

# FALLON PAIUTE-SHOSHONE TRIBE



## LAW AND ORDER CODE

### Title 13

### Domestic Violence

# Fallon Paiute-Shoshone Tribe

## Law & Order Codes

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#### TITLE 13

#### Domestic Violence

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**Law and Order Code  
TITLE 13  
DOMESTIC VIOLENCE**

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**TITLE 13 – DOMESTIC VIOLENCE**

**13-10 - GENERAL PROVISIONS**

**13-10-010 Purpose**

This Domestic Violence Title shall be construed to promote the following:

- (a) That violence against family members is not in keeping with traditional Tribal values. It is the expectation that the criminal justice system respond to victims of domestic violence with fairness, compassion, and in a prompt and effective manner. The goal of this Title is to provide victims of domestic violence with safety and protection.
- (b) It is also the goal to utilize the criminal justice system in setting standards of behavior within the family that are consistent with traditional Tribal values and, as such, the criminal justice system will be utilized to impose consequences upon offenders for behaviors that violate traditional Tribal values that hold women and children as sacred. These consequences are meant as responses that will allow offenders the opportunity to make positive changes in their behavior.
- (c) The prevention of future violence in all families through prevention and public education programs that promote cultural teachings and traditional Tribal values so as to nurture non-violence within Tribal families and respect for Tribal women.

**13-10-020 Authority to regulate domestic violence in its jurisdictional territory.**

- (a) The Fallon Paiute-Shoshone Tribe has the right to exclude non-members as well as an inherent authority to protect its political integrity and provide for the welfare of its members and others who choose to live within its territory.
- (b) The problem of domestic violence within the boundaries of the Fallon Paiute-Shoshone Reservation and Colony is seriously impacting the ability of the Tribe to provide for the health and well-being of its Tribal members and threatens the political integrity of the Tribe.
- (c) Domestic violence is also being perpetrated by or against persons who are not members of the Fallon Paiute-Shoshone Tribe. These activities of non-members and non-Indians, who have entered into consensual relations with Tribal members, will be regulated under this Title just as the activities of Tribal members.

**13-10-030 Definitions.**

Unless the context otherwise requires, as used in this Title:

- (a) "Domestic 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 or household member;
  - (2) Placing a family or household member in fear of physical harm; or
  - (3) Causing a family or household member to engage involuntarily in sexual activity by force, threat of force, or duress.
- A “crime involving domestic violence” is further defined in Section 13-20-010.
- (b) "Family or household members" include:
    - (1) Adults or minors who are current or former spouses;
    - (2) Adults or minors who have had or are having a “dating relationship,” which means frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement, but does not include a casual relationship or an ordinary association between persons in a business or social context.;
    - (3) Adults or minors who are engaged in or who have engaged in a sexual relationship;
    - (4) Adults or minors who are related or formerly related by marriage;
    - (5) Persons who have a child in common; and
    - (6) Minor children of a person in a relationship that is described in paragraphs (1) through (5) above.
  - (c) “Domestic violence advocate” means an employee of, or volunteer for, a program for victims of domestic violence and/or sexual assault who:
    - (1) Has a primary function of rendering advocacy, counseling, or assistance to victims of domestic violence and/or sexual assault (and their children); supervising the employees or volunteers of the program; or administering the program;
    - (2) Has undergone a minimum of 40 hours of specialized advocate training; and,
    - (3) Works under the direction of a supervisor of the program, supervises employees or volunteers, or administers the program.
  - (d) "Program of intervention for perpetrators" and/or "offender's program" means a specialized program that accepts court orders and voluntary participants that offers intake, orientation, and placement in a domestic violence class; and offers such classes. The offender’s program may be provided by the Tribe or through referrals to an outside entity.
  - (e) "Program for victims of domestic violence" means a specialized program for victims of domestic violence and their children that includes but is not limited to advocacy, shelter, crisis intervention, supportive services, and referral.
  - (f) "Safety plan" means a written or oral outline of actions to be taken by a victim of domestic violence to secure protection and support after making an assessment of the dangerousness of the situation.
  - (g) “Domestic violence probation officer”, for the purposes of this Title, means a duly authorized officer of the Tribe’s Police Department, recognized and authorized to monitor and supervise persons placed on probation, parole, or supervised release for a crime of domestic violence.
  - (h) "Public servant" means any law enforcement officer, dispatcher, detention guard, law enforcement supervisor or administrator, judge, court clerk, prosecutor, court administrator, juvenile presenting officer, counselor, or domestic violence probation officer.

### **13-10-040 Severability Clause**

If any clause, section or part of this Title is declared invalid by the Tribal Court, such shall not render invalid the remainder thereof, but shall be confined in its operation to the offending clause, section or part.

### **13-10-050 Specific Applicability**

The provisions of this Title takes precedence over any general laws of applicability.

## **13-20 CRIMINAL PENALTIES AND PROCEDURES**

### **13-20-010 "Crime involving domestic violence" defined.**

- (a) Crimes involving domestic violence as defined in Section 13-10-030 are oftentimes already defined under the Law and Order Code Title 5 – Code of Criminal Offenses. The purpose of this Title is to clarify that domestic violence is a separate crime punishable separate and apart from the underlying crime, and to acknowledge that when the following crimes are perpetrated against a family or household member, a finding of such shall trigger the application of this Title. The crime of Domestic Violence occurs when a family or household member commits one or more of the following offenses (as defined in Tribal law or similar provisions in any applicable state or federal law) against another family or household member:
- (1) Arson;
  - (2) Assault Offenses (Battery and Assault);
  - (3) Burglary;
  - (4) Destruction of Property, Damage, Vandalism of Property
  - (5) Homicide Offenses (Murder and Nonnegligent Manslaughter, Negligent Manslaughter, and Justifiable Homicide);
  - (6) Kidnapping, Abduction, Unlawful Restraint;
  - (7) Sexual Offenses, Forcible (Forcible Rape, Forcible Sodomy, Sexual Assault with an Object, and Forcible Fondling);
  - (8) Stolen Property Offenses, Theft;
  - (9) Weapon Law Violations;
  - (10) Disorderly Conduct;
  - (11) Family Offenses, Non-Violent (Criminal Non-Support, Deprivation of Resources, Isolation, Failure to Support Dependent Persons), Criminal Child Abuse, Criminal Child Neglect;
  - (12) Stalking;
  - (13) Trespass;
  - (14) Harassment.
- (b) Committing the above-stated should not diminish the seriousness of domestic violence or take precedence over the crime of domestic violence since the intent of this Title is to prevent further acts of domestic violence. The commission of one of the above-referenced crimes against a family or household member shall trigger the application of this Title under Section 13-20-050 herein, even if the criminal complaint is also charged as one these separate offenses. The purpose of this Title is to differentiate between those crimes committed against non-family and non-household members and those against family and household members as defined in Section 13-10-030 which shall be subject to the provisions of this ordinance.
- (c) The use of alcohol in the committing of domestic violence or any crime related to domestic violence shall not diminish the seriousness of domestic violence or take

precedence over the crime of domestic violence. The fact that the perpetrator was under the influence at the time of the offense shall not be utilized by law enforcement, prosecution or court to mitigate the severity of the violence. Voluntary intoxication, which is available as a legal defense only in cases involving specific intent crimes, shall not be available as a defense to a perpetrator, nor shall it be utilized to lessen the consequences to the perpetrator

**13-20-020 Violation of certain orders for protection is a misdemeanor.**

- (a) Violation of one of the following orders issued in accordance with this Title is a misdemeanor, to be designated and charged as a Violation of Order for Protection:
  - (1) An order enjoining the respondent from threatening to commit or committing acts of domestic violence against the petitioner or other family or household member;
  - (2) An order prohibiting the respondent from harassing, annoying, telephoning, contacting, or otherwise communicating verbally or in writing with the petitioner directly or indirectly through family members, relations by marriage, friends, and co-workers;
  - (3) An order removing and excluding the respondent from the residence of the petitioner;
  - (4) 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;
  - (5) An order granting temporary custody and child support regarding children, denying visitation or outlining specific visitation conditions and restrictions, including supervised visitation;
  - (6) An order prohibiting the respondent from using or possessing a firearm or other weapon as specified by the court and in accordance with 18 U.S.C. § 922;
  - (7) An order requiring the respondent to attend domestic violence classes; and
  - (8) An order requiring the respondent to obey all laws of the Fallon Paiute-Shoshone Tribe.
- (b) The petitioner who is granted an order for protection cannot violate or be arrested for a violation of her/his own order for protection.
- (c) Any person granted a civil or criminal order of protection from the Tribal Court or any other court of competent jurisdiction cannot be punished for a violation of that order for protection under this Title. It shall not be a defense to a charge of violation of an order for protection under this section that the victim consented to the violation by encouraging contact or a violation of the order of protection. A violation of an order for protection shall be a criminal violation punishable under Tribal, state, or federal law.

**13-20-030 Penalties.**

When a defendant makes a judicial admission, pleads guilty to, or has been found guilty of a crime involving domestic violence as defined by this code, or violation of an order for protection, the following minimum sentencing provisions shall apply uniformly to all offenders:

- (a) First Offense:
  - (1) A first offense for domestic violence shall be punished one classification higher than the underlying offense. For example, if the underlying crime is punished as a Class C offense, then a first offense of domestic violence shall be punished as a Class B offense. Additionally for a first offense of domestic violence, the

defendant shall be required to successfully complete a domestic violence offender's program (if one is available) and a minimum two years supervised probation, including all court-ordered and probation department rehabilitative conditions.

- (2) Any jail sentence for a first domestic violence conviction may be suspended dependent upon completion of a domestic violence offender's program (if one is available) and two years supervised probation, including all court-ordered and probation department administrative and rehabilitative conditions.
- (3) Completion of any sentenced jail time shall not be construed to satisfy, excuse, or negate the requirement of mandatory successful completion of any domestic violence offender's program.
- (b) Second or subsequent offense for domestic violence shall be punished as a Class A offense (to a term of imprisonment not to exceed one (1) year, to a fine not to exceed \$5,000.00, or to both such imprisonment and fine) and mandatory successful completion of a domestic violence offender's program (if one is available) and minimum three years supervised domestic violence probation, including all court-ordered and probation department rehabilitative conditions. Completion of any sentenced jail time shall not be construed to satisfy, excuse, or negate the requirement of mandatory successful completion of the domestic violence offender's program.
- (c) Conviction of a third offense of domestic violence shall require that the court designate for the record that the offender has been designated as a habitual domestic violence offender and subject to the additional provisions of Section 13-20-200 of this Title.
- (d) Any person who makes a judicial admission, pleads guilty to, or has been found guilty of a crime, or subsequent crime, of domestic violence shall be placed on probation with the Tribe's Probation Department or Police Department for a term consistent with the sentencing conditions of this section. The Probation or Police Department shall have administrative and rehabilitative latitude to set rehabilitative standards and conditions consistent with assisting the offender to attain a non-violent, productive, and alcohol-free/drug-free life path.

**13-20-040 Duties of Tribal police officer to victim of domestic violence; required notice to victim.**

A Tribal police officer who responds to an allegation of domestic violence shall use all reasonable means to protect the victim and others present from further violence and has a duty to arrest upon finding probable cause to believe that domestic violence has occurred. A Tribal police officer need not obtain a search warrant to enter a residence where s/he has probable cause to believe a crime of domestic violence is occurring or has just occurred, nor to seize property under this subsection. Such reasonable means include but are not limited to:

- (a) Taking any lawful 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 violence.
- (c) Transporting or obtaining transportation for the victim and any child(ren) to a shelter or any other place of safety.
- (d) Assisting the victim in removing essential personal effects.
- (e) Assisting the victim and any child(ren) in obtaining medical treatment, including obtaining transportation to a medical facility.

- (f) Giving the victim immediate and adequate notice of the rights of victims and/or the remedies and services available to victims of domestic violence, including the contact information for the Tribe's Victim Services Program.
- (g) Enforcing an order for protection.

**13-20-050 Mandatory arrest for crimes involving domestic violence; determination of predominate aggressor; required report.**

- (a) A Tribal police officer shall arrest any person, with or without a warrant, whom s/he has probable cause to believe committed any crime involving domestic violence as defined in Section 13-20-010, either in the presence of the officer or within 24 hours of a report to law enforcement of the commission of such offense. The officer shall promptly file a report and charge the arrestee with Domestic Assault.
- (b) Regardless of the elements of any other crime committed in conjunction with crimes of domestic violence, the crime of Domestic Violence shall be considered a separate and distinct offense and shall be charged in addition to any other crime.
- (c) If a Tribal police officer receives complaints of domestic violence from two or more opposing persons, the officer shall evaluate each complaint separately to determine who was the predominate aggressor. If the officer determines that one person was the predominate aggressor, the officer need not arrest the other person alleged to have committed domestic violence. In determining whether a person is the predominate aggressor, the officer shall consider:
  - (1) The history of domestic violence, both documented prior complaints and convictions and the Tribal police officer's own prior knowledge of the family;
  - (2) The relative severity of the injuries inflicted on each person, i.e., who in this relationship poses the most danger to the other;
  - (3) The likelihood of future injury to each person, i.e., who is at the most risk of future harm;
  - (4) Whether one of the persons acted in self-defense and/or in defense of others; and
  - (5) The degree to which one of the persons has acted with more deliberate intent to control, isolate, intimidate, emotionally demean, cause injury or pain or fear of harm to the other person or to a third party.
- (d) A Tribal police officer shall not threaten, suggest, or otherwise indicate the possible arrest of all parties to discourage requests for intervention by any party.
- (e) A Tribal police officer shall not consider the use or abuse of alcohol by either party in making a determination as to whether or not domestic violence has been committed.
- (f) The employment, economic, educational, social, physical and/or mental health and political status of the alleged perpetrator and/or victim shall not be considered in making an arrest.
- (g) The Tribal police officer is not required to make an arrest based on who hit who first but shall consider the dynamics of domestic violence and the definition of predominate aggressor in determining which party to arrest.
- (h) In addition to any other report required, a Tribal police officer who does not make an arrest after investigating a complaint of domestic violence, or who arrests two or more persons for a crime involving domestic violence, must submit a written report setting forth the grounds for not arresting or, in instances where both parties are arrested, separate reports for each party must be submitted that describe how the determination was made that both parties acted as predominant aggressors and that neither party acted primarily in self-defense.

- (i) Copies of all reports shall be forwarded to the Tribe's Victim Services Program within 24 hours of reports of domestic violence, regardless of whether or not an arrest was made, arrests were made of two or more persons, or a predominate aggressor was identified and arrested.

**13-20-060 Mandatory arrest for certain violations of orders for protection.**

- (a) When a Tribal police officer has probable cause to believe that a respondent has violated one of the following orders of the court and verifies the existence of the order, the officer shall, without a warrant, arrest the apparent violator, whether the violation was committed in or outside the presence of the officer, if the orders are issued in accordance with this Title, or the laws of any other jurisdiction, provided such laws comply with 18 U.S.C. § 2265. An officer making an arrest under this subsection shall be immune from suit provided s/he acted in good faith. Such orders may include, but are not limited to:
  - (1) An order enjoining the respondent from threatening to commit or committing acts of domestic violence against the petitioner or other family or household member;
  - (2) An order prohibiting the respondent from harassing, annoying, telephoning, contacting or otherwise communicating with the petitioner, either directly or indirectly through family, relations by marriage, friends, and co-workers;
  - (3) An order removing and excluding the respondent from the residence of the petitioner;
  - (4) 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;
  - (5) An order prohibiting the respondent from using or possessing a firearm or other weapon specified by the court;
- (b) The petitioner who is granted an order for protection cannot violate or be arrested for violation of her/his own order for protection.

**13-20-070 Authority of Tribal police officer to seize weapons.**

Incident to an arrest, or in the course of securing a crime scene involving domestic violence, a Tribal police officer:

- (a) 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; and
- (b) Shall seize a weapon that is in the plain view or which is located during a search authorized by a person entitled to consent to the search. The seizure of weapons is without regard to ownership of the weapons; weapons owned by a third party are subject to confiscation when officers conclude that the weapon was used in the commission of a crime or must be confiscated to protect law enforcement, victims of domestic violence, or others.

**13-20-080 Immunity.**

- (a) Any Tribal police officer shall have immunity from any liability, civil or criminal, in making arrests or exercising any other authority granted under this section when domestic violence or any crimes involving domestic violence have been committed, if the Tribal police officer acts in good faith so as to provide protection for victims of domestic violence.

- (b) Tribal police 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.

**13-20-090 Conditions of pre-trial release.**

No person arrested for a crime of domestic violence or violation of an order for protection under this ordinance shall be released from detention until after the expiration of 12 hours from arrest, notwithstanding the ability to post a cash or surety bond or the failure of the prosecutor to file a criminal complaint.

**13-20-100 Mandatory arrest for violation of conditions of release.**

- (a) If a Tribal police officer or domestic violence probation officer has probable cause to believe that a person on domestic violence probation, parole, or other supervised release has violated a condition of release imposed in accordance with Section 13-20-090 herein, the officer shall, without a warrant, arrest the alleged violator whether the violation was committed in or outside the presence of the officer. A domestic violence probation officer may, for reasons of dangerousness and safety, direct a Tribal police officer to take the person into physical custody on the authority of the probation officer's probable cause.
- (b) A sworn affidavit by a domestic violence probation officer, Victim Services Program employee or upon the report of a person to be protected under a domestic violence order for protection, of such violation of a condition of release imposed in accordance with Section 13-20-090 herein will constitute probable cause to arrest without a warrant, under this section.

**13-20-110 Duty of prosecutor to notify victim.**

- (a) A prosecutor shall make reasonable efforts to notify a victim of an alleged crime involving domestic violence when the prosecutor has decided to decline prosecution of the crime, to dismiss the criminal charges filed against the defendant, or to enter into a plea agreement.
- (b) Release of a defendant from custody must not be delayed because of the requirements of subsection (a), but may delay the release for a period not to exceed two (2) hours to allow for notification or attempt to notify the alleged victim by law enforcement personnel or Victim Services Program employees.

**13-20-120 Record of dismissal required in court file.**

When the court dismisses criminal charges or a prosecutor moves to dismiss charges against a defendant accused of a crime involving domestic violence, the specific reasons for the dismissal must be recorded in the court file. The prosecutor shall indicate the specific reason why any witnesses are unavailable and the reasons the case cannot be prosecuted. Any dismissal of a complaint by the Court, for any reason other than insufficient evidence, may be appealed by the Tribe or the victim to the Tribe's Court of Appeals.

**13-20-130 Dismissal of criminal case prohibited because civil compromise reached.**

A court shall not dismiss a criminal case involving domestic violence for the sole reason that a civil compromise or settlement is reached. Evidence of a civil compromise or settlement shall not be admissible in the criminal proceeding as evidence of consciousness of guilt or innocence, or an admission against interest. It shall also not be used to impeach a victim's testimony.



**13-20-140 Spousal privileges inapplicable in criminal proceedings involving domestic violence.**

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 an alleged crime involving domestic violence perpetrated by the other spouse:

- (a) The privilege of confidential communication between spouses.
- (b) The testimonial privilege of spouses.

**13-20-150 Victim-advocate privilege applicable in cases involving domestic violence.**

- (a) Except as otherwise provided in Subsection 2, a victim of domestic violence may refuse to disclose, and may prevent a Victim Services Program employee or other domestic violence advocate from disclosing, confidential oral communication between the victim and the advocate and written records and reports concerning the victim unless the privilege is waived by:
  - (1) The victim; or
  - (2) The death of the victim.
- (b) The privilege does not relieve a person from any duty imposed in the mandatory reporting of child abuse or neglect. A person may not claim the privilege when providing evidence in proceedings concerning child abuse or neglect.
- (c) As used in this subsection, "domestic violence advocate" means an employee of or volunteer for a program for victims of domestic violence who:
  - (1) Has a primary function of rendering advice, counseling, or assistance to victims of domestic violence; supervising the employees or volunteers of the program; or administering the program;
  - (b) Has undergone a minimum of 40 hours of specialized domestic violence advocacy training; and
  - (c) Works under the direction of a supervisor of the program, supervises employees or volunteers, or administers the program.

**13-20-160 Residential confinement in home of victim prohibited; cultural remedies restricted.**

In cases involving domestic violence, a court shall not order residential confinement for a perpetrator in the home of the victim. Nor shall the court order any action, even though the action might commonly be perceived by the community as a cultural remedy, that might jeopardize the safety of the victim.

**13-20-170 Diversion prohibited; deferred sentencing prohibited; no contest prohibited.**

The Court shall not approve or entertain a plea of no contest, or consider diversion or deferred sentencing recommendations for a perpetrator of domestic violence.

**13-20-180 Appearance or testimony of victim not required.**

No judge or prosecutor shall require a victim of domestic violence or related offense addressed by this Title to appear or testify as a condition of proceeding with the prosecution of any offense included in this Title.

**13-20-190 Juveniles.**

Any juvenile committing domestic violence as defined in Section 13-10-030 will be charged with domestic violence following the procedures under Title 9 Child Delinquency. Juvenile domestic violence offenses or case files shall not be made available or considered for the purposes of determining habitual domestic violence offender status under Section 13-20-200 of this Title.

**13-20-200 Habitual domestic violence offender status.**

- (a) Any person convicted or having pled guilty to three or more offenses of domestic violence, or related offenses under this Title shall be judicially designated as a Habitual Domestic Violence Offender, such designation to be displayed on the outside of, and made a part of, any subsequent criminal case file arising from any violation of this Title or Title 5 Code of Criminal Offenses. The court shall further provide that:
- (1) Judicial notice of such status shall be taken regarding sentencing for any further violations of this Title or Title 5 Code of Criminal Offenses;
  - (2) A current and updated registry be maintained for information on habitual domestic violence offenders, with inclusion of the registry in any Tribal criminal information database and provision to make the information available upon inquiry from any court, law enforcement, or domestic violence advocacy agency;
  - (3) Consecutive sentencing be implemented for any further violations of this Title or Title 5 Code of Criminal Offenses; and
  - (4) Any person judicially designated as a Habitual Domestic Violence Offender shall be subject to extended rehabilitative efforts, including but not limited to extended probation, and increased monitoring efforts as outlined and recommended to the court;
  - (5) Any person judicially designated as a habitual domestic violence offender under this section shall be subject to the permanent or extended prohibition against possessing, using, selling, trading or access to any firearm or ammunition.
- (b) Qualifying cases for determining habitual offender status shall be any domestic violence offense charged after December 31, 1998.

**13-20-210 Denying, hindering, or delaying provision of emergency or law enforcement services to a family or household member; mandatory arrest; penalties.**

- (a) It shall be a misdemeanor offense of Hindering Emergency Services for:
- (1) Any person to use force, fear, or intimidation against a family or household member to prevent that family or household member from contacting law enforcement services, emergency medical services, or the 911 reporting system to secure appropriate law enforcement or emergency services assistance on behalf of him/herself or another; or
  - (2) Any person to destroy, disable, conceal, or remove from the immediate premises any telephone or other telecommunications devices, or any motor vehicle or other means of transportation, with the intent to deny, hinder, delay, or prevent any family or household member from attempting to secure law enforcement or emergency services in a timely and expedient manner.
- (b) Any person who is convicted of, or pleads guilty to, subsection 1 or 2 shall be subject to punishment of a Class B offense (to a term of imprisonment not to exceed six (6) months, to a fine not to exceed \$1,000.00, or to both such imprisonment and fine).

**13-20-220 Specific Applicability.**

The provisions of this Chapter 13-20 apply specifically to this Title and take precedence over any general laws of applicability.

## **13-30 CIVIL ORDERS FOR PROTECTION**

### **13-30-010 Eligible petitioners for order.**

- (a) A person who is or has been a victim of domestic violence may file a petition for an order for protection against any person who has threatened or has committed an act of domestic violence as defined in Section 13-20-010, and is a family or household member as defined in Section 13-10-030 of this Title.
- (b) A parent, guardian, or other representative may file a petition for an order for protection on behalf of a child or family or household member, or former household member on behalf of a child against a family or household or former household member, who commits an act of domestic violence.
- (c) Issuance of an order for protection must arise from a situation of domestic violence as defined by Section 13-20-010 of this Title.

### **13-30-020 Uniform form required for petitions and orders; required statements in petitions and orders; no fee for filing.**

- (a) The Tribal Court system shall:
  - (1) Develop and adopt uniform forms for petitions and orders, including but not limited to such orders issued pursuant to divorce, custody, protection and other domestic relations hearings;
  - (2) Provide that the title of any form or order developed under this section, whether an emergency, emergency ex parte, or permanent order for protection, shall include the words "Order for Protection"; and
  - (3) Provide that all petitions and forms developed and implemented under this section address and include all requirements for compliance with full faith and credit provisions of the Violence Against Women Act, 18 U.S.C. § 2265.
- (b) In addition to any other required information, the petition for an order for protection must contain a statement listing all current or pending civil or criminal actions involving one or both parties.
- (c) The following statements must be printed on the order for protection:
  - (1) The judge shall include in the order the consequences for violation of the order for protection.
  - (2) "If so ordered by the court, the respondent is forbidden to enter or stay at the petitioner's residence, even if invited to do so by the petitioner or any other person. In no event is the order for protection voided by any such invitation or contact initiated by the plaintiff.";
  - (3) "Any person who is subject to an order for protection shall not possess, own, buy, sell, trade, or have immediate access to any firearm or ammunition, in violation of Section 13-20-060 of this Title and 18 U.S.C. § 922(g)(8). Violation of firearms restrictions shall result in prosecution under Tribal and/or federal law."
- (d) Except as otherwise provided in Section 13-30-050, a petition for an order for protection must be in writing, verified, and subscribed to in the manner provided by Tribal law.
- (e) All orders for protection must be issued on the form adopted in accordance with Subsection (a).
- (f) There shall be no filing fees for a protection order under this Title.
- (g) The order for protection may include a requirement that the victim's address be kept confidential.

**13-30-030 Jurisdiction; venue; residency not required to petition.**

- (a) The Tribal Court has jurisdiction over any petition for orders for protection under this Title when the petitioner or respondent is domiciled or found within the Tribe's jurisdiction or any act of domestic violence occurred within the Tribe's jurisdiction or when the court is being asked to recognize and enforce a valid order of another court of competent jurisdiction. The Court shall construe this section liberally to exercise maximum jurisdiction.
- (b) There is no minimum requirement of residency to petition for or to be granted an order for protection.

**13-30-040 Continuing duty to inform court of other proceedings; effect of other proceedings; delay of relief prohibited; omission of petitioner's address.**

- (a) At any hearing in a proceeding to obtain an order for protection, each party has a continuing duty to inform the court of each proceeding for an order for protection, any civil litigation, each proceeding in family or juvenile court, and each criminal case involving the parties, including the case name, the file number, and the tribe, county, and/or state, including federal proceedings, if that information is known by the party.
- (b) An order for protection is in addition to and not in lieu of any other available civil or criminal proceeding. A petitioner is not barred from seeking relief because of the existence of a pending action between the parties.
- (c) A petitioner may omit her or his address from all documents filed with the court. If a petitioner omits her or his address, the petitioner must provide the court a mailing address or, in the event the petitioner is utilizing an attorney or advocate, the name of an attorney/advocate that has the knowledge to be able to contact the petitioner. If disclosure of petitioner's address is necessary to determine jurisdiction, the court may order the disclosure to be made:
  - (1) After receiving the petitioner's consent;
  - (2) Orally and in chambers, out of the presence of the respondent and a sealed record be made; or
  - (3) After a hearing, if the court takes into consideration the safety of the petitioner and finds such disclosure is in the interest of justice.

**13-30-050 Order for protection; modification of orders; relief available ex parte; relief available after hearing; duties of the court; duration of order.**

- (a) If it appears from a petition for an order for protection, or a petition to modify an order for protection, that domestic violence has occurred or a modification of an order for protection is required, the Tribal Court may:
  - (1) Without notice or hearing, immediately issue an order for protection ex parte or modify an order for protection ex parte as it deems necessary to protect the petitioner; or
  - (2) Upon notice, issue an order for protection or modify an order after a hearing, whether or not the respondent appears;
- (b) A court may grant the following relief without notice and hearing in an order for protection or a modification issued ex parte, and the court may grant the following relief in a permanent order for protection or a modification of a permanent order for protection:

- (1) Enjoin the respondent from threatening to commit or committing acts of domestic violence against the petitioner and any designated family or household member;
  - (2) Prohibit the respondent from harassing, annoying, telephoning, contacting, or other communicating with the petitioner directly or indirectly through friends, relatives, or co-workers;
  - (3) Remove and exclude the respondent from the residence of the petitioner, regardless of ownership of the residence or lessee of record (but only on a temporary basis if the petitioner owns the residence and under conditions that will protect the owner's interest in the residence);
  - (4) Order the respondent to stay away from the residence, school, or place of employment of the petitioner, or any specified place frequented by the petitioner and any designated family or household member;
  - (5) Seize and prohibit the respondent from using or possessing a firearm or other weapon specified by the court;
  - (6) Order possession of the parties' residence and use of or ownership of any vehicle and other essential personal effect, regardless of the ownership, and direct the appropriate Tribal police officer to accompany the petitioner to the residence of the parties to ensure that the petitioner is safely restored to possession of the residence, vehicle, and other personal effects, or to supervise the petitioner's or respondent's removal of personal belongings;
  - (7) Prohibit the destruction, liquidation or disposal of any and all joint assets or property and any and all specific assets or property of the petitioner;
  - (8) Grant temporary custody of any minor children to the petitioner, including custody to any petitioner currently residing in a shelter or safe home; and
  - (9) Order such other relief as it deems necessary to provide for the safety and welfare of the petitioner and any designated family or household member.
- (c) The court may grant the following relief in an order for protection or a modification of an order after notice and hearing, whether or not the respondent appears:
- (1) Grant the relief available in accordance with Subsection (b);
  - (2) Specify arrangements for visitation of any minor child by the respondent and require supervision of that visitation by an independent third party or deny visitation if necessary to protect the safety of the petitioner and/or child;
  - (3) In specifying visitation arrangements, the court shall consider the respondent's overall lifestyle, especially as it pertains to alcohol and other chemical use;
  - (4) Order the respondent to:
    - (A) Pay rent or make payment on a mortgage on the petitioner's residence and pay for the support of the petitioner and minor child if the respondent is found to have a duty to support the petitioner or minor child-,
    - (B) Reimburse the petitioner or other person for any expenses associated with the domestic violence incident, including but not limited to medical expenses, counseling, shelter, and repair or replacement of damaged property; and
    - (C) Pay any costs and fees incurred by the petitioner in bringing the action;
- (d) The court shall:

- (1) Cause the order to be delivered to the Tribal Police or other appropriate person or agency for service;
  - (2) Make reasonable efforts to ensure that the order for protection is understood by the petitioner, and the respondent, if present; and
  - (3) Transmit, by the end of the next business day after the order is issued, a copy of the order for protection to the local law enforcement agency or agencies designated by the petitioner,
- (e) An order for protection issued ex parte or upon notice and hearing, or a modification of an order for protection issued ex parte or upon notice and hearing, is effective until further order of the court. If an ex parte order is entered, a hearing shall be scheduled within 14 days to allow the Respondent to respond to the petition. It shall be noted in bold or capital letters on the ex parte order:
  - (1) Advising the respondent that, "If a permanent order for protection is granted at a hearing, this ex parte order shall remain in effect until service is completed of the permanent order for protection."
  - (2) Advising the respondent that, "If the Respondent fails to appear at the hearing on a permanent order for protection, the court may issue a default judgement granting the relief requested; any failure to appear on the part of the Respondent shall not be used as a defense by the respondent of violation of rights."
- (f) The Tribal Police, through the Chief of Police, shall provide expedited service for orders for protection.

**13-30-060 Issuance of permanent orders for protection; duration of order; expiration date required.**

Any permanent order for protection issued under this chapter upon notice and opportunity to appear shall be issued for a period of not less than one (1) years. In the discretion of the Court, a permanent order for protection may be issued for a longer period of time, up to the projected lifespan of the petitioner. For the purpose of Full Faith & Credit compliance and enforcement, all such extended orders must include an expiration date, whether figured by actual length of the order or from projected lifespan of the petitioner.

**13-30-070 Required hearings; service; duty of court when order for protection denied.**

- (a) Except as otherwise provided in subsection b, if a court issues an order for protection ex parte or a modification of an order for protection ex parte and the court provides relief pursuant to subsection b of section 13-30-050, the court shall set a date for a permanent order for protection hearing regarding the ex parte order for protection within 14 days. If personal service cannot be completed, the court shall notify the respondent by mail, at the last and best known address of the respondent and/or petitioner, of the date and time of the hearing for a permanent order for protection.
- (b) Upon approval of an ex parte order, the civil clerk of courts shall set a hearing date scheduled for within 14 days and immediately serve the petitioner regardless of the involvement or lack of involvement of an advocate.
- (c) If applicable, the respondent shall be served upon arraignment on any related charge(s). The court clerk shall be responsible for forwarding a copy of the ex parte order to the jail for service before the respondent's release on any related charge(s).
- (d) In the event that service is not successful, the judge shall ask the petitioner, under oath at the hearing for the permanent order for protection, if s/he believes the respondent is avoiding service by concealment or otherwise, and does not know the respondent's whereabouts or current residence. If the petitioner so states, the judge shall direct the

civil clerk of courts to set another hearing date within 14 days and to initiate service by mail to the last and best known address of the respondent. Any ex parte order shall remain in effect per provision of Section 305, subsection 5, above.

- (e) At a second hearing for a permanent order for protection and in the event the respondent again does not appear, irregardless of service, the judge shall issue a permanent order for protection, if warranted, and grant relief as the court deems appropriate.
- (f) At a second hearing for a permanent order for protection and having made reasonable efforts to contact the respondent, and in the event the petitioner requests or the court provides relief in accordance with Subsection 13-30-050(b)(8) concerning custody of a minor child or the petitioner requests relief pursuant to Subsection 13-30-050(c)(2) or (3), such a hearing determining the above cited relief must be given precedence over all matters including older matters of the same character and involving the same petitioner and respondent.
- (g) In a hearing held pursuant to Subsection (a) or (b) of this section:
  - (1) Relief in accordance with Section 13-30-050 is available; and
  - (2) If the petitioner seeks further relief concerning an issue not outlined by the ex parte order for protection, the court may grant the relief or continue the hearing, or the petitioner may be granted a continuance to allow time to file a petition for modification of the order.
- (h) Whether or not the respondent has been arrested or charged with domestic violence, the judge shall order the respondent to participate in a domestic violence offender's program. Further, should the court determine that an assault has occurred or the threat of assault has occurred, the judge shall notify a tribal prosecutor for follow-up and possible investigation.
  - (1) A domestic violence offender's program shall be responsible for initiating a civil contempt action should the respondent fail to comply with court-ordered participation as outlined in this subsection.
  - (2) Completion, or partial completion, of a domestic violence offender's program, as ordered under this section, shall not be substituted to meet any subsequent or existing sentencing condition imposed under any other section of this Title.
- (i) The Tribal Police Department shall expedite service of permanent orders for protection. If the respondent is not able to be served in person after 30 days, the Department of Public Safety shall notify the civil clerk of courts and the permanent order for protection shall be mailed to the last and best known address of the respondent.
- (j) Any person against whom a permanent order for protection is granted under subsection 5 above may petition the court for reconsideration of the order for protection upon a showing, by clear and convincing evidence, that the respondent did not willingly and knowingly evade service and that there is a meritorious defense to the action. Upon such a showing, the court may grant another ex parte order to protect the petitioner and immediately schedule a hearing within 14 days. The respondent shall be served with a copy of the ex parte order at the same time the respondent's petition is granted.
- (k) If the court denies a petition for an order for protection or a petition to modify an order for protection that is requested without notice to the respondent, the court shall inform the petitioner, in person or by mail, of his or her continuing right to request a hearing upon notice to the respondent. The court must state in the court record why the request was denied.



**13-30-080 Petitioner cannot violate order for protection.**

If a respondent is excluded from the residence of or ordered to stay away from the petitioner, an invitation by the petitioner to the respondent, and any acceptance of that invitation, does not waive or nullify an order for protection. Further, the petitioner cannot be considered by such invitation as having violated, or be subject to arrest for a violation of, his/her own ex parte or permanent order of protection.

**13-30-090 Denial of relief prohibited.**

The continuing safety of the petitioner shall be the primary factor of consideration for petitions for relief under this Title. The court is prohibited from:

1. Denying a petitioner relief requested pursuant to Section 13-30-050 or 13-30-060 solely because of a lapse of time between an act of domestic violence and the filing of the petition, except if the petitioner cannot provide a reasonable explanation for any lapse of time over three years; or
2. Denying a petitioner relief requested pursuant to Section 13-30-050 or 13-30-060 solely because of ex parte contentions, gossip, or allegations made by the respondent or his family and disparaging of the character or lifestyle of the plaintiff.

**13-30-100 Mutual orders for protection prohibited.**

A court shall not grant a mutual order for protection, ex parte or permanent, to opposing parties.

**13-30-110 Court-ordered and court-referred mediation of cases involving domestic violence prohibited.**

A court shall not order parties into mediation or any type of counseling, alternative justice, restorative justice, peace-making, circle sentencing, traditional ceremonies, or any other mediation type of situation that would put the petitioner in the position of dealing directly with the respondent, even if the petitioner has the right to refuse to participate, for resolution of the issues in a petition for an order for protection.

**13-30-120 Court costs and fees.**

Fees for filing and service of process shall not be charged to any petitioner for any proceeding seeking only the relief provided in this Title.

**13-30-130 Court responsibilities; notification of assistance available to victims of domestic violence.**

The court shall refer any petitioner for relief under this Title about local services and advocacy available through the appropriate agency without regard to the victim's employment, economic, educational, mental or physical health, social, or political status.

**13-30-140 Enforcement of foreign orders for protection.**

- (a) A copy of an order for protection issued by another tribal, state, county, or other court jurisdiction, shall be given full faith and credit by Tribal law enforcement authorities as having the same force and effect as one issued by the Tribal Court.
- (b) Valid foreign orders for protection shall be upheld as to the conditions of the foreign order whether or not those remedies or conditions are available through this Title.
- (c) Under this section, the court shall utilize the penalties and procedures provided in Chapter 13-20 for the enforcement of orders for protection.
- (d) In accordance with Section 13-20-060, any violations of a foreign order for protection shall be acted upon in the same manner as if the order for protection were issued by the

Tribal Court and in accordance with the full faith and credit provisions of Title 18 U.S.C. § 2265.

- (e) Law enforcement and criminal justice system personnel shall enter valid foreign orders for protection in the tribal registry.
- (f) Law enforcement and criminal justice system personnel shall encourage persons possessing foreign orders for protection to file the foreign order with the tribal registry and with the Tribal Court.
- (g) Facsimile copies which meet the requirements of 18 U.S.C. § 2265 shall be recognized as valid verification of foreign orders for protection for the purpose of enforcement under this section.

**13-30-150 Tribal registry for orders for protection.**

- (a) To ensure the proper and timely enforcement of all Tribal Orders for Protection, and any foreign orders falling within its purview and jurisdiction, the Tribal Court shall provide for a registry of all orders for protection issued by or registered with the Tribal Court.
- (b) The court shall coordinate with, and ensure any Tribal orders for protection are submitted to any other registries, whether federal, state, tribal, or local, for the purpose of enhancing full faith and credit enforcement of all orders for protection, including provisions to enter the order for protection in the National Crime Information Center (NCIC) database. The court clerk shall also immediately provide the designated registries with copies and/or information concerning any modifications, revocations, withdrawals, and/or expired orders for protection.
- (c) The court shall provide that information contained in the registry available on a 24-hour basis to any court, law enforcement agency, or domestic violence program.
- (d) Facsimile copies which meet the requirements of 18 U.S.C. § 2265 shall be recognized as valid and official copies for the purpose of entry into the registry.

**13-30-160 Specific Applicability.**

The provisions of this chapter apply specifically to this Domestic Violence Title and take precedence over any general laws of applicability.

**13-40 FAMILY AND CHILDREN**

**13-40-010 Presumptions concerning custody.**

In every proceeding where there is at issue a dispute as to the custody of a child, a determination by the court that domestic violence has occurred by clear and convincing evidence raises a rebuttable presumption that it is detrimental to the child and not in the best interest of the child to be placed in sole custody, joint legal custody, or joint physical custody with the perpetrator of domestic violence. It is irrelevant, in determining whether the presumption applies, that the domestic violence occurred in the presence or outside the presence of the child.

**13-40-020 Factors in determining custody and visitation.**

- (a) In addition to other factors that a court must consider in a proceeding in which the custody of a child or visitation by a parent is at issue and in which the court has made a finding of domestic violence:
  - (1) The court shall consider as primary the safety and well-being of the child and of the parent who is the victim of domestic violence;

- (2) The court shall consider the domestic violence perpetrator's history of causing physical harm, bodily injury, assault, or causing reasonable fear of physical harm, bodily injury, or assault, to another person; and
  - (3) The court shall also consider the perpetrator's overall lifestyle, including alcohol or other chemical use, in determining custody and/or visitation.
- (b) If a parent is absent or relocates because of an act of domestic violence by another, the absence or relocation is not a factor that weighs against the parent in determining custody or visitation.
- (c) In any application for emergency ex parte custody, or permanent custody, of any child or children, the court shall entertain any information concerning, and make every effort to determine:
  - (1) If the petitioner for custody has been recently arrested and/or convicted of a domestic violence offense;
  - (2) If the petitioner for custody has been recently named as the respondent in a domestic violence order for protection; and
  - (3) If the petitioner for custody has been recently served with a divorce petition, divorce modification, child custody order, child support enforcement order, modification of an order for protection, or any other court order initiated by the respondent to the petition for custody.
- (d) If any situation outlined in subsection (c) above is found to exist, the court must examine whether the petitioner's motion for custody has been submitted in retaliation against a victim of domestic violence and as part of a continuing pattern of violence, abuse, harassment, intimidation, and/or other controlling behavior. If the court determines that such retaliation and continuing pattern of controlling behavior is likely, the court shall not grant the petition for custody, emergency ex parte or permanent, until such time as a hearing may be held on the petition.
- (e) Pursuant to subsection (d) above, and barring any overwhelming articulated and immediate need to provide emergency measures for the safety of the child(ren), the court may order that the child(ren) in question remain with the custodial parent, that the child(ren) be placed with a neutral relative, or that the child(ren) be placed in interim foster care until the hearing, such hearing to be held within 72 hours.
- (f) Pursuant to subsection (e) above, the court shall order an investigation be conducted, and report filed, by Youth and Family Services or a court-appointed child advocate, concerning the specific grounds for the emergency ex parte or permanent custody petition. The investigation and report shall be expedited to be available for the ordered hearing.

**13-40-030 Presumptions concerning residence of child.**

- (a) In every proceeding where there is at issue a dispute as to the custody of a child, a determination by a court that domestic violence has occurred raises a rebuttable presumption that it is in the best interest of the child to reside with the parent who is not a perpetrator of domestic violence, in the location of that parent's choice, within or outside the confines of the Tribe's jurisdiction.
- (b) The court shall exclude, in such proceedings, any consideration that the petitioner may or may not be currently residing in a shelter or safe home. Should shelter or safe home residence of the petitioner be presented by the respondent as grounds to deny custody, the court shall proceed with the presumption that a shelter or safe home, by definition

and operating procedures, is a safe, stable and non-violent environment for the child(ren), equally or more suitable than the place where the perpetrator resides.

**13-40-040 Change of circumstances.**

In every proceeding in which there is at issue the modification of an order for custody or visitation of a child, the finding that domestic violence has occurred since the last custody determination constitutes a finding of a change of circumstances.

**13-40-050 Conditions of visitation in cases involving domestic violence.**

- (a) A court may award visitation by a parent who committed domestic violence only if the court finds that adequate provision for the safety of the child and the parent who is a victim of domestic violence can be made.
- (b) In a visitation order, a court may:
  - (1) Order an exchange of a child to occur in a protected setting.
  - (2) Order visitation supervised by an independent third person or agency.
  - (3) Order the perpetrator of domestic violence to attend and complete, to the satisfaction of the court, a program of intervention for perpetrators as a condition of visitation.
  - (4) Order the perpetrator of domestic violence to attend and complete, to the satisfaction of the court, a program for chemical dependency.
  - (5) Order the perpetrator of domestic violence to abstain from possession or consumption of alcohol or controlled substances during the visitation and the 24 hours preceding the visitation.
  - (6) Order the perpetrator of domestic violence to pay a fee to defray the costs of supervised visitation.
  - (7) Prohibit overnight visitation.
  - (8) Require a bond from the perpetrator of domestic violence for the return and safety of the child.
  - (9) Impose any other condition that is deemed necessary to provide for the safety of the child, the victim of domestic violence, or other family or household member.
- (c) Whether or not visitation is allowed, the court may order the address of the child and the victim to be kept confidential.
- (d) The court may refer but shall not order that a victim of domestic violence attend specialized counseling or seek specialized victim support services relating to the victim's status or behavior as a victim, as a condition of receiving or continuing custody of a child, or as a condition of visitation.
- (e) Supervised visitation shall be conducted by an independent third party as approved jointly by the court and the victim.

**13-40-060 Mediation prohibited in cases involving domestic violence.**

The court shall not order parties into mediation or any type of counseling, alternative justice, peace-making, circle sentencing, traditional ceremonies or any other mediation type of situation that would put the petitioner in the position of dealing directly with the respondent for resolution of the issues in a petition for custody, even if the petitioner has the right to refuse to participate

**13-40-070 Duties of Tribal Court.**

- (a) In cases involving abuse or neglect of a child, the Tribal Court may order, if it deems it necessary, that Youth and Family Services assess whether abuse of another family or household member is also occurring. The assessment must include but is not limited to:
  - (1) Inquiry concerning the criminal record of the parents, and the alleged abusive or neglectful person and the alleged perpetrator of domestic violence, if not a parent of the child; and
  - (2) Inquiry concerning the existence of orders for protection issued to either parent.
- (b) If it is determined in an investigation of abuse or neglect of a child:
  - (1) That the child or another family or household member is in danger of domestic violence, and that removal of one of the parties is necessary to prevent the abuse or neglect of a child, the Tribal Court shall seek the removal of the alleged perpetrator of domestic violence.
  - (2) That a parent of the child is a victim of domestic violence, any available services must be offered to the victimized parent and the provision of such services must not be contingent upon a finding that either parent is at fault or has failed to protect the child.

**13-40-080 Specific Applicability.**

The provisions of this chapter apply specifically to this Domestic Violence Title and take precedence over any general laws of applicability.

**13-50 FIREARMS DISQUALIFICATION****13-50-010 Purpose.**

It shall be the purpose of this chapter to prohibit any person who has been convicted of a felony or misdemeanor offense of domestic violence/abuse, as defined under Section 13-10-030 of this Domestic Violence Title, under tribal, state or federal law, or any person who is subject to an order of protection based upon a finding that the person represents a credible threat of violence to the victim, under tribal, state or federal law, to possess, own, sell, trade, or have immediate access to a firearm.

**13-50-020 Firearm possession, dealing, or access prohibited.**

It shall be unlawful for any person to possess, own, trade, or have immediate access to a firearm who:

- (a) Is subject to any court order from a court of competent jurisdiction that restrains such person from assaulting, harassing, stalking or threatening a family or household member as defined in Section 13-10-030(b), or engaging in any other conduct that would place a family or household member in reasonable fear of bodily injury to the household or family member, except that this paragraph shall apply only to an order that:
  - (1) Was issued after a hearing, of which such person received actual notice and had the opportunity to participate;
  - (2) Included a finding that such person represented or represents a credible threat to the physical safety of a household or family member; and
  - (3) By its terms explicitly prohibits the use, attempted use or threatened use of physical force against another family or household member.
- (b) Has been convicted in state, federal or tribal court of any crime involving domestic violence/abuse, as defined in Section 13-10-030 of this Title, 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 a household or family member as defined in Section 13-10-030(b).

- (c) In every judgment of conviction or admonishment of rights issued for domestic violence under this Title, the Tribal Court shall:
  - (a) Inform the person convicted that he or she is prohibited from owning, possessing or having under his or her custody or control any firearm; and
  - (b) Order the person convicted to permanently surrender, sell or transfer any firearm that he or she owns or that is in his or her possession or under his or her custody or control in the manner set forth in Section 13-50-040.

**13-50-030 Penalties; forfeiture of firearms.**

Any person violating Section 13-50-020 and/or any provision included in a judgment of conviction or admonishment of rights issued pursuant to this Section concerning the surrender, sale, transfer, ownership, possession, custody or control of a firearm is guilty of a misdemeanor and shall be punished for a Class C offense for a first conviction, Class B offense for a second conviction, and Class A offense for a any subsequent convictions of this Section.

**13-50-040 Surrender, sale or transfer of firearm by person prohibited from owning or possessing firearm.**

- (a) If a person is prohibited from owning, possessing or having under his or her custody or control a firearm pursuant to Section 13-50-020, the Tribal Court shall order the person to surrender any firearm that the person owns or that is in his or her possession or under his or her custody or control to a designated law enforcement agency, a person designated by court order or a licensed firearm dealer, and the person shall, not later than 24 hours after service of the order:
  - (1) Surrender any firearm that the person owns or that is in his or her possession or under his or her custody or control to the appropriate local law enforcement agency designated by the Tribal Court in the order;
  - (2) Surrender any firearm that the person owns or that is in his or her possession or under his or her custody or control to a person designated by the Tribal Court in the order;
  - (3) Sell or transfer any firearm that the person owns or that is in his or her possession or under his or her custody or control to a licensed firearm dealer; or
  - (4) Submit an affidavit:
    - (A) Informing the court that he or she currently does not own or have any firearm in his or her possession or under his or her custody or control; and
    - (B) Acknowledging that failure to surrender, sell or transfer any firearm that he or she owns or has in his or her possession or under his or her custody or control is a violation of the order and Tribal law.
- (b) If the court orders a person to surrender any firearm to a local law enforcement agency pursuant to Subsection (a)(1), the law enforcement agency shall provide the person with a receipt which includes a description of each firearm surrendered and the serial number of each firearm surrendered. The person shall, not later than 72 hours or 1 business day, whichever is later, after surrendering any such firearm, provide the receipt to the Tribal Court.
- (c) If a person surrenders any firearm to a person designated by the Tribal Court pursuant to Subsection (a)(2), the person who surrenders the firearm shall, not later than 72 hours

or 1 business day, whichever is later, after the person surrenders any firearm to such person, provide to the Tribal Court and the appropriate local law enforcement agency the name and address of the person designated in the order and a written description of each firearm surrendered and the serial number of each firearm surrendered to such person.

- (d) If a person sells or transfers any firearm to a licensed firearm dealer pursuant to Subsection (a)(3):
  - (1) The licensed firearm dealer shall provide the person with a receipt which includes a description of each firearm sold or transferred and the serial number of each firearm sold or transferred; and
  - (2) The person shall, not later than 72 hours or 1 business day, whichever is later, after such sale or transfer, provide the receipt to the Tribal Court and the Tribal Police.
- (e) If there is probable cause to believe that the person has not surrendered, sold or transferred any firearm that the person owns or in the person's possession or under the person's custody or control within 24 hours after service of the order, the Tribal Court may issue and deliver to the Tribal Police a search warrant which authorizes the law enforcement officer to enter and search any place where there is probable cause to believe any firearm is located and seize the firearm.
- (f) As used in this section, "licensed firearm dealer" means a person licensed pursuant to 18 U.S.C. § 923(a).