

**ORDINANCE  
COLORADO RIVER TRIBAL COUNCIL**

An Ordinance to Enact Title IV of the Domestic Relations Code, Domestic and Family Violence

Be it enacted by the Tribal Council of the Colorado River Indian Tribes in special meeting assembled on December 15, 2008

WHEREAS, the Colorado River Indian Tribes is a federally recognized Indian tribe, duly organized with a tribal governing body known as the Tribal Council, according to the provisions contained in the Indian Reorganization Act of June 18, 1934; and

WHEREAS, the purpose of Title IV of the Domestic Relations Code, Domestic and Family Violence is as follows:

- (1) End all domestic and family violence on the Colorado River Indian Reservation and promote the healing of families;
- (2) Ensure the safety of victims of domestic and family violence and guarantee victims the maximum protection from abuse and/or violence;
- (3) Establish unequivocally the official response to cases of domestic and family violence: Violent and abusive behavior will not be tolerated or excused under any circumstance;
- (4) Foster the principle that the elders, adults, women, children and physically/mentally challenged of our Tribes and community residing on the Colorado River Indian Reservation are to be cherished, protected and treated with respect;
- (5) Hold perpetrators of domestic and family violence fully accountable for their conduct;
- (6) Eliminate future violence in all families through prevention, counseling, treatment programs and public education that promote the cultural and traditional values of the Colorado River Indian Tribes so as to nurture non-violence within families and instill respect for the elders, adults, women, children and the physically/mentally challenged of our Tribes; and

WHEREAS, a public hearing was held on November 10, 2008 for public comments and feedback; and

WHEREAS, the Domestic Violence Workgroup made appropriate changes to Title IV of the Domestic Relations Code, Domestic and Family Violence based on public comments and feedback received at the public hearing; and

NOW, THEREFORE, BE IT ENACTED that the Tribal Council approves and adopts Title IV of the Domestic Relations Code, Domestic and Family Violence; and

BE IT FURTHER ENACTED that Title IV of the Domestic Relations Code, Domestic and Family Violence shall be effective on February 1<sup>st</sup>, 2009; and

BE IT FURTHER AND FINALLY ENACTED that the Tribal Council Chairman and Secretary, or their designated representatives, are hereby authorized and directed to execute any and all documents necessary to implement this action.

#### CERTIFICATION

The foregoing Ordinance was on December 15, 2008 duly approved by a vote of 3 for, 2 against and 0 abstaining, by the Tribal Council of the Colorado River Indian Tribes, pursuant to authority vested in it by Article VI of the Constitution of the Tribes, ratified by the Tribes on March 1, 1975 and approved by the Secretary of the Interior on May 29, 1975, pursuant to Section 16 of the Act of June 18, 1934, (48 Stat. 984). This Ordinance is effective on February 1, 2009

**COLORADO RIVER TRIBAL COUNCIL**

By



Chairman



Secretary

**DOMESTIC RELATIONS  
DOMESTIC AND FAMILY VIOLENCE CODE  
ARTICLE IV**

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## **DOMESTIC RELATIONS**

### **ARTICLE IV. DOMESTIC AND FAMILY VIOLENCE CODE**

#### **CHAPTER 1. TITLE, PURPOSE, DEFINITIONS**

##### **Section 1-101. Title.**

This Ordinance shall be known and cited to as the "Domestic and Family Violence Code of the Colorado River Indian Tribes," or the "Domestic and Family Violence Code."

##### **Section 1-102. Statement of Purpose.**

The Domestic and Family Violence Code shall promote the following:

- (1) End all domestic and family violence on the Colorado River Indian Reservation and promote the healing of families.
- (2) Ensure the safety of victims of domestic and family violence and guarantee victims the maximum protection from abuse and/or violence.
- (3) Establish unequivocally the official response to cases of domestic and family violence: Violent and abusive behavior will not be tolerated or excused under any circumstance.
- (4) Foster the principle that the elders, adults, women, children and physically/mentally challenged of our Tribes and community residing on the Colorado River Indian Reservation are to be cherished, protected and treated with respect.
- (5) Hold perpetrators of domestic and family violence fully accountable for their conduct.
- (6) Eliminate future violence in all families through prevention, counseling, treatment and public education that promotes the cultural and traditional values of the Colorado River Indian Tribes so as to nurture non-violence within families and instill respect for the elders, adults, women, children and the physically/mentally challenged of our Tribes.

##### **Section 1-103. Definitions.**

- (1) "Abuse and/or Violence" means the infliction of any of the following acts upon a person:

(A) "Assault" – as defined under Article III, Section 317 of the Law and Order Code; however, the exercise of proper disciplinary actions by any of the following people on a minor does not constitute assault:

- (i) Parents;
- (ii) Legal guardians or custodians;
- (iii) Adults that are given limited care, control and custody by parents or legal guardians or custodians; or
- (iv) Adults that are expected to exercise care, control and custody by parents or legal guardians or custodians.

(B) "Battery" - application of force to the person of another resulting in bodily harm or an offensive touching;

(C) "Threats or Endangerment" - as defined under Article III, Section 318 of the Law and Order Code;

(D) "Coercion" – compelling an unwilling person, through force or threat of force, to:

- (i) Engage in conduct which the person has a right to abstain from; or
- (ii) Abstain from conduct which the person has right to engage in;

(E) "Confinement" - compelling a person to go where the person does not wish to go or to remain where the person does not wish to remain;

(F) "Damage to Property" – destroying, damaging, misusing or misappropriating the property of another;

(G) "Emotional Abuse" - using threats, intimidation or extreme ridicule to inflict humiliation and emotional suffering upon another;

(H) "Harassment" - conduct which causes emotional alarm or distress to another by shaming, degrading, humiliating, placing in fear, or otherwise abusing personal dignity.

(I) "Unwelcome Conduct" –

- (i) Unwelcome visiting or following of a person in a private or public place;
- (ii) Unwelcome sexual propositioning, references to body parts, functions or attributes, or other offensive comments of a sexual nature;
- (iii) Unwelcome communications made by phone, letter, computer or other similar methods, containing intimidating, offensive, threatening, or violent language; or
- (iv) Unwelcome lingering around the home, school, or work place of a person;

(J) "Sexual Abuse" - any physical contact of a sexual nature, or attempted physical contact of a sexual nature, with a person, made without that person's consent. Consent cannot be obtained through means such as force, intimidation, duress, fraud, or from a minor under any circumstance; and

(K) "Elder and Dependent Adult Abuse and Neglect" means conduct by any person that has the responsibility for care or custody of an elder or a dependent adult, where the negligent exercise of that responsibility results in deprivation of services necessary to maintain minimum physical, medical and mental health to a degree of care below that which a reasonable person in a like position would exercise. Neglect includes, but is not limited to, all of the following:

- (i) Failure to assist in personal hygiene, or in the provision of food, clothing or shelter.

- (ii) Failure to provide medical care for physical and mental health needs. No elder shall be deemed neglected or abused for the sole reason that he or she voluntarily relies on treatment by spiritual means or through prayer alone in lieu of medical treatment.
- (iii) Failure to prevent malnutrition.
- (iv) Abandoning an elder or dependent adult for indefinite periods of time.
- (v) Stealing or misappropriating money, checks, property or other assets from an elder or dependent adult.

(L) "Other criminal conduct" – means any other conduct that constitutes an offense under the criminal laws of the Colorado River Indian Tribes.

(2) "Bodily harm" means physical pain, illness, or the impairment of physical condition which includes but is not limited to any skin bruising, bleeding, failure to thrive, malnutrition, burns, fracture, subdural hematoma, soft tissue swelling, injury to any internal organ or any physical condition which imperils a person's health.

(3) "Business day" means any day except a Saturday, Sunday or a holiday officially recognized by the Colorado River Indian Tribes.

(4) "Court" means the Tribal Court of the Colorado River Indian Tribes.

(5) "Dating relationship" means a present courtship or engagement relationship between people of different sex or of the same-sex. For the purposes of this Article IV, a casual acquaintance or ordinary fraternization between persons in a business or social context shall not constitute a dating relationship.

(6) "Dangerous instrument" means anything that under the circumstances in which it is used, attempted to be used or threatened to be used is readily capable of causing death or serious physical injury.

(7) "Deadly weapon" means anything designed for lethal use, including, but not limited to, firearms.

(8) "Department of Behavioral Health Services" means the Colorado River Indian Tribes Department of Behavioral Health Services.

(9) "Department of Child Protective Services" means the Colorado River Indian Tribes Department of Child Protective Services.

(10) "Department of Health Services" means the Colorado River Indian Tribes Department of Health Services.

(11) "Department of Social Services" means the Colorado River Indian Tribes Department of Social Services.

(12) "Dependent adult" means a person over eighteen (18) years of age that has an impairment by reason of mental illness, mental deficiency, developmental disabilities, mental disorder, physical or mental disability, advanced age, chronic use of drugs, chronic intoxication or other cause to the extent that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his/her person, as determined by the courts or qualified healthcare professionals.

(13) "Domestic and family abuse and violence" means any act of abuse or violence on a family or household member of the perpetrator.

(14) "Elder" means a person fifty-five (55) years or more in age.

(15) "Family or household members" means:

(A) current or former spouses;

(B) persons who live together or have lived together;

(C) persons who are engaged in a sexual relationship;

(D) persons who have a child in common or who are expecting a child together;

(E) persons related by blood, adoption, or marriage who regularly resides in the household or who within the prior six (6) months regularly resided in the household, and

(F) minor children or adopted children of persons described in (A) through (E) above.

(G) persons having a guardianship relationship over a dependent adult or an elder.

The above definition of "family or household member" applies only to the Domestic and Family Violence Ordinance.

(16) "Firearm" means a gun, pistol, or any weapon from which a projectile is discharged by the force of an explosive substance or any air guns, including, but not limited to, pellet guns, bb guns, air rifles, air pistols; paint-ball guns. However, soft-pellet toy guns or other air soft guns are not deemed firearms.

(17) "Judicial Clerk" means the Judicial Clerk of the Tribal Court.

(18) "Officer" means a duly commissioned law enforcement officer of the Colorado River Indian Tribes, pursuant to section 117 of the Law and Order Code.

(19) "Perpetrator" means a person who has committed an act of, or engaged in conduct defined as, abuse and/or violence or stalking against any person defined as a victim.

(20) "Police Department" means the police department of the Colorado River Indian Tribes.

(21) "Prosecutor" means the prosecuting attorney for the Colorado River Indian Tribes.

(22) "Prosecutor's Office" means the office of the prosecuting attorney for the Colorado River Indian Tribes.

(23) "Protection order" means a temporary or permanent restraining order or order of protection granted for the protection of victims of domestic and family violence.

(24) "Repeatedly" means on three or more occasions.

(25) "Serious bodily injury" means bodily injury which creates a reasonable risk of death, or which causes serious or permanent disfigurement, or serious impairment of health or loss or protracted impairment of the function of any bodily organ or limb.

(26) "Sexual abuse" means any physical contact of a sexual nature, or attempted physical contact of a sexual nature, with a person, made without that person's consent. Consent cannot be obtained under any circumstance through means such as force, intimidation, duress, fraud, or from a mentally retarded person.

(27) "Significant other" means a person with whom the victim has or has had a sexual relationship and who is currently living or who has lived with the victim in the past, regardless of whether they were legally married, or a person with whom the victim has a child in common regardless of whether they have been legally married or have lived together at any time.

(28) "Tribal Council" means the Colorado River Indian Tribes Tribal Council.

(29) "Tribes" means the Colorado River Indian Tribes.

(30) "Unlawful Sexual Behavior" is as defined under Section 320 of Article III of the Law and Order Code and includes offenses of rape, deviate sexual contact and sexual assault; for purposes of this Code, any offenses under Section 320 of Article III of the Law and Order Code may be charged whether or not the victim is the perpetrator's spouse and regardless of the perpetrator's gender.

(31) "Victim" means a spouse, family member, household member or person in a dating relationship who has been subjected to domestic or family violence or stalking.

(32) "Violence" includes abuse, assault, battery, unlawful sexual behavior, or sexual abuse.

## **CHAPTER 2. DUTY TO REPORT ABUSE**

### **Section 1-201. Persons Required to Report Abuse**

(1) Any physician, hospital intern or resident, surgeon, physician's assistant, dentist, osteopath, chiropractor, podiatrist, coroner, registered nurse, licensed practical nurse,

nurse's aide, psychiatrist, mental and/or substance abuse counselor, social worker, school personnel, law enforcement officer, judge, religious practitioner, or any other person having substantial responsibility for the care of children, elders or dependent adults whose observation or examination of any child, elder or dependent adult discloses evidence of injury, sexual molestation, physical or sexual abuse, or physical neglect which appears to have been inflicted upon such child, elder or dependent adult by other than accidental means or which is not explained by the available medical history as being accidental in nature, shall immediately report or cause reports to be made of such information to a Tribal law enforcement official as described under Section 1-201(2). Such reports shall be made by telephone or in person, and shall be followed by written report. Such reports shall contain:

(A) The names and addresses of the child, elder or dependent adult and his/her parent or the person having custody of such child, elder or dependent adult, if known.

(B) The age and sex of the alleged victim and the nature and extent of his/her injuries, molestation, abuse or physical neglect, including any evidence of previous injuries, molestation, abuse or physical neglect of the child, elder or dependent adult.

(C) Any other information that such person believes might be helpful in establishing the cause of the injury, molestation, abuse or physical neglect.

(2) When telephone or in-person reports are received by a Law Enforcement Officer, a Probation Officer, Social Services Case Worker and/or a Child Protective Case Worker, he/she shall immediately notify the appropriate Tribal department(s) such as the Police Department, Probation, Department of Social Services and/or Department of Child Protective Services to initiate civil and/or criminal investigation(s).

(3) Any person required to make reports pursuant to Subsection (1) of this Section may take or cause to be taken photographs of the child, elder or dependent adult and the vicinity involved. If medically indicated, further examinations and tests, including but not limited to, radiological examinations, of the involved person may be performed.

(4) The reporting duties under this Section are individual, and no supervisor or administrator may impede or inhibit such reporting duties and no person making such report shall be subject to any sanction for making such report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established, provided that they are not inconsistent with the provisions of this Chapter.

(5) Any other person who has knowledge of or observes a child, elder or dependent adult whom he/she reasonably suspects has been a victim of abuse or neglect may report such suspected instances of child abuse or neglect to a Law Enforcement Officer, a Probation Officer, a Social Services Worker and/or a Child Protective Case Worker.

## **CHAPTER 3. CRIMES**

### **Section 1-301. Criminal Domestic and Family Violence.**

A person commits the crime of Domestic and Family Violence if the person commits any offense which is designated a crime under the Colorado River Indian Tribes Law and Order Code and if the victim is a family or household member or a person with whom he/she has or has had a dating relationship.

### **Section 1-302. Criminal Stalking.**

A person commits the crime of Stalking if the person:

- (1) Engages in a conduct directed at a specific person that would cause a reasonable person to fear the death or bodily injury to him/her or to a member of his/her immediate family; or
- (2) Knows or should have known that the specific person will be placed in reasonable fear of death or bodily injury to himself or herself or a member of his or her immediate family; or
- (3) Acts with intent to induce fear in a specific person of death or bodily injury to himself or herself or to a member of his or her immediate family.

### **Section 1-303. Criminal Elder and Dependent Adult Neglect and Abuse**

A person commits the crime of Elder and Dependent Adult Abuse under this Section if the person has the responsibility for care or custody of an elder or a dependent adult, and the negligent exercise of that responsibility results in deprivation of services necessary to maintain minimum physical, medical and mental health to a degree of care below that which a reasonable person in a like position would exercise. Neglect includes, but is not limited to, all of the following:

- i. Failure to assist in personal hygiene, or in the provision of food, clothing or shelter.
- ii. Failure to provide medical care for physical and mental health needs. No elder shall be deemed neglected or abused for the sole reason that he or she voluntarily, and with informed consent, relies on treatment by spiritual means through prayer alone in lieu of medical treatment.
- iii. Failure to prevent malnutrition.
- iv. Leaving of an elder or dependent adult unattended for indefinite periods of time.
- v. Stealing or misappropriating money, checks, property or other assets from an elder or dependent adult

**Section 1-304. Unlawful Possession of Firearms and Ammunition.**

(1) A person commits the crime of unlawful possession of a firearm if the person intentionally or knowingly uses or possesses any firearm while:

(A) The person is on probation for conviction of a domestic and/or family violence crime, or

(B) While there is an outstanding protection order against the person and the protection order prohibits the person's use and/or possession of a firearm.

(2) Exception. The person may petition the Court that the weapon be returned to his or her use or possession provided the person shows by clear and convincing evidence:

(A) That he or she has a compelling need for the weapon, such as a need to hunt for subsistence; and

(B) That the return of the weapon will not increase the risk of harm to the victim.

(3) The Court may place any conditions on the return and use of the weapon that are necessary to protect the victim.

It shall be unlawful for any person who has been convicted in any Court of a criminal domestic and family violence, to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition. For the purpose of interstate or foreign transport under this Section, the definitions for firearms and ammunition are as found in 18 U.S.C. § 921.

**Section 1-305. Aggravated Criminal Domestic and Family Violence.**

(1) A person commits aggravated criminal domestic and family violence if the person commits any of the following criminal offenses under the Colorado River Indian Tribes Law and Order Code and when the victim is a family or household member or a person with whom he/she has or has had a dating relationship:

(A) Criminal Homicide (L & O Code, Article III, Section 316)

(B) Assault, involving the use of a deadly weapon or dangerous instrument (L & O Code, Article III, Section 317)

(C) Assault, where serious physical injury occurs (L & O Code, Article III, Section 317)

(D) Kidnapping (L & O Code, Article III, Section 319)

(E) Unlawful Sexual Behavior (L & O Code, Article III, Section 320) includes offenses of rape, deviate sexual contact and sexual assault; for purposes of this Code, any offenses under Section 320 of Article III of the Law and Order Code may be charged whether or not the victim is the perpetrator's spouse and regardless of the perpetrator's gender.

(F) Arson (L & O Code, Article III, Section 321)

(G) Burglary (L & O Code, Article III, Section 322 (a))

(H) Carrying a Concealed Weapon (L & O Code, Article III, Section 345)

(I) Child Abuse (L & O Code, Article III, Section 356)

(2) A person convicted of Aggravated Criminal Domestic and Family Violence under this section shall be sentenced to confinement not to exceed one year and not less than one-hundred and eighty (180) days per offense and may be ordered into a counseling program to address their violent and/or abusive behavior. The Court may also order a person convicted of an offense of Aggravated Domestic and Family Violence to pay a fine in an amount not to exceed five-thousand dollars (\$5,000.00). The Court in its discretion shall have authority to order restitution pursuant to Section 1-514.

#### **Section 1-306. Violation of a Protection Order.**

(1) A person commits the offense of Violation of a Protection Order if any person intentionally, willfully or knowingly:

(A) Violates any provision of an Order of Protection which was issued by any Federal, State, CRIT Tribal Court or court of any other Indian Tribe, or

(B) Commands, encourages, requests or solicits another person to violate any provision of an Order of Protection which was issued by any Federal, State, CRIT Tribal Court or court of any other Indian Tribe.

### **CHAPTER 4. CRIMINAL PROCEDURES, PENALTIES**

#### **Section 1-401. Investigation.**

(1) An Officer who conducts an investigation pursuant to this Article IV shall make a written incident report whether or not an arrest is made and submit that report to the Prosecutor's Office within forty-eight (48) hours of the incidence, excluding weekends and holidays.

(2) An Officer who conducts an investigation pursuant to this Article IV and finds that no probable cause to arrest a person exists shall include in the written incident report the

relevant facts as to why no probable cause was found and set forth the reason(s) for that decision.

#### **Section 1-402. Probable Cause.**

Probable cause for arrest means that the Officer, acting as a person of reasonable caution or judgment, has reasonable grounds to believe that the person to be arrested has committed a criminal offense under the laws of the Colorado River Indian Tribes, based on all the facts known to the Officer, including the Officer's personal observations, statements made by parties involved in the incident, statements made by witnesses, if any, and any other reliable, relevant information.

#### **Section 1-403. Investigation by an Officer.**

- (1) If a law officer is a suspected perpetrator the investigating officer shall notify the Chief of Police immediately.
- (2) The Officer(s) who investigates pursuant to this Article IV an incident involving an alleged perpetrator who is an Officer shall make a written incident report and include whether or not an arrest is made and submit that report to the Prosecutor's Office and Chief of Police within forty-eight (48) hours of the incident.

#### **Section 1-404. Arrest Procedures.**

- (1) The arresting Officer, Criminal Investigator, or other Official designated by the Prosecutor, after notifying the alleged perpetrator of his/her rights, if the alleged perpetrator consents, shall interview the alleged perpetrator within twenty-four (24) hours after the arrest.
- (2) The arresting Officer shall file with the Court a criminal complaint and an affidavit or a written report of the alleged incidence within forty-eight (48) hours after the arrest.
- (3) Any alleged perpetrator arrested under this Article IV shall be held in custody of the Police Department for a period no less than seventy-two (72) hours, or such longer period as is necessary to conduct a hearing or as determined by the Court, as a mandatory "cooling-off" period. During the "cooling-off" period the alleged perpetrator shall not be released on bail or on his/her own recognizance.
- (4) Twenty-four (24) hours prior to releasing an alleged perpetrator, the Police Department and Prosecutor's Office shall notify the victim of the anticipated date and time of the perpetrator's release from custody and whether the Court has issued any orders and release conditions.

### **Section 1-405. Mandatory Arrest.**

An Officer shall arrest if there is probable cause to believe the person to be arrested has committed an offense, as defined by this Article IV, even though the arrest may be against the expressed wishes of the victim.

An Officer shall arrest and take into custody an alleged perpetrator pursuant to this Article IV:

(1) If any arrest warrant has been issued, or without a warrant if the offense occurs in the presence of the Officer or if the Officer has probable cause to believe that the person to be arrested has committed an offense under this Article IV, without regard to any other requirements imposed by the Colorado River Indian Tribes Tribal Code.

(2) If the Officer has probable cause to believe the alleged perpetrator has violated a protection order if the existence of the protection order can be verified by the Officer. A perpetrator violates a protection order regardless of whether or not the perpetrator had actual knowledge of the protection order, whether or not the victim initiated the contact with the perpetrator or invited the perpetrator back into contact with the victim or into the victim's home.

(3) If a Judge issues a telephonic arrest warrant. Any judge of the Colorado River Indian Tribal Court may issue a telephonic arrest and/or search warrant during non-business hours under the following circumstances:

(A) A telephonic arrest warrant must be based upon probable cause, supported by oath, and particularly describing the place to be searched and/or the person or thing to be seized,

(B) The Officer must have probable cause to believe the alleged perpetrator has committed an offense listed in Chapter 3 of this Code,

(C) The Officer shall complete a probable cause form. The probable cause form shall describe the facts and details to support probable cause,

(D) The Officer shall complete the arrest and/or search warrant and must therein describe the place to be searched and/or the person or thing to be seized.

(E) When the Officer has completed both the probable cause form and the arrest – search warrant, the Officer may contact a judge of the Colorado River Indian Tribal Court by telephone,

(F) The Judge shall administer the oath to the Officer,

(G) The Judge shall have the Officer read the completed probable cause form and the arrest – search warrant to the judge,

(H) If probable cause is found by the Judge, the Judge may authorize the Officer to sign the arrest warrant on the Judge's behalf, and

(I) When the arrest and/or search warrant is executed, a copy of the probable cause form and the arrest and/or search warrant shall be filed with the Court as an attachment to the criminal complaint.

(4) If there was the use of or threatened use of a dangerous instrument or deadly weapon.

Whenever the conditions for arrest as set forth in this Section 1-405 are present, the Officer shall arrest the alleged perpetrator whether or not the alleged victim signs a complaint and whether or not the arrest is against the expressed wishes of the alleged victim. The Officer shall obtain all relevant evidence at the time of the arrest to support probable cause; all evidence obtained at the time of the arrest can be used for all proceedings under this Title.

#### **Section 1-406. Victims Assistance.**

The arresting Officer shall immediately provide written notification to all known victims of the availability of treatment programs, legal rights and available services. Upon request by the victim, the Officer shall provide or arrange for transportation of the victim to a medical facility, or the Colorado River Regional Crisis Shelter. A Domestic Violence Advocate, Shelter Advocate, or Behavioral Health Services may be called on behalf of the victim.

Whether or not the alleged perpetrator has been arrested, the victim shall have a right to file an order of protection with the Court.

#### **Section 1-407. Special Court Rules.**

(1) In addition to the rules of Court generally applicable to criminal proceedings, the Court is authorized to take the following actions in a proceeding for offenses under this Article IV:

(A) If the alleged perpetrator is to be released from custody the Court, in its discretion and as a condition of release, may issue a protection order pursuant to this Article IV, Chapter 4 to protect the alleged victim by excluding the alleged perpetrator from the home of the alleged victim and restraining the alleged perpetrator from any contact with the alleged victim.

(B) If the alleged perpetrator pleads guilty, a pre-sentence report may be ordered, at the discretion of the Court prior to sentencing.

(C) If it appears to the Court that alcohol or drugs played a part in the abuse, a chemical dependency evaluation with a treatment plan may be ordered, at the discretion of the Court, prior to sentencing.

(2) Upon a guilty plea, grant of probation or suspension of the execution or imposition of a sentence, for any person convicted under this Article IV, Chapter 4, the Court shall order the perpetrator to enter and successfully complete an appropriate counseling program. Such counseling may include, but is not limited to alcohol/drug abuse counseling, domestic and family violence counseling, individual, group and/or family counseling. Appropriate counseling program may be in conjunction with programs based on traditional Native American healing practices. Such counseling program may consist of the following:

(A) Mandatory attendance and cooperation by the perpetrator in an intake session for evaluation.

(B) The evaluation shall be completed no later than twenty (20) business days after entry of the order requiring evaluation, unless the Court extends that time period.

(C) A copy of the recommended treatment plan shall be provided to the Court.

(D) The Court may request a progress report from the treating agency.

(3) Willful failure or refusal to comply with a Court order requiring a perpetrator to attend and cooperate in evaluation and/or to undergo treatment as described in a treatment plan shall constitute contempt of court pursuant to Section 341 of the L & O Code and, in addition to the penalties under Section 341, the Court shall impose all or some of the original suspended jail sentence and again require the perpetrator to complete the entire program.

#### **Section 1-408. Penalties.**

(1) A person convicted of a first offense under Chapter 4 of this Article IV shall be sentenced to confinement not to exceed one-hundred and eighty (180) days and no less than ten (10) days and ordered into a counseling program to address their violent and/or abusive behavior. The Court may also fine a person convicted of a first offense of domestic and family violence an amount not to exceed five-hundred dollars (\$500.00). The Court in its discretion shall have authority to order restitution pursuant to Section 1-514.

(2) A person convicted of a second offense within one (1) year of the commission of the first offense under this Chapter 4 of this Article IV or violates Section 1-302 when there is a protection order, injunction, or any other Court order in effect shall be sentenced to confinement not to exceed one-hundred and eighty (180) days and no less than ninety (90) and ordered into a counseling program to address their violent and/or abusive behavior. The Court may also order a person convicted of the second offense of

domestic and family violence to pay a fine in an amount not to exceed two-thousand dollars (\$2,000.00). The Court in its discretion shall have authority to order restitution pursuant to Section 1-514.

(3) A person convicted of a third offense within one (1) year of the commission of the second offense under this Chapter 4 of this Article IV shall be sentenced to confinement not to exceed one year and no less than one-hundred and eighty (180) days and ordered into a counseling program to address their violent and/or abusive behavior. The Court may also order a person convicted of the third offense of domestic and family violence to pay a fine in an amount not to exceed five-thousand dollars (\$5,000.00). The Court in its discretion shall have authority to order restitution pursuant to Section 1-514.

#### **Section 1-409. Right to File for Criminal Relief.**

(1) A person's right to file a criminal complaint shall not be affected by:

(A) The petitioner's use of reasonable force in self-defense against the respondent;

(B) Evidence that the petitioner has previously filed for a protection order and subsequently reconciled with the respondent;

(C) Evidence that the petitioner has left the residence or household to avoid abuse;

(D) Evidence that the petitioner has not filed for an annulment, separation or divorce; or

(E) Evidence that the victim has left the Colorado River Indian Reservation.

(2) Prosecution of an offense under this Article IV shall not preclude prosecution of any other offense under the Colorado River Indian Tribes Tribal Code arising out of the same set of facts.

#### **Section 1-410. Prosecution Without a Willing Victim Witness**

Prosecution of an offense under Chapter 3 of this Article IV shall be pursued even without a willing victim witness if there is probable cause to show the commission of such criminal offense.

#### **Section 1-411. Victims Assistance; Duty of Law Enforcement Officer**

(1) A law enforcement officer who responds to an incident involving family violence shall use all reasonable means to protect the victim, hold the perpetrator accountable and prevent further violence, including but not limited to:

(A) Taking the action necessary to provide for the safety of the victim and any family or household member.

(B) Confiscating any weapon involved in the alleged domestic or family violence.

(C) Transporting or obtaining transportation for the victim and any child to a shelter or place of safety.

(D) Assisting the victim in removing essential personal effects.

(E) Assisting the victim and any child in obtaining medical treatment, including obtaining transportation to a medical facility.

(F) Giving the victim immediate and adequate notice of the rights of victims, as contained in the laws of Colorado River Indian Tribes, and of the remedies and services available to victims of family violence.

(2) As part of the notice required by paragraph (F) of Subsection (1), the law enforcement officer shall give a written notice to the adult victim substantially as follows:

(A) “If you are the victim of domestic or family violence and you believe that law enforcement protection is needed for your physical safety, you have the right to request and the officer shall assist you in providing for your safety, including facilitating the obtaining of an order of protection when courts are closed. You may also request and the officer shall assist you in obtaining your essential personal effects and locating and taking you to a safe place, including but not limited to a designated meeting place for a shelter, a family member’s or a friend’s residence, or a similar place of safety. If you are in need of medical treatment, you have the right to request and the officer shall assist you in obtaining medical treatment. A Victims’ Rights Advocate, Shelter Advocate, Behavioral Health Service Counselor, Child Support Services Case Worker or a Social Services Case Worker may be called on your behalf. The officer shall provide you with a copy of the report at no cost from the law enforcement department.”

(B) “You may ask the prosecuting attorney to file a criminal complaint. However, the decision whether or not to prosecute ultimately lies with the prosecutor. You also have the right to file a petition in Tribal Court of the Colorado River Indian Tribes requesting an order for protection from domestic or family violence.

(C) “Any full or ex parte order of protection granted pursuant to Article 4, Chapter 4 of the Domestic Relations Code shall be to protect the petitioner from abuse or stalking and may include all the terms under Article IV, Chapter 5 of the Domestic Relations Code”

(D) “The forms you need to obtain an order for protection are available from the Tribal Court of the Colorado River Indian Tribes. The resources available in this

community for information relating to family violence, treatment of injuries, and places of safety and shelters are available from the Police Department, the Department of Behavioral Health Services, the Department of Child Protective Services, and the Department of Social Services. You also have the right to seek reimbursement for losses suffered as a result of the abuse, including medical and moving expenses, loss of earnings or support, and other expenses for injuries sustained and damage to your property.”

(3) The written notice must not include the addresses of shelters, unless the location is public knowledge.

**Section 1-412. Rights of Victims of Domestic or Family Violence; Duty of Prosecutor to Inform Victim of Rights.**

(1) A victim of domestic or family violence is entitled to:

(A) be informed of all hearing dates and continuances;

(B) receive a copy of the arresting officer's report at no cost;

(C) provide the Court with a victim-impact statement, victim-opinion statement, and an assessment of the risk of further harm;

(D) be present at all court hearings and to address the Court upon request;

(E) recommend and advise the Court of conditions of pre-trial release and probation necessary to ensure the safety of the victim and other family or household members;

(F) receive restitution for losses sustained as a direct consequence of any criminal conduct.

(2) The prosecutor must notify in writing the victim of domestic or family violence of the victim's rights set forth in this section.

**Chapter 5. CIVIL, PROTECTION ORDERS, PENALTIES**

**Section 1-501. Protection Orders; Commencement; Right to File**

(1) A proceeding to obtain a protection order shall be commenced by the filing of a petition by:

(A) Any adult or emancipated person claiming to be the victim of abuse and/or violence;

(B) Any adult family member or adult household member of a person claimed to be the victim of abuse and/or violence, on behalf of the alleged victim; or

(C) The Prosecutor.

(2) A petition may be filed regardless of the pendency of any other civil or criminal proceeding related to the allegations in the petition.

(3) The petitioner or the victim on whose behalf a petition has been filed, is not required to file for annulment, separation or divorce as a prerequisite to obtaining a protection order.

(4) A petitioner's right to apply for relief under this Article IV shall not be affected by:

(A) The petitioner's use of reasonable force in self-defense against the respondent;

(B) Evidence that the petitioner has previously filed for a protection order and subsequently reconciled with the respondent;

(C) Evidence that the petitioner has left the residence or household to avoid abuse;

(D) Evidence that the petitioner has not filed for an annulment, separation or divorce; or

(E) Evidence that the victim has left the Colorado River Indian Reservation.

#### **Section 1-502. Availability of Petition; Filing Fees.**

(1) Standard, simplified petition forms with instructions for completion shall be available to persons not represented by counsel. The Colorado River Indian Tribes Police Department and the Tribal Court shall keep such forms and make them available upon request.

(2) No filing fee shall be required for the filing of a petition under Section 1-501.

(3) If an alleged perpetrator has been arrested for an offense under this Article IV, the Court or the arresting Officer shall advise the alleged victim of the right to file a petition under Section 1-501 without cost.

**Section 1-503. Contents of the Petition.**

- (1) A petition shall allege the existence of an act of abuse and/or violence or an offense under this Article IV, and shall be verified or supported by an affidavit made under oath stating the specific facts and circumstances justifying the requested order.
- (2) The petition shall state whether any other action is pending between the petitioner or victim and the respondent.

**Section 1-504. Ex-Parte Temporary Protection Order Procedure; Notice of Hearing; Hearing.**

(1) Upon the filing of a petition for a protection order, the Court shall immediately grant an ex-parte, temporary protection order without bond if, based on the specific facts stated in the affidavit or the verified petition:

(A) The Court has probable cause to believe that the petitioner or the person on whose behalf the petition has been filed is the victim of an act of abuse and/or violence or an offense under this Article IV committed by the respondent; and

(B) Issuance of the ex-parte, temporary protection order is necessary to protect the victim from further abuse and/or violence.

(2) Upon the filing of a petition for a protection order, the Court shall cause a notice of hearing to be served immediately on the respondent.

(A) The service shall be made pursuant to Section 108 of the Law and Order Code.

(B) In the event personal services cannot be completed in time to give the respondent the minimum notice required under Section 108 of the Law and Order Code, the Court may set a new hearing date not to exceed fifteen (15) days.

(3) Upon the filing of a petition for a protection order, the Court shall hold a hearing within fifteen (15) days after the filing of a petition to determine whether to grant a permanent order of protection.

**Section 1-505. Protection Order; Non-Defenses.**

(1) The following shall not be considered a defense in a proceeding for the issuance or enforcement of a protection order under this Article IV:

(A) Intoxication;

(B) Substance abuse;

- (C) Spousal immunity; or
- (D) Provocation.

**Section 1-506. Protection Order; Contents.**

(1) An ex-parte, temporary protection order or a permanent protection order entered after notice and hearing shall, when deemed appropriate by the Court, include provisions:

- (A) Restraining the respondent from committing any acts of domestic and family abuse and/or violence.
- (B) Excluding the respondent from the residence of the victim, whether or not the respondent and the victim share that residence.
- (C) Restraining the respondent from any contact with the victim for an amount of time that may be valid up to one (1) year or as determined by the Court.
- (D) Restraining the respondent from stalking the victim.
- (E) Awarding custody or establishing visitation rights with regard to minor children of the respondent on a basis which gives primary consideration to the safety of the victim and the minor children.
  - i. If the Court finds that the safety of the victim or the children will be jeopardized by unsupervised or unrestricted visitation, the Court shall set forth conditions or restrict visitation as to the time, place, duration, or supervision, or deny visitation entirely, as needed, to guard the safety of the victim and the children.
  - ii. Any custody order may provide for child support for the person having custody of the children in amounts deemed reasonable and necessary by the Court.
  - iii. The Court's deliberation under Section 1-504 shall in no way delay the issuance of a protection order.
- (F) Awarding use and possession of personal and real property of the respondent.
- (G) Restraining one or both parties from transferring, encumbering, concealing, selling, or otherwise disposing of real or personal property as authorized by the Court, except if done in the usual course of business or for the necessities of life, without the written consent of the parties or permission of the Court, and requiring that an accounting shall be made to the Court for all such transfers, encumbrances, dispositions, selling and expenditures.

(H) Ordering the respondent to timely pay any existing debts of the respondent, including mortgage or rental payments, necessary to maintain the victim in his/her residence.

(I) Describing any prior orders of the Court relating to domestic matters which are superseded or altered by the protection order.

(J) Notifying the parties that the willful violation of any provision of the order constitutes contempt of court punishable by a fine or imprisonment or both and constitutes a violation of this Article IV for which penalties and fines may be assessed.

(K) Ordering respondent to submit to alcohol and drug testing when there is a reasonable suspicion of drug and/or alcohol use.

(L) Ordering respondent to attend and successfully complete alcohol and drug education, treatment and/or other counseling services.

(M) Ordering respondent to attend and successfully complete domestic and family violence education, treatment and/or counseling services.

(N) Ordering respondent to comply with current prescribed medical treatments.

(O) Ordering, in the Court's discretion, any other lawful relief as it deems necessary for the protection of the victim, including orders or directives to the Colorado River Indian Tribes Police Department.

2) In cases involving elders and dependent adults, upon a showing of evidence sufficient to establish probable cause to believe that abuse or serious neglect of the elder or dependant adult has occurred, or is likely to occur, the Court may do the following:

(A) Declare an elder or dependent adult a temporary ward of the Court and issue a Temporary Protection Order for a period not to exceed one (1) year. The Court shall notify the Department of Health Services of its order, and furnish the Department with a copy of all relevant documents. Upon receipt of the Court's Order, the Department of Health Services, through its designated sub-department, shall do the following:

- (i) Initiate an investigation of neglect and abuse within twenty-four (24) hours of receipt of the Court's Order.
- (ii) File a motion to continue or dismiss the temporary wardship within thirty (30) days of receipt of the Court's Order.

(a) The motion shall state the facts supporting either the continuance or dismissal of the wardship order for the affected Elder or Dependent Adult.

(b) The designated sub-department shall furnish the Court with a progress report for review hearings at least once.

(B) The Court shall set a review hearing every sixty (60) days while the Temporary Protection Order is in effect.

(C) The Court may renew a Temporary Protection Order for an affected Elder or Dependent Adult as many times as necessary until a safe alternative care arrangement can be made for the Elder or Dependent Adult.

(3) In cases involving children, procedures under the Children's Code shall apply.

(4) The Court may order restitution pursuant to Section 1-514.

(5) When the Court issues a protection order it shall inform the petitioner and respondent that the Court must formally modify or vacate the protection order before the parties may have further contact, the respondent may return to the residence or act contrary to any other conditions of the protection order.

#### **Section 1-507. Protection Order; Duration; Modification.**

(1) The provisions of the protection order shall remain in effect for the period of time stated in the protection order, not to exceed one (1) year. The Court may for good cause shown at the request of any party, extend the protection order for a period not to exceed six (6) months.

(2) The petition and protection order may be amended or modified regardless of whether or not there is a pending lawsuit, complaint, petition, or other action between the parties.

(3) Either party may request a hearing to modify a protection order.

(4) The Court may conduct hearings to review the protection order every ninety (90) days or sooner as necessary.

#### **Section 1-508. Protection Order; Service.**

Protection orders are to be served personally upon the respondent by an Officer, Court Bailiff, or Registered Process Server. If the respondent cannot be located, the protection order will be mailed, pursuant to Section 108(c)(1), Notices and Service of Law and Order Code, by registered or certified mail, to the respondent's last known address, and upon application with the Court, notice will be posted.

**Section 1-509. Protection Order; Assistance of Police Department in Service or Execution.**

When a protection order is issued, the Court may order an Officer to accompany and assist any victim in taking possession of the victim's dwelling or residence, or otherwise to assist the Court in execution, enforcement or service of the protection order.

**Section 1-510. Copy of Protection Order to Police Department.**

Each protection order granted under this Article IV, shall be forwarded by the Judicial Clerk immediately to the Colorado River Indian Tribes Police Department. The Police Department shall make available to each Officer information as to the existence and status of any such orders.

**Section 1-511. Violation of Court Order.**

Intentional, willful or knowing violation of an order issued under this Article IV shall constitute contempt of court punishable pursuant to Section 341 of the Colorado River Indian Tribes Law and Order Code.

**Section 1-512. Order to Show Cause.**

The Court may issue an Order to Show Cause against the victim if the victim intentionally, willfully or knowingly initiated contact with the perpetrator causing the perpetrator to violate the terms of the protection order.

**Section 1-513. Civil Fine.**

(1) Any person who intentionally, willfully or knowingly violates or fails to comply with any provision of any protection order issued under this Article IV after notice and hearing, upon first offense may be assessed a civil fine not to exceed five-hundred dollars (\$500.00). The Court in its discretion shall have authority to order restitution pursuant to Section 1-514.

(2) A person who intentionally, willfully or knowingly violates or fails to comply with any provision of any protection order issued under this Article IV after notice and hearing, upon a second offense within one (1) year of the commission of the first offense may be assessed a civil fine not to exceed two-thousand dollars (\$2,000.00). The Court in its discretion shall have authority to order restitution pursuant to Section 1-514.

(3) A person who intentionally, willfully or knowingly violates or fails to comply with any provision of any protection order issued under this Chapter 4 of this Article IV after notice and hearing, upon a third offense within one (1) year of the commission of the second offense may be assessed a civil fine not exceed to five-thousand dollars

(\$5,000.00). The Court in its discretion shall have authority to order restitution pursuant to Section 1-514.

**Section 1-514. Restitution.**

(1) When appropriate the Court may order the perpetrator to pay restitution to the victim under this Article IV. The order of restitution under this Section 1-514 shall direct the perpetrator to pay the victim the full amount of the victim's losses as determined by the Court pursuant to this Section 1-513(3).

(2) The restitution order be enforced by all available and reasonable means.

(3) An order of restitution also may be enforced by the victim named in the order to receive the restitution in the same manner as a judgment in a civil action.

(4) The term "full amount of the victim's losses" includes any costs incurred by the victim for:

(A) Medical services relating to physical, psychiatric, or psychological care;

(B) Physical and occupational therapy or rehabilitation;

(C) Necessary transportation, temporary housing, and child care expenses;

(D) Lost income;

(E) Attorneys' fees, plus any costs incurred in obtaining a civil protection order; and

(F) Any other losses suffered by the victim as a proximate result of abuse and/or violence under this Article IV.

**Section 1-515. Expulsion.**

Expulsion of a non-member of the Tribes under this Article IV shall be pursuant to the procedures set forth in the Law and Order Code, Article V.

**Chapter 6. LIABILITY, COMITY, SEVERABILITY.**

**Section 1-601. Liability.**

No Officer shall be held criminally or civilly liable for making an arrest authorized by this Article IV, provided he/she acted in good faith and without malice.

**Section 1-602. Comity.**

- (1) Any protection order issued pursuant to this Article IV shall be effective throughout the Colorado River Indian Reservation.
- (2) Absent federal law to the contrary, the Court shall have jurisdiction to determine if full faith and credit will be given to protection orders of courts of other jurisdictions in matters involving tribal members and all residents of the Reservation.
- (3) Upon determining that a foreign court had jurisdiction to enter a protection order pursuant to 18 U.S.C. § 2265, the Court may enforce the order recognizing that protection order and accord it full faith and credit.

**Section 1-603. Severability.**

If any section or sections, provision, or the application of any section, of this Article IV is adjudged to be unconstitutional or invalid by a court of competent jurisdiction, such judgment shall not affect the validity of the remaining sections of this Article IV. The Tribal Council hereby declares that it would have passed the remaining parts of this Article IV even if it had known that such part or parts or application of any part thereof would be declared unconstitutional or invalid.

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