



**NCA 16-038**

**CLASSIFICATION: #14. CRIMES AND PUNISHMENTS**

**A LAW OF THE MUSCOGEE (CREEK) NATION AMENDING MCNCA TITLE 6, CHAPTER 3 ENTITLED "PROTECTION FROM DOMESTIC AND FAMILY VIOLENCE ACT" AND AMENDING MCNCA TITLE 27 §1-102 AND §2-111 AND APPENDIX 1 RULE 13 ENTITLED "SELECTION OF JURORS" AND AMENDING MCNCA TITLE 14 CHAPTER 1 AND CHAPTER 2**

**Be it Enacted by the National Council of the Muscogee (Creek) Nation:**

**SECTION ONE. FINDINGS. The National Council finds that:**

A. The Muscogee (Creek) Nation has taken a strong stand against domestic, dating and family violence.

B. On March 7, 2013, the President of the United States signed the Violence Against Women Reauthorization Act of 2013 (VAWA) returning to the tribes a portion of their authority over the criminal acts of Non-Native Americans as they pertain to domestic, dating, and family violence.

C. In preparation for the enactment of VAWA, the Muscogee (Creek) Nation has, for the last two years, participated in the VAWA pilot project working along side of other tribes to address issues that may effect implementation.

D. By updating these code provisions, the Nation will be able to move forward with the enforcement and prosecution of crimes of domestic, dating and family violence committed by non-Native offenders.

**SECTION TWO. AMENDMENT. This amendment shall be codified in Title 6, Chapter 3 of the Code of Laws of the Muscogee (Creek) Nation; provided that for purposes of codification said amendment and its inclusion in pocket parts of the Code of Laws of the Muscogee (Creek) Nation, the Attorney General is hereby authorized: (1) to approve any changes related to the manner in which sections, articles, chapters and sub-chapters are designated consistent with the format in the Code of Laws published in 2010 by West Publishing Company; (2) to include footnoted references to the legislative history in said pocket parts to the Code of Laws and; (3) to note in said pocket parts any editorial correction of minor clerical or grammatical errors in the following amendment, without further National Council approval:**

**SECTION THREE. AMENDMENT.** The following sub-chapters and sub-sections of MCNCA Title 6, Chapter 3, are hereby amended to read as follows:

TITLE 6. CHILDREN AND FAMILY RELATIONS  
CHAPTER 3. PROTECTION FROM DOMESTIC AND FAMILY VIOLENCE ACT  
SUBCHAPTER 1. GENERAL PROVISIONS

§ 3-101. Title

This Chapter shall be entitled the Protection from Domestic and Family Violence Act.

§ 3-102. Purpose and Construction Findings

~~This Chapter shall be construed to promote the protection and safety of all victims of domestic or family violence and all victims of crimes involving domestic or family violence in a fair, prompt, and effective manner, and promote the prevention of future violence in all families.~~

Vhaky hoccyt etviwv enyekcety cuko huncylyke empytaky ton kv, momen cuko huncylyke nak herekyt ocvt, vhaky vvt homy enhuere ton tos. Vhaky roputtan momen vhaky vekcen vlatet myhavet, ton tos. Oghatvialkut, yv vhaky hoccyt nak herekyt eskerretv tonkv. Momen, vhaky vekcet este hvlattepicce taye hocce ton tos. Cuko huncylyke humv enhuervt, myt etviwv, momen enhorkv vvt etviwv vhaky vekcen, hvlattepicce taye ton. Yv etviwv menhorkv nvt herekyt, etviwv, sewikako hocce ton tos. Myskoke etviwv cuko huncylyke vcvfeknetv, momen vketecet lapken komet mynyce ton tos.

Myskoke etviwv vhaky hoccyt nak herekot, cuko huncylyke homy huervt, vhaky kacv. Vhaka vekcen vlatet, mon mehoco vvt etviwv menhockv tos, makes. Myskoke etviwv cuko huncylyke cvfeknet vpoket, nak etviwv emvyetv, vnokecet vpoke taye hocce ton tos.

A. Purpose. The Purpose of this Chapter is to recognize that the strength of the Nation is founded on the healthy families, and that the safety of victims of domestic, dating and family violence must be ensured by the immediate intervention of advocacy, law enforcement, prosecution, education, treatment, and other appropriate services. Furthermore, the purpose of this Chapter is to recognize domestic violence, dating violence and family violence as serious crimes against society, the Nation, and the family, and to offer victims the maximum protection from further violence that the law can provide. It is the expectation that the criminal justice system respond to victims with fairness, compassion, and in a prompt and effective manner.

It is the intent of the Muscogee (Creek) Nation that the official response to domestic, dating and family violence shall stress the enforcement of laws to protect the victim and to hold the perpetrator accountable, which will in turn communicate the Nation's cultural values and belief system that violent behavior against intimate partners or family members is criminal behavior and will not be excused or tolerated. The Nation promotes safety and healing of families, cultural teachings and traditional tribal values so as to nurture non-violence and respect within families and relationships.

This chapter shall be interpreted and applied to give it to the broadest possible scope to carry out these purposes.

B. Findings. It is the intent of the Muscogee (Creek) Nation that the official response to domestic, dating and family violence shall be that the Nation will not tolerate or excuse violent behavior under any circumstances. All people, whether they are elders, male, female or children of the Nation, are to be cherished and treated with respect.

Domestic, dating and family violence are not acceptable and are contrary to the traditional culture and values of honoring the family and are contrary to the interest of our community and sense of well-being and growth. Domestic, dating and family violence will not be tolerated.

The Nation finds that domestic, dating and family violence imperils the very subsistence of the tribal community. The Nation recognizes the United States Department of Justice finding that approximately 39% of Native women are subjected to domestic violence in their lifetime. Additionally, one in three Native women are sexually assaulted in their lifetime and nearly 86% of reported assaults on Native women are committed by non-Native men. A community response to domestic, dating and family violence is necessary because these crimes impact the health, safety and welfare of the community as a whole. These crimes redirect tribal resources, whether to personnel, financial, public safety or elsewhere and require an immediate response. As a result of this impact on the Nation's resources, the Nation deems it necessary to address domestic, dating and family violence to the fullest extent permitted by laws existing now or as may be adopted or amended in the future.

The Nation recognizes that there is a distinction between domestic or dating violence and family member violence. Domestic or dating violence involves an intimate partner relationship where dynamics of power and control are often overwhelmingly present in the action. Family violence is committed against all

other family or household members. Both are reprehensible actions that require specialized recognition with enhanced provisions over what might be otherwise available to victims of crimes, or remedies available in civil actions.

§ 3-103. Definitions

The following words and phrases when used in this chapter shall, for the purposes of this chapter, have the meanings respectively ascribed to them in this section, except where the context otherwise requires:

A. "Alternative method" means a method by which a child witness testifies which does not include all of the following:

1. having the child testify in person in an open forum;
2. having the child testify in the presence and full view of the finder of fact and Judge; and
3. allowing all of the parties to be present, to participate, and to view and be viewed by the child.

AB. "Crimes involving domestic or family violence" are as defined in Title 6, §3-301.

C. "Criminal proceeding" means a trial or hearing before a court in the prosecution of a person charged with violating a criminal law of the Nation or in a juvenile delinquency proceeding involving conduct that if engaged in by an adult would constitute a violation of a criminal law of the Nation.

BD. "Cross-deputization agreement" means an agreement between the Nation, the Bureau of Indian Affairs (BIA) and/or any city, county or state governmental entity, by which the Lighthorse Police are authorized to act as law enforcement officers to enforce the law of such other governmental entity with regard to crimes arising in the Muscogee (Creek) Nation territorial jurisdiction that are subject to that entity's criminal jurisdiction as described in Title 6, § 3-202, and by which such other governmental entity's law enforcement officers are authorized to enforce the law of the Muscogee (Creek) Nation and/or federal law with regard to crimes arising in the Muscogee (Creek) Nation territorial jurisdiction that are subject to Muscogee (Creek) Nation jurisdiction or federal jurisdiction as described in Title 6, § 3-302.

G. "Dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional involvement, and shall be adjudged by the District Court upon consideration of factors such as the length of time of the relationship, the type of relationship, the frequency of interaction between the parties,

~~and the if the relationship has been terminated by either parties, the length of time since the termination of the relationship. This term does not include a casual relationship or an ordinary fraternization between two individuals in a business or social context.~~

E. "Dating Violence" means crimes under § 3-301 of this subchapter committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim characterized by the expectation of affectional involvement and shall be adjudged by the District Court upon consideration of factors such as the length of time of the relationship, the type of relationship, the frequency of interaction between the parties and if the relationship has been terminated by either party, and the length of time since the termination of the relationship. This term does not include a casual relationship or an ordinary fraternization between two individuals in a business or social context. Provided that a "first date" shall not automatically be excluded provided that other characteristics of a social relationship of a romantic or intimate nature are present.

~~D. "Domestic or family violence" means the occurrence of one or more of the following acts by a family or household member, but does not include acts of self-defense:~~

- ~~1. Attempting to cause or causing physical harm to another family member;~~
- ~~2. Placing a family or household member in fear of physical harm; or Causing a family or household member to engage involuntarily in activity by force, threat of force, or duress.~~
- ~~3. Causing a family or household member to engage involuntarily in sexual activity by force, threat of force, or duress.~~

F. "Domestic Violence" means crimes under § 3-301 of this subchapter committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, or by a person similarly situated to a spouse of the victim.

EG. "Family or household Members" means:

- ~~1. Adults or minors who are current or former spouses~~
- ~~2. Adults or minors who live or have lived together~~
- ~~3. Adults or minors who are in a dating relationship or who have been in a dating relationship as defined in subsection C of this section;~~
- ~~4. Adults or minors who are engaged in or who have engaged in a sexual relationship with each other;~~

- ~~5. Adults or minors who are related by blood or adoption;~~
- ~~6. Adults or minors who are related or formerly related by marriage;~~
- ~~7. Persons who have a child in common; and~~
- ~~8. Minor children of a person in a relationship that is described in paragraphs 1 and 2 of this subsection.~~

1. Persons who are or have been related by blood, marriage or adoption;
2. Minor children who are part of the household; or
3. Persons who reside or have resided together in the past who have never been intimate partners.

H. "Family Violence" means the same or similar acts committed in Domestic Violence, but directed towards a Family or Household member instead of an intimate partner.

F.I. "Foreign protection order" means a protection order issued by any issuing court except the Muscogee (Creek) Nation District Court.

G.J. "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 harms or annoys the person, and which serves no legitimate purpose. The course of conduct shall be such as would cause a reasonable person to suffer emotional distress, and shall actually cause substantial distress to the person. "Harassment" shall include, but not be limited to, harassing or obscene telephone calls.

H.K. "Indian" means a person who is a member of the Muscogee (Creek) Nation; or a person who is a member of any other federally recognized Indian Tribe, including Native Hawaiians and Alaska Natives; or a person who possesses a Certificate of Degree of Indian Blood; or a person who under oath confirms to the District Court that he/she is Indian.

I.L. "Issuing Court" means a court that has issued a protection order, and includes a court of any Tribe, the United States, a state of the United States, the District of Columbia, or a commonwealth, territory, or possession of the United States; or any foreign court which has adequate due process protection.

J.M. "Lighthorse Police" means law enforcement officers of the Muscogee (Creek) Nation.

N. "Mandatory Arrest" means that a police officer shall arrest if there is probable cause to believe the person to be arrested has committed an offense as



defined by this Chapter even though the arrest may be against the expressed wishes of the victim.

O. "Noncriminal proceeding" means a trial or hearing before a court, other than a criminal proceeding.

KP. "Other authorized law enforcement officer" means, for purposes of this Act, any federal, law enforcement officer or law enforcement officer of a city, county, or state law enforcement officer governmental entity who is authorized to enforce a Muscogee (Creek) Nation law or federal law under authority of a commission received pursuant to a Cross-Deputization Agreement as defined in subsection B of this section.

Q. "Perpetrator" means the person alleged to have committed an act of dating, domestic or family violence. The perpetrator may also be referred to as a "defendant" in a criminal case or "respondent" in a civil case.

LR. "Prosecutor" shall mean the Prosecutor of the Muscogee (Creek) Nation charged with the duty of enforcing the criminal laws of the Nation.

S. "Protection Order" means any injunction, restraining order or other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to another person and/or their domesticated animals and includes any temporary or final order issued by a civil or criminal court, whether obtained by filing an independent action or as a pendent lite order in another proceeding, if the civil or criminal order was issued in response to a complaint, petition, or motion filed by, or on behalf of a person seeking protection.

T. "Spouse or intimate partner" includes: (1)(a) a spouse or former spouse, persons who share a child in common, and persons who cohabit or have cohabited as a spouse; or (b) persons who are or have been in a social relationship of a romantic or intimate nature, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship; and (2) any other person similarly situated to a spouse who is protected by the domestic or family violence laws of the State or tribal jurisdiction in which the injury occurred or where the victim resides.

MU. "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.

**NV.** "Territorial jurisdiction" means the Muscogee (Creek) Nation territorial jurisdiction as defined by the Judicial Code of the Muscogee (Creek) Nation in Title 27 of the code of laws of the Muscogee (Creek) Nation.

**OW.** "Violation of protection order" means: (1) any violation within the Muscogee (Creek) Nation territorial jurisdiction of a protection order issued by the District Court; and (2) where applicable, any violation within the Muscogee (Creek) Nation territorial jurisdiction of a foreign protection order.

**§ 3-104. Immunity**

**Any law enforcement officer shall have immunity from any liability, civil or criminal, in making arrests or exercising any authority granted under this Code, if the law enforcement officer acts in good faith and has probable cause based on the totality of the circumstances so as to provide protection for victims of domestic violence. Law enforcement officers shall have the same immunity with respect to participation in any court proceedings resulting from arrests made for domestic violence or any crimes involving domestic violence.**

No judge, Lighthorse Police or other authorized law enforcement officer, court employee, Attorney General, Assistant Attorney General, Prosecutor, Assistant Prosecutor or other Tribal government official who takes, or refrains from taking, any action to enforce a protection order can be sued in a civil suit or prosecuted in a criminal action. Nothing herein shall imply an absence of immunity for any other purpose. The Nation and all its officials, employees, and agents retain all available immunity in all settings, unless specifically and explicitly waived by law duly enacted by the National Council of the Muscogee (Creek) Nation.

**SUBCHAPTER 2. SPECIAL EVIDENTIARY RULES**

**§ 3-201. Expert Testimony**

Notwithstanding the provisions of any other evidentiary rules, in a civil or criminal action in the District Court, if a party offers evidence of a domestic abuse, **dating, or family violence**, the testimony of an expert witness concerning the effects of such **domestic abuse violence** on the beliefs, behaviors and perception of the person being abused shall be admissible as evidence.

**§ 3-202. Spousal privileges inapplicable in criminal proceedings related to crimes involving domestic or family violence**

Notwithstanding the provisions of any other evidentiary rules, the following evidentiary privileges do not apply in any criminal proceeding in which a spouse or other family or



household member is the victim of a crime involving domestic or family violence perpetrated by the other spouse: the privilege of confidential communication between spouses and the testimonial privilege of spouses.

**§ 3-203. Advocate-victim privilege**

A. **Prevention of disclosure.** Except as otherwise provided in subsection B and Title 6, § 3-503, a victim of a crime involving domestic, dating, or family violence may refuse to disclose, and may prevent an advocate as defined in subsection B of Title 6, §3-501 from disclosing, confidential oral communication between the victim and the advocate and written records and reports concerning the victim of the privilege claimed by:

1. The victim; or
2. The person who was the advocate at the time of the confidential communication, except that the advocate may not claim the privilege if there is no victim in existence or if the privilege has been waived by the victim.

B. **Mandatory reporting requirements.** The privilege does not relieve a person from any duty imposed pursuant to any law of the Muscogee (Creek) Nation concerning mandatory reporting of child abuse or neglect. A person may not claim the privilege when providing evidence in proceedings concerning child abuse pursuant to any such law.

**§ 3-204. Child witness testimony by alternative methods**

**A. The following shall apply to child witness testimony by alternative methods:**

1. **Hearing whether to allow testimony by alternative method 1. The Judge in a criminal or noncriminal proceeding may order a hearing to determine whether to allow a child witness to testify by an alternative method. The Judge, for good cause shown, shall order the hearing upon motion of a party, a child witness, or an individual determined by the Judge to have sufficient standing to act on behalf of the child.**
2. **A hearing to determine whether to allow a child witness to testify by an alternative method must be conducted on the record after reasonable notice to all parties, any nonparty movant, and any other person the Judge specifies. The child's presence is not required at the hearing unless ordered by the**

Judge. In conducting the hearing, the Judge is not bound by rules of evidence except the rules of privilege.

B. Standards for determining whether a child witness may testify by alternative method.

1. In a criminal proceeding, the Judge may allow a child witness to testify by an alternative method only in the following situations:

a. The child may testify other than in an open forum in the presence and full view of the finder of fact if the Judge finds by clear and convincing evidence that the child would likely suffer serious emotional trauma if required to testify in the open forum.

b. The child may testify other than face-to-face with the defendant if the Judge finds by clear and convincing evidence that the child would likely suffer serious emotional trauma if required to be confronted face-to-face by the defendant.

2. In a noncriminal proceeding, the presiding Judge may allow a child witness to testify by an alternative method if the Judge finds by a preponderance of the evidence that allowing the child to testify by an alternative method is necessary to serve the best interest of the child or enable the child to communicate with the finder of fact.

a. In making this finding, the Judge shall consider:

- (1) the nature of the proceeding;
- (2) the age and maturity of the child;
- (3) the relationship of the child to the parties in the proceeding;
- (4) the nature and degree of emotional trauma that the child may suffer in testifying; and
- (5) any other relevant factors.

C. If the presiding Judge determines that the standards under B have been met, the Judge shall determine whether to allow a child witness to testify by an "alternative method" and in doing so shall consider:

1. alternative methods reasonably available;

2. available means for protecting the interest of or reducing emotional trauma to the child without resorting to an "alternative method";
3. the nature of the case;
4. the relative rights of the parties;
5. the importance of the proposed testimony of the child;
6. the nature and degree of emotional trauma that the child may suffer if an alternative method is not used; and
7. any other relevant factor.

D. Order regarding testimony by alternative method

1. An order allowing or disallowing a child witness to testify by an alternative method must state the findings of fact and conclusions of law that support the Judge's determination.
2. An order allowing a child witness to testify by an alternative method must:
  - a. state the method by which the child is to testify;
  - b. list any individual or category of individuals allowed to be in, or required to be excluded from, the presence of the child during the testimony;
  - c. state any special conditions necessary to facilitate a party's right to examine or cross-examine the child;
  - d. state any condition or limitation upon the participation of individuals present during the testimony of the child; and
  - e. state any other condition necessary for taking or presenting the testimony.
3. The alternative method ordered by the Judge may be no more restrictive of the rights of the parties than is necessary under the circumstances to serve the purpose of the order.

E. Right of party to examine child witness.

An alternative method ordered by the presiding Judge must permit a full and fair opportunity for examination or cross-examination of the child witness by each party.

**§ 3-301. Crimes Involving domestic or family violence**

A. Crimes defined in Criminal Code. A "crime involving domestic, dating or family violence" occurs when a spouse, intimate partner, family or household member commits, or attempts or conspires to commit, one or more of the following crimes as defined in and punishable pursuant to Title 14 of the Muscogee (Creek) Nation Code of Laws against another family or household member:

1. Arson;
2. Assault and battery offenses;
3. Burglary, breaking and entering;
4. Destruction, damage, vandalism of property, malicious mischief;
5. Homicide offenses, including without limitation, murder, non-negligent manslaughter, negligent manslaughter, and justifiable homicide;
6. Kidnapping and abduction;
7. Sex offenses, forcible, including without limitation, forcible rape, forcible sodomy, forcible sexual assault with an object, and forcible fondling;
8. Stolen property offenses;
9. Weapon law violations;
10. Disorderly conduct;
11. Stalking, harassment; and
12. Trespass of real property.

B. Violation of an ex parte, temporary or final protection order by Indian a respondent is a crime.

1. In addition to the crimes listed in subsection A of this section, a "crime involving domestic, dating or family violence" includes the violation by a an Indian respondent of a protection order issued by the District Court in accordance with this Act and includes the violation by a an Indian respondent of a foreign protection order as follows: An order enjoining respondent from threatening to commit or committing acts of domestic ~~or family~~ violence against the petitioner or other family or household member or their domesticated animals; an order prohibiting the respondent from harassing, visiting, stalking, annoying, telephoning, texting, emailing or using any other form of electronic or digital means to communicate, contacting or using a third party to contact, or otherwise interfering with or communicating with the petitioner, directly or indirectly; an order removing and excluding the respondent from the residence of the petitioner; an order requiring

- the respondent to stay away from the residence, school, place of employment or a specified place frequented regularly by the petitioner and any named family or household member; and an order prohibiting the respondent from using or possessing a firearm or other weapon specified by the Court.
2. Except as provided by paragraph 3, of this subsection, an ~~Indian~~ a respondent who has been served with an ~~ex-parte~~ a temporary or final protection order or foreign protection order and who is convicted of the crime of "Violation of a Protection Order" shall be guilty of a misdemeanor ~~punished~~ punishable by a fine of not less than fifty dollars (\$50.00) and not more than two thousand five hundred dollars (\$2,500.00) or by imprisonment of not less than one (1) day and not more than one (1) year, or by both such fine and imprisonment.
  3. A any ~~Indian~~ respondent who has been served with an ~~ex-parte~~ a temporary or final protection order or foreign protection order and who is convicted of the crime of "Violation of a Protection Order – Second or Subsequent Offense" shall be guilty of a felony ~~punished~~ punishable by a fine of not less than one thousand dollars (\$1,000.00) and not more than ~~five~~ fifteen thousand dollars (\$15,000.00) or by imprisonment of not less than ten (10) days and not more than ~~one (1) three~~ (3) year, or both such fine and imprisonment.
  4. A any ~~Indian~~ respondent who has been served with an ~~ex-parte~~ a temporary or final protection order or foreign protection order who violates the protection order and causes physical injury or physical impairment to the petitioner or to any other person named in said protection order shall, upon conviction, be guilty of the crime of "Violation of Protection Order with Physical Injury Inflicted" and shall be guilty of a felony ~~punished~~ punishable by a term of imprisonment for not less than twenty (20) days nor more than ~~one (1) three~~ (3) year. In addition to the term of imprisonment, the person may be punished by a fine not to exceed ~~five~~ fifteen thousand dollars (\$15,000.00). In determining the term of imprisonment required by this paragraph, the jury or sentencing judge shall consider the degree of physical injury or physical impairment to the victim. The provisions of this paragraph shall not affect the applicability of Title 14 of the Muscogee (Creek) Nation Code of Laws.
  5. The minimum sentence of imprisonment issued pursuant to the provisions of paragraphs 1 and 2 of this subsection shall not be subject to statutory provisions for suspended sentences, deferred sentences or probation, provided the District Court may subject any

remaining penalty under the jurisdiction of the District Court to the statutory provisions for suspended sentences, deferred sentences or probation.

6. In addition to any other criminal penalty specified by this section, the District Court may require the Indian respondent to undergo the treatment or participate in the counseling services necessary to bring about the cessation of domestic, dating or family violence against the victim(s).
7. When an Indian a minor child violates the provisions of any protection order, the violation shall be heard in a civil juvenile proceeding and the District Court may order the child and the parent or parents of the child to participate in individual and/or family counseling services necessary to bring about the cessation of domestic, dating or family violence abuse against the victim and may order community service hours to be performed.

**C. Firearms Disqualification.**

1. It shall be unlawful for any person to possess a firearm who:
  - a. Is subject to any court order from a court of competent jurisdiction that restrains such person from harassing, stalking, threatening, having contact or assaulting an intimate partner or family member as defined in this chapter or engaging in any other conduct that would place an intimate partner or family member in reasonable fear of physical harm to the intimate partner or family member.
  - b. Has been convicted under the law of any state, territory, tribe, or United States military tribunal of any crime involving domestic violence or family violence, as defined by the laws of the Muscogee (Creek) Nation, which involved the use or attempted use of physical force, or the threatened use of physical force, or the threatened use of a deadly weapon against an intimate partner or family member as defined in this chapter.
  - c. Has been found mentally incompetent to stand trial or has been committed for mental health reasons after a domestic violence, family violence, sexual assault, stalking, or dating violence offense.
2. Violation of this section shall be subject to criminal and/or civil penalty



- a. Each violation is subject to a criminal penalty of up to five thousand dollars (\$5,000) fine, and three (3) years of imprisonment, or both.
- b. Each violation of this section shall also be considered a civil violation subject to enforcement by any means not prohibited by federal law, including, but not limited to the issuance of a fine of up to ten thousand (\$10,000), forfeitures and/or civil contempt.
- c. A civil action brought under this paragraph may be filed in the Muscogee (Creek) Nation District Court by the Nation or any person harmed by a person's violation of the Domestic and Family Violence Act of this Code.

§ 3-302. Criminal jurisdiction over crimes involving domestic or family violence

A. Muscogee (Creek) Nation jurisdiction. The Muscogee (Creek) Nation shall have criminal jurisdiction for the enforcement of a crime involving domestic, dating or family violence that occurs in the Muscogee (Creek) Nation territorial jurisdiction pursuant to Title 27, §1-102 of the Muscogee (Creek) Nation Code of Laws, and ~~that involves an Indian offender, regardless of the Indian or non-Indian status of the victim, subject to the limitations contained in the Federal Indian Civil Rights Act, 25 U.S.C. §1301-1302(7), which provides that Indian Tribes shall not impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of one (1) year and a fine of Five Thousand Dollars (\$5,000.00), or both.~~

B. Federal jurisdiction. The Muscogee (Creek) Nation recognizes that the United States possesses criminal jurisdiction over the following:

1. The enforcement of certain felony offenses as defined by 18 U.S.C. §1153 and any provisions of VAWA granting Federal Courts jurisdiction over crimes involving domestic or family violence or dating violence in Indian country. ~~that are crimes involving domestic or family violence, that occur in the Muscogee (Creek) Nation territorial jurisdiction and that involve an offense by an Indian offender against an Indian victim;~~
2. ~~The enforcement of certain crimes involving domestic or family that occur in the Muscogee (Creek) Nation territorial jurisdiction and that involve an offense by a non-Indian offender against an Indian victim;~~
3. ~~The enforcement of the criminal provisions of the Federal Violence Women Act (VAWA), 18 U.S.C. §§ 2261-2262, over a person who leaves Indian country as defined by VAWA, 18 U.S.C. §2266, with the intent to commit certain crimes involving domestic or family~~

~~violence, and who in the course of or as a result of such travel, engage in such conduct as more specifically described in VAWA; and~~

4. ~~Any other provisions of VAWA granting Federal Courts jurisdiction over crimes involving domestic or family violence or dating violence in Indian country as defined by VAWA, 18 U.S.C. §2266.~~

C. Construction. Nothing herein shall be construed as limiting the authority of the Muscogee (Creek) Nation to take any of the following actions in the Muscogee (Creek) Nation territorial jurisdiction:

1. Lighthorse police enforcement of state or federal criminal laws against a non-Indian offender pursuant to a cross-deputization agreement;
2. Lighthorse arrest of a non-Indian offender, detention and referral to appropriate authorities for violation of a foreign protection order in the Muscogee (Creek) Nation territorial jurisdiction when the foreign protection order was issued against a non-Indian offender, pursuant to 18 U.S.C. § 2265; or
3. Civil enforcement related to a violation of a protection order, in The Muscogee (Creek) Nation shall have full territorial civil jurisdiction to issue and enforce protection orders involving any person, including the authority to enforce any order through civil contempt proceedings, to exclude violators from Indian land, and to use other appropriate mechanisms, in matters arising anywhere in Muscogee (Creek) Nation Indian country or otherwise within the authority of the Muscogee (Creek) Nation, regardless of the Indian or non-Indian status of the offender and the victim.
  - a. Each violation of a provision of this Code shall be considered a civil violation subject to enforcement by any means not prohibited by federal law, including, but not limited to, the issuance of a fine of up to Ten Thousand Dollars (\$10,000.00), forfeitures, and/or civil contempt.
  - b. A civil action brought under this paragraph may be filed in the Muscogee (Creek) Nation District Court by the Nation or any person harmed by a person's violation of this Code.

§ 3-303.  
violence

General duties of law enforcement officers to protect victims and prevent

A Lighthorse police or other authorized law enforcement officer who responds to an allegation of domestic, dating, or family violence or a crime involving domestic, dating, or family violence occurring in the Muscogee (Creek) Nation territorial jurisdiction shall use all reasonable means to protect the victim and prevent further violence, including but not limited to:

1. Taking the action necessary to provide for the safety of the victim and any family or household member;
2. Confiscating any weapon involved in the domestic, dating, or family violence as provided in subsection ~~G of Title 6, §3-304~~ F of Title 6, §3-305;
3. Transporting or obtaining transportation for the victim and any child to a shelter;
4. Assisting the victim in removing essential personal effects;
5. Assisting the victim and any child in obtaining medical treatment, including obtaining transportation to a medical facility; and
6. Giving the victim immediate and adequate notice of the rights of victims and of the remedies and services available to victims of domestic or family violence.

**§ 3-304. Response of Lighthorse police or other authorized law enforcement officers related to complaint of domestic or family violence**

**A. Determination of identity of primary aggressor.** If a Lighthorse police or other authorized law enforcement officer receives complaints of domestic, dating, or family violence from two (2) or more opposing persons, the officer shall evaluate each complaint separately to determine who was the primary aggressor. If the officer determines that one person was the primary physical aggressor, the officer need not arrest the other person believed to have committed domestic or family violence. In determining whether a person is the primary aggressor the officer shall consider:

1. Prior complaint of domestic or family violence;
2. The relative severity of the injuries inflicted on each person;
3. The likelihood of future injury to each person; and
4. Whether one of the persons acted in self-defense

**B. Prohibited actions.** A Lighthorse police or other authorized law enforcement officer shall not:

1. Discourage a victim of domestic, dating or family violence from pressing charges against the perpetrator by any means; or

2. Discourage a request for intervention by law enforcement by any party, such as threatening, suggesting, or otherwise indicating the possible arrest of all parties.

**§ 3-305. Arrests; rights of persons detained; reports**

A. Presumption of need to arrest. If a Lighthorse police or other authorized law enforcement officer has probable cause to believe that a person has committed a crime involving domestic, dating or family violence, even if the crime was committed outside the presence of the officer, the Lighthorse police or other authorized law enforcement officer shall presume that arresting and charging the person is the appropriate response. A Lighthorse police or other authorized law enforcement officer shall not base the decision to arrest or not to arrest on the specific consent or request of the victim or the Officer's perception of the willingness of a victim or witness to a crime involving domestic, dating or family violence to testify or otherwise participate in a judicial proceeding.

B. Warrantless arrest for crimes involving domestic, dating or family violence outside the presence of law enforcement officer. If a Lighthorse police or other authorized law enforcement officer observes a recent physical injury to, or an impairment of the physical condition of the victim, the officer shall arrest without a warrant a person located within the Muscogee (Creek) Nation territorial jurisdiction, including his/her place of residence. If the Lighthorse police or other authorized law enforcement officer has probable cause to believe that the person, within the preceding seventy-two (72) hours, has committed a crime involving domestic, dating or family violence in the Muscogee (Creek) Nation territorial jurisdiction, although the crime did not take place in the presence of the Lighthorse police or other authorized law enforcement officer.

C. Warrantless arrest for violation of protection order issued by District Court. A Lighthorse police or other authorized law enforcement officer, without a warrant, may arrest and take into custody a person if the Lighthorse police or other authorized law enforcement officer has reasonable cause to believe that:

1. An emergency ex parte, temporary or final protection order has been issued and served upon the person, pursuant to this title;
2. The person named in the order has received notice of the order and has had a reasonable time to comply with such order; and
3. The person named in the order has violated the order or is then acting in violation of the order in the Muscogee (Creek) Nation territorial jurisdiction, whether the violation was committed in or outside the presence of the officer.

**D. Mandatory warrantless arrest for violation of conditions of pretrial release.** If a Lighthorse officer or other authorized law enforcement officer has probable cause to believe that a person has violated a condition of pretrial release imposed in accordance with Title 6, §3-307 in the Muscogee (Creek) Nation territorial jurisdiction and verifies that the alleged violator has notice of the condition, the officer shall, without a warrant, arrest the alleged violator whether the violation was committed in or outside the presence of the officer.

**E. Warrantless arrest for violation of foreign protection orders.** A Lighthorse police or other authorized law enforcement officer, without a warrant, may arrest and take into custody a person if the following conditions have been met:

1. The Lighthorse police or other authorized law enforcement officer has reasonable cause to believe that a foreign protection order has been issued pursuant to the law of the issuing court; and
2. The Lighthorse police or other authorized law enforcement officer has reasonable cause to believe the person named in the order has violated the order or is then acting in violation of the order in the Muscogee (Creek) Nation territorial jurisdiction, whether the violation was committed in or outside the presence of the officer.

**F. Seizure of weapons incident to arrest.** Incident to an arrest for a crime involving domestic, dating or family violence, a Lighthorse police or other authorized law enforcement officer:

1. Shall seize all weapons that are alleged to have been involved or threatened to be used in the commission of a crime or any weapon in the immediate vicinity of the alleged commission of the offense. The immediate vicinity is not limited to the "wingspan" of the perpetrator and can include additional rooms of the home if weapons are reasonably suspected to be present; and
2. May seize a weapon that is in the plain view of the officer or was discovered pursuant to a consensual search, as necessary for the protection of the officer or other persons. The seizure of weapons is without regard to ownership of the weapons; weapons owned by a third party are subject to seizure when officers conclude that the weapon must be seized to protect law enforcement, victims of domestic violence or others. Weapons belonging to a 3<sup>rd</sup> party will only be returned to the owner upon showing that the safety of the victim can be ensured.

G. Rights of person detained. Any person detained pursuant to this section shall be brought before the District Court within ~~twenty-four (24)~~ forty-eight (48) hours after arrest to answer to a charge for violation of the order, at which time the District Court shall do each of the following:

1. Set a time certain for a hearing on the violation of the order within ~~seventy-two (72) hours~~ twenty (20) days after arrest, unless extended by the District Court on the motion of the arrested person;
2. Set a reasonable bond pending a hearing of the violation of the order, provided, however, that any person arrested for a crime of domestic violence shall be detained for a period of no less than forty-eight (48) hours before being allowed to post bond; 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.

H. Written report stating the grounds for action. In addition to any other report required, a Lighthouse police or other authorized law enforcement officer who does not make an arrest after investigating a complaint of domestic, dating or family violence or who arrests two or more persons for a crime involving domestic, dating or family violence shall submit a written report setting forth the grounds for not arresting or for arresting both parties.

§ 3-306. Assistance to victims by Lighthouse police or other authorized law enforcement officer

A. Notice to victim. The Lighthouse police or other authorized law enforcement officer shall give the victim immediate, adequate oral and written notice of the rights of victims and of the remedies and services available to victims of domestic, dating or family violence. The written notice shall include resources available in the Community for information relating to domestic, dating and family violence, treatment of injuries, and places of safety and shelters. The written notice shall not include the addresses of shelters, unless the location is public knowledge and shall be provided in the native language of the victim, if practicable, when the native language of the victim is not English. The written notice shall be substantially in the following form:

"If you are the victim of domestic, dating or family violence and you believe that law enforcement protection is needed for your physical safety, you have the right to request that the officer assist in providing for your safety, including asking for an emergency order for protection. You may also request that the officer 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