenile filings:

(a) juvenile cases that have been dismissed and no pleading has been filed or any action taken in the case for more than five (5) years, and

(b) all juvenile cases after a twenty-year period has elapsed since any pleading has been filed or any action taken in the case.

(B) The judicial records and the appearance docket books or
sheets on which they are entered, prior to their disposal or destruction, shall be stored on microfilm records, optical disks, or other appropriate medium which shall be available for public use in the court clerk's office. Records reproduced from microfilm, optical disk, and other media produced pursuant to the provisions of this section shall be received in evidence and have the same legal efficacy as the original.

(C) Traffic cases. The court clerk shall destroy the judicial records of traffic cases and the appearance docket books or sheets on which they are entered after a five-year period has elapsed since any pleading has been filed or any action taken in the case, except in the case of a conviction for driving under the influence of intoxicating liquor or any narcotic drug, which records shall be destroyed after a ten-year period has elapsed since any pleading has been filed or any action taken in the case.

SECTION 23. AMENDATORY. Section 1115 of Title 2 is amended to read as follows:

(A) After a petition has been filed in an action for divorce and alimony, or for alimony alone, the Court may make and enforce by attachment or otherwise, such order to restrain the disposition of the property of the parties or of either of them, and for the use, management, and control thereof, or for the control of the children and support of the wife or husband during the pendency of the action, as may be right and proper; and may also make such order relative to the expenses of the suit as will insure an efficient preparation of the case; and, on granting a divorce the Court may require the husband or wife to pay such reasonable expenses of the other in the prosecution or defense of the action as may be just and proper considering the respective parties and the means and property of each; provided further, that the Court may in its actions, brought by the parties or their attorneys, for the enforcement or modification of any interlocutory or final orders in the divorce action made for the benefit of either party or their respective attorneys. Provided, no ex parte orders shall be issued until the opposing party is granted an opportunity to be heard, unless such ex parte order provides that instead of performing thereunder the opposing party may appear on a date certain, not more than twenty (20) days thereafter, and show good cause as to why he should not comply with said order.

(B) In every case involving the custody of, guardianship of or visitation with a child, the court shall consider evidence of ongoing domestic abuse which is properly brought before it. If the occurrence of ongoing domestic abuse is established by clear and convincing evidence, there shall be a rebuttable presumption that it is not in the best interests of the child to have custody, guardianship or unsupervised visitation granted to the abusive
SECTION 24. AMENDATORY. Section 1116 of Title 2 is amended to read as follows:

(A) A petition or cross-petition for a divorce, legal separation, or annulment must state whether or not the parties have minor children of the marriage. If there are such children, the Court shall make provision for guardianship, custody, support and education of the minor children, and may modify or change any order in this respect, whenever circumstances render such change proper either before or after final judgment in the action.

(B) Any child, not emancipated and declared an adult by Court order, shall be entitled to support by the parents until the child reaches eighteen (18) years of age. If the Court determines that the parents are unable to provide for the support of the children, it may order any person obligated to support the children by the Tribal Common law to be brought into the action by service of summons, and may enter an order requiring said person to contribute to the support of the children within their means.

(C) In every case involving the custody of, guardianship of or visitation with a child, the court shall consider evidence of ongoing domestic abuse which is properly brought before it. If the occurrence of ongoing domestic abuse is established by clear and convincing evidence, there shall be a rebuttable presumption that it is not in the best interests of the child to have custody, guardianship or unsupervised visitation granted to the abusive person.

SECTION 25. AMENDATORY. Section 602 of Title 5 is amended to read as follows:

(A) An arrest is the taking of a person into custody in the manner authorized by law. An arrest may be made by either a police or law enforcement officer or by a private person.

(B) A police or law enforcement officer may make an arrest in obedience to an arrest warrant, or he may, without a warrant, arrest a person:

(1) When he has probable cause to believe that an offense has been committed in his presence.

(2) When he has probable cause for believing the person has committed an offense, although not in his presence, and there is reasonable cause for believing that such person before a warrant can be obtained may:
(a) flee the jurisdiction or conceal himself to avoid arrest, or

(b) destroy or conceal evidence of the commission of an offense, or

(c) injure or annoy another person or damage property belonging to another person.

(3) On a charge, made upon reasonable cause, of the commission of a felony by the party arrested.

(4) When he has probable cause to believe that the party was driving or in actual physical control of a motor vehicle involved in an accident upon the public highways, streets or turnpikes and was under the influence of alcohol or intoxicating liquor or who was under the influence of any substance included in Sections 539 and 540 of Title 4 of the Iowa Statutes.

(5) Anywhere, including his place of residence, if the police officer has probable cause to believe the person within the preceding four (4) hours has committed an act of domestic abuse as defined by Section 104.1 of Title 5 of the Iowa Statutes, although the assault did not take place in the presence of the police officer. A police officer may not arrest a person pursuant to this section without first observing a recent physical injury to, or an impairment of the physical condition of, the alleged victim.

(6) When a police officer is acting on a violation of a protective order offense.

(C) A private person may arrest another, for prompt delivery to a law enforcement officer.

(1) When an offense is committed or attempted in his presence;

(2) When an arrest warrant for that person is in fact outstanding.

(D) Any person making an arrest may orally summon as many persons as he deems necessary to help him.

(E) If the offense charged is an offense punishable by banishment or in violation of the federal major crimes act, the
arrest may be made at his residence at any time of the day or night. Otherwise the arrest pursuant to a warrant can be made at a person's residence only between the hours of 7:00 a.m. and 9:00 p.m. unless arrest at night at the residence is specifically authorized by the issuing Judge. Arrest at places other than at the residence may be made at any time.

(F) Any person, upon making an arrest:

(1) Must inform the person to be arrested of his intention to arrest him, of the cause or reasons for the arrest, and his authority to make it, except when the person to be arrested is actually engaged in the commission of, or an attempt to, commit an offense, or is pursued immediately after its commission or an escape if such is not reasonably possible under the circumstances;

(2) Must show the warrant of arrest as soon as is practicable, if such exists and is demanded;

(3) If a law enforcement officer, may use reasonable force and use all necessary means to effect the arrest if the person to be arrested either flees or forcibly resists after receiving information of the officer's intent to arrest except that deadly force may be used only as otherwise provided by law;

(4) If a law enforcement officer, may break open a door or window of a building in which the person to be arrested is, or is reasonable believed to be, after demanding admittance and explaining the purpose of which admittance is desired;

(5) May search the person arrested and take from him and put into evidence all weapons he may have about his person;

(6) Shall as soon as is reasonably possible, deliver the person arrested to a police office or do as commanded by the arrest warrant or deliver the person arrested to the jail for processing of a complaint.

SECTION 26. AMENDATORY. Section 701 of Title 5 is amended to read as follows:

(A) Any person charged with an offense, other than an offense punishable by banishment, shall, at his appearance before a Judge or Magistrate of the Court, be ordered released pending trial on his personal recognizance or upon execution of an unsecured
appearance bond in an amount specified by such judicial officer subject to the condition that such person shall not attempt to influence, injure, tamper with or retaliate against an officer, juror, witness, informant, or victim or violate any other law, unless the judicial officer determines in the exercise of his discretion, that such a release will not reasonably assure the appearance of the person as required.

When such determination is made, the judicial officer shall, either in lieu of or in addition to release on personal recognizance or execution of an unsecured appearance bond, impose one or any combination of the following conditions of release which will reasonably assure the appearance of the person for trial:

(1) Place the person in the custody of a designated person or organization agreeing to supervise him;

(2) Place restrictions on the travel, association, or place of abode of the person during the period of release;

(3) Require the execution of an appearance bond in a specified amount and the deposit in the registry of the Court, in cash or other security as directed, of a sum not to exceed 10 percent of the amount of the bond, such deposit to be returned upon the performance of the conditions of release;

(4) Require the execution of a bail bond with sufficient solvent sureties, or the deposit of cash in lieu thereof; or

(5) Impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody after specified hour.

(B) In determining which conditions of release will reasonably assure appearance, the judicial officer shall, on the basis of available information, take into account the nature and circumstances of the offense charged, the weight of the evidence against the accused, the accused's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and his record of appearance at Court proceedings or of flight to avoid prosecution or failure to appear at Court proceedings.

(C) A judicial officer authorizing the release of a person under this section shall issue an appropriate order containing a statement of the conditions imposed, if any, shall inform such person of the penalties applicable to violations of the conditions of his release and shall advise him that a warrant for his arrest will be issued immediately upon any such violation.
(D) A person for whom conditions of release are imposed and who after seventy-two hours from the time of the release hearing continues to be detained as a result of his inability to meet the conditions of release, shall, upon application, be entitled to have the conditions reviewed by the judicial officer who imposed them. Unless the conditions of release are amended and the person is thereupon released, the judicial officer shall set forth in writing the reasons for requiring the conditions imposed. A person who is ordered released on a condition which requires that he return to custody after specified hours shall, upon application, be entitled to a review by the judicial officer who imposed the condition. Unless the requirement is removed and the person is thereupon released on another condition, the judicial officer shall set forth in writing the reasons for continuing the requirement. In the event that the judicial officer who imposed conditions of release is not available, any other judicial officer of the Court may review such conditions.

(E) A judicial officer ordering the release of a person on any condition specified in this section may at anytime amend his order to impose additional or different conditions of release: Provided, That, if the imposition of such additional or different conditions results in the detention of the person as a result of his inability to meet such conditions or in the release of the person on a condition requiring him to return to custody after specified hours, the provisions of subsection (D) shall apply.

(F) No police officer or sheriff may release a person arrested for a violation of an ex parte or final protective order as provided in Sections 104.3 and 104.4 of this title, or arrested for an act constituting domestic abuse as specified in Section 205 of Title 4 of the Iowa Statutes, or arrested for any act constituting domestic abuse, stalking or harassment as defined by Section 104.1 of this title without the violator appearing before a judge of the court. The judge of the court shall determine bond and other conditions of release as necessary for the protection of the alleged victim.

(G) Information stated in, or offered in connection with, any order entered pursuant to this section need not conform to the rules pertaining to the admissibility of evidence in a court of law.

(H) Nothing contained in this section shall be construed to prevent the disposition of any cause or class of cases by forfeiture of collateral security where such disposition is authorized by the Court, nor to prevent the Court by rule from authorizing and establishing a Policeman's Bail Schedule for certain offenses or classes of offenses through which a person arrested may post bail with the Chief of the Tribal Police for transmittal to the Court Clerk and obtain his release prior to his
appearance before a Judicial officer.

SECTION 27. AMENDATORY. Section 3(h) of Title 14 is amended to read as follows:

(h) "Child or juvenile in need of supervision" means a juvenile who:

1. has repeatedly disobeyed reasonable and lawful commands or directives of the parent, legal guardian, or other custodian; or

2. is willfully and voluntarily absent from his home without the consent of the parent, legal guardian, or other custodian for a substantial length of time or without intent to return; or

3. is willfully and voluntarily absent from school, if the juvenile is subject to compulsory school attendance; or

4. has been served with an ex parte or final protective order pursuant to the Protection from Domestic Abuse Act.

NOW, THEREFORE, BE IT RESOLVED That the Business Committee adopts as part of its Code, the provisions as stated herein.

CERTIFICATION

We, Lawrence Murray, Chairman of the Iowa Tribe of Oklahoma, and Phoebe O'Dell, Secretary, do hereby certify the above Resolution I-99-92 to be a true and exact copy as approved at a Regular Business Committee meeting held on October 26, 1999 by a vote of 4 ayes, 0 nays, and 0 abstentions.

Phoebe O'Dell, Secretary
Iowa Tribe of Oklahoma

Lawrence Murray, Chairman
Iowa Tribe of Oklahoma