



**TRIBAL COUNCIL RESOLUTION NO. 2018- 34**

**RESOLUTION REPEALING 2007 PUEBLO OF JEMEZ CHILDREN'S CODE AND  
SUBSEQUENT AMENDMENTS THERETO AND ADOPTING 2018 PUEBLO OF  
JEMEZ CHILDREN'S CODE**

At a duly called meeting of the Tribal Council of the Pueblo of Jemez on the 11<sup>th</sup> of December 2018, the following resolution was adopted:

**WHEREAS**, the Pueblo of Jemez is a federally recognized sovereign tribal government with a Governor and Tribal Council empowered to exercise all government powers, fiscal authority and tribal sovereignty; and

**WHEREAS**, the Pueblo of Jemez is a federally recognized sovereign tribal government with a Governor and Tribal Council empowered to initiate and carry out programs for the benefit of the Jemez tribal members; and

**WHEREAS**, the Pueblo of Jemez Tribal Council adopted by Resolution 2007-39, the Pueblo of Jemez Children's Code, Title XI; Amended by Resolution 2007-50 to make it more responsive to the needs of the children, families and service providers appearing in Jemez Tribal Court; Amended again by Resolution 2010-16 to allow collaboration and interaction with the State of New Mexico and to provide due process protections to limit liability for placement of children in a New Mexico State facility; and

**WHEREAS**, the Jemez Pueblo Social Services Program contracted with a consultant to review and revise the Pueblo of Jemez Children's Code (as amended in 2010) to make it more responsive to the changes in Federal and/or State of New Mexico law, policies and procedures as it relates to the prosecution and treatment of children appearing in the Pueblo of Jemez Children's Court; and

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**WHEREAS**, the Social Services Program and the Consultant collaborated with Jemez Law Enforcement, Jemez Tribal Courts and Jemez Tribal Administration/Leadership in revising Title XI Pueblo of Jemez Children's Code; and

**WHEREAS**, due to substantial and major changes to the current existing Title XI Pueblo of Jemez Children's Code, it is recommended that the Children's Code adopted in 2007 and as subsequently amended in 2010 be repealed and the new 2018 proposed Pueblo of Jemez Children's Code be adopted; and

**WHEREAS**, the Tribal Council has been advised of the proposed revisions and have determined that the new Children's Code will continue to strengthen our tribal sovereignty, contribute to the judicial needs of the Pueblo and provide for the orderly administration of tribal justice for children, families and parties that appear in the Pueblo of Jemez Children's Court.

**NOW THEREFORE BE IT RESOLVED** that the Children's Code adopted in 2007 and subsequent amendments are hereby REPEALED and the new 2018 Pueblo of Jemez Children's Code Title XI Sections 11-1-1 to Sections 11 -9 -1 , are hereby APPROVED and ADOPTED as laws of the Pueblo and **shall become effective January 1, 2019**, and

**BE IT FURTHER RESOLVED** that the newly adopted Pueblo of Jemez Children's Code supersedes all prior code provisions and shall be incorporated into the Pueblo of Jemez Tribal Code.

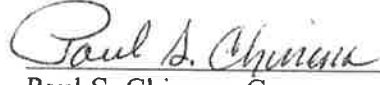
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**CERTIFICATION**

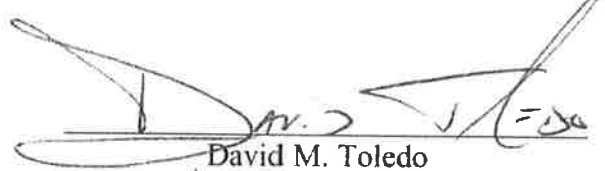
I, THE UNDERSIGNED, as Governor of Pueblo of Jemez do hereby certify that the Jemez Tribal Council at a duly called meeting which was convened and held on the 11<sup>th</sup> day of December 2018, at Pueblo of Jemez, New Mexico, approved the foregoing resolution that a quorum was present and that 11 voted for and 0 opposed and 0 abstained.

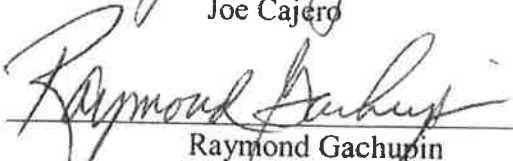
  
Paul S. Chinana, Governor

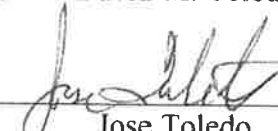
ATTEST:   
1st Lieutenant Governor

**TRIBAL COUNCIL:**

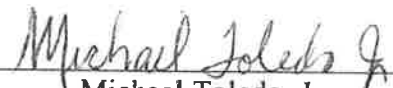
  
Joe Cajero

  
David M. Toledo

  
Raymond Gachupin

  
Jose Toledo

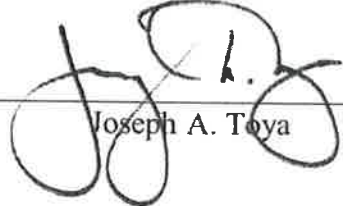
  
Frank Loretto

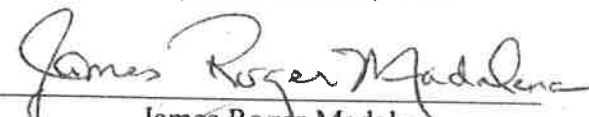
  
Michael Toledo, Jr.

J. Leonard Loretto

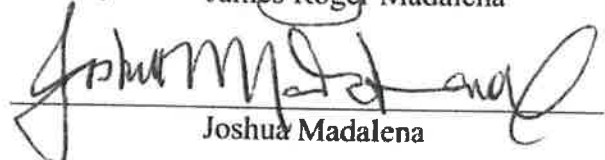
Paul Tosa

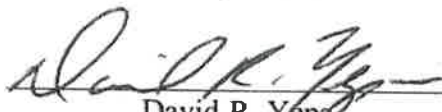
Raymond Loretto, DVM

  
Joseph A. Toya

  
James Roger Madalena

Vincent A. Toya, Sr.

  
Joshua Madalena

  
David R. Yepa

  
Jose E. Magdalena

**Office of the Governor**



RESOLUTION ADOPTING AMENDMENTS  
TO 2000 DOMESTIC VIOLENCE CODE

RESOLUTION NO. 2008-\_\_\_\_\_


At a duly called meeting of the Tribal Council of the Pueblo of Jemez the following resolution was passed:

- WHEREAS, On June 15, 2000, pursuant to Tribal Council Resolution No. 2000-17, the Pueblo of Jemez Tribal Council adopted the Pueblo of Jemez Domestic Violence Code; and,
- WHEREAS, since implementation of the Domestic Violence Code, Social Services, Tribal Courts and the Tribal Law Enforcement Department have identified the need to revise certain provisions of the Code; and,
- WHEREAS, the Social Services Department and the Domestic Violence Program, Tribal Courts, Tribal Law Enforcement Department and Pueblo's legal counsel have worked on amending provisions to the Code; and
- WHEREAS, the aforementioned tribal departments and the Pueblo's legal counsel recommend adoption of the proposed amendments to the Domestic Violence Code; and
- WHEREAS, the Pueblo of Jemez Tribal Council has been informed of the proposed amendments to the Domestic Violence Code and agree that the amendments to the Domestic Violence Code should be adopted.

NOW THEREFORE BE IT RESOLVED, that the Code attached hereto is adopted by the Tribal Council and hereby repeals the Domestic Violence Code adopted in 2000.

**CERTIFICATION**

I, the undersigned as the Governor of the Pueblo of Jemez do hereby certify that the foregoing resolution was passed at a duly called meeting of the tribal council meeting on 10<sup>th</sup> day of December, 2008, at which 8 voted for and 0 voted against.

  
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Governor, Pueblo of Jemez

*Office of the Governor*

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ATTEST:

Joshua Madalena

\_\_\_\_\_  
Tribal Councilman

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Tribal Councilman

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Tribal Councilman

Jose E. Magdalenin  
Tribal Councilman

J. Leonard Loretto  
Tribal Councilman

Michael Toledo Jr  
Tribal Councilman

Jose L. Pecos  
Tribal Councilman

J. Roger Madalena  
Tribal Councilman

Jul. Lopez  
Tribal Councilman

Arthur San dia  
Tribal Councilman

Frank Loretto  
Tribal Councilman

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Tribal Councilman

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Tribal Councilman

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Tribal Councilman



RESOLUTION ADOPTING  
DOMESTIC ABUSE CODE

RESOLUTION 2000-17

At a duly called meeting of the Tribal Council, of the Pueblo of Jemez, the following resolution was passed:

WHEREAS, on February 23, 1995, pursuant to Tribal Council Resolution 95-13, the Pueblo of Jemez Tribal Council adopted the Pueblo of Jemez Tribal Code; and,

WHEREAS, the Jemez Tribal Code Section (Title III Section 3-2-23) on Domestic Violence enacted in 1995 does not adequately address the recent increase of the number of domestic violence cases in Tribal Court; and

WHEREAS, due to the seriousness of and increase in crimes of domestic violence, Title III, Section 3-2-23, Domestic Violence, as enacted in 1995 should be repealed and new provisions enacted to adequately address domestic violence cases for purposes of prosecution in tribal court and protection of victims of domestic violence; and

WHEREAS, a TASK FORCE established by the Social Service Department (Domestic Abuse Program) developed a new Domestic Abuse Code for the Pueblo; and,

WHEREAS, the Pueblo of Jemez Tribal Council reviewed the proposed Domestic Abuse Code and agree that the Domestic Abuse Code should be adopted but that it shall not be a substitute for the traditional methods of administering tribal justice.

NOW THEREFORE BE IT RESOLVED that Title III, Section 3-2-23, Domestic Violence, as enacted in 1995 is hereby repealed and, the Domestic Abuse Code, Title X, Domestic Abuse Code, Section 10-1-1 et seq. and attached hereto as Exhibit A is adopted and shall become part of the 1995 compilation of the Pueblo of Jemez Tribal Code.

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**Office of the Governors**

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**CERTIFICATION**

I, the undersigned as the Governor of the Pueblo of Jemez do hereby certify that the foregoing resolution was passed at a duly called meeting of the tribal council meeting on 15<sup>th</sup> day of June, 2000, at which 10 voted for and 0 voted against.

*Raymond Gachupin*  
Governor, Pueblo of Jemez

ATTEST:

*Sam Miguel Chirino*, 1<sup>st</sup> Lt. Gov.

*L. de Padilla*

*Jose L. Pecos*

*Rosendo Pachuan*

*Don Bosa*

*Jose Toledo*

*J. Leonard Loretto*

*Jose V. Cajero*

*Jose E. Magdalene*

*Frank Faltto*

*Arthur Sandoa*

TITLE X

DOMESTIC VIOLENCE CODE  
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TITLE X

DOMESTIC VIOLENCE CODE

CHAPTER 1 POLICY, DEFINITIONS, AND DUTIES OF DOMESTIC  
VIOLENCE PROGRAM AND COURT CLERKS

SECTION 10-1-1 POLICY

Violence against family members is not in keeping with the traditional Jemez Pueblo values. It is the expectation of the Pueblo of Jemez's traditional tribal justice system to respond to victims of domestic violence with fairness, compassion and in a prompt and effective manner. It is also the goal of the Pueblo of Jemez to utilize the Pueblo's traditional tribal justice system in setting standards of behavior within the family that are consistent with traditional Jemez Pueblo values, and as such the criminal justice system will be utilized to impose consequences upon offenders for behavior that violates traditional Jemez Pueblo values that hold the family sacred. The intent of this Code is to prevent future violence in all families through prevention and public education programs that promote cultural teachings and traditional Jemez Pueblo values so as to nurture non-violence within Jemez Pueblo families and respect for Jemez Pueblo men and women alike.

Furthermore, this Code acknowledges the cycle of violence that perpetuates domestic violence and acknowledges our communal obligation to seek permanent solutions to the problem.

**SECTION 10-1-2 PURPOSE**

A. The Pueblo of Jemez Domestic Violence Code is construed to promote the following:

1. That violence against family members is not in keeping with traditional Jemez Pueblo 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 code is to provide victims of domestic violence with safety and protection.

2. It is also the goal to utilize the criminal justice system in setting standards of behavior within the family that are consistent with traditional Jemez values and, as such, the criminal justice system will be utilized to impose consequences upon offenders for behaviors that violate traditional Jemez values that hold women and children as sacred.

**SECTION 10-1-3 DEFINITIONS**

A. These definitions shall be liberally construed so as to protect all persons who are subjected to domestic violence. As used in this Code:

1. "Domestic violence" means the occurrence of one or more of the following acts by a family or household members who reside together or formerly resided together, but does not include acts of self-defense:

a. Attempting to cause or intentionally, knowingly or recklessly causing bodily injury with or without a deadly weapon to another family or household member.

b. Placing by physical menace or threat another family or household member in fear of serious bodily injury.

c. Causing a family or household member to engage involuntarily in sexual activity by force, threat of force, or duress.

2. Persons protected under this Code include:

a. current or former spouses;

b. persons who presently live together or who have lived together in the past;

c. persons who are dating or have dated in the past;

d. person who have a continuing personal relationship;

e. persons who have a child in common or who are expecting a child together;

f. persons related by blood, adoption, marriage;

g. minor children of a person in a relationship described in paragraphs a - g.

3. bodily injury - causing or inflicting pain, physical injury, or impairment of a physical condition;

4. a threat to cause bodily injury - any act, including a verbal threat, which would cause a reasonable person to fear

physical harm or death;

5. harassment - a course of conduct directed at a specific person that is otherwise designed or intended to annoy, alarm, or terrorize another person. Harassment includes but is not limited to the following:

a. repeated communications, made in person, by phone or by other methods containing intimidating, taunting, insulting, humiliating, offensive, threatening or violent language;

b. sexual propositioning, references to body functions or characteristics, or other comments of a sexual nature;

c. forcing a person to engage in conduct unwillingly.

6. sexual assault - any physical contact of a sexual nature, or attempted physical contact of a sexual nature, with a person, made without a person's consent. Physical contact of a sexual nature is any touching of the sexual or other intimate parts of the person of another or otherwise taking indecent liberties with another for the purpose of arousing or gratifying sexual desire of the alleged perpetrator. Consent cannot be obtained through means such as force, threat of force, intimidation, or deception.

7. criminal damage to property - consists of intentionally damaging any real or personal property of another without the consent of the owner of the property;

8. stalking - knowingly pursuing a pattern of behavior that would cause a reasonable person to feel frightened, intimidated or threatened. In furtherance of the stalking, the alleged stalker must commit one or more of the following acts on more than one occasion:

a. following another person, in a place other than the residence of the alleged stalker;

b. placing another person under surveillance by being present outside that person's residence, school, workplace or motor vehicle or other place frequented by that person other than the residence of the alleged stalker;

c. in carrying out his behavior place a specific person in reasonable apprehension of death, bodily harm, sexual assault, confinement or restraint or the alleged stalker must intend to cause a reasonable person to fear for his or her safety or the safety of a household member.

9. Tribal Official - for purposes of this Code, references to tribal officials means the Governors, Tribal Sheriff, and Governor's aides.

10. Court means the Pueblo of Jemez Tribal Court.

11. CIRT (Community Intervention Response Team) is an organization consisting of volunteers trained to provide immediate support and services including but not limited, to victims of domestic violence, sexual abuse, child abuse and in

other crisis or emergency situations.

12. *Defendant* as used in Chapter 3 (Criminal Procedures and Penalties) means any person charged with the crime of domestic violence.

13. *Knowingly* means that the act was done voluntarily and intentionally. Intoxication or substance abuse does not excuse the perpetrator's intent to act voluntarily and intentionally.

14. *Order for protection* means a court order granted for the protection of victims of domestic violence.

15. *Perpetrator* as used in Chapter 3 (Criminal Procedures and Penalties), means any person who has committed an act of domestic violence.

16. *Probable cause for arrest* means that a law enforcement officer, acting as a person of reasonable caution, has reasonable grounds to believe that the person to be arrested has committed an offense as defined by this Code, based on all the facts known to the officer, including the officer's personal observations, statements made by the parties involved in the incident, statements made by witnesses if any, or any other reliable information.

17. *Program for abusers* means a program recognized by the Pueblo of Jemez as providing education and treatment for perpetrators of domestic violence.

18. *Program for victims* means a program recognized by the

Pueblo of Jemez as serving victims of domestic violence by providing advocacy, shelter, crisis intervention, counseling, education and other appropriate services.

19. *Respondent* as used in Chapter 4 (Civil Procedures) means any person against whom relief or recovery is sought.

#### **SECTION 10-1-4 GENERAL PROCEDURES**

The written procedures of the Pueblo of Jemez Tribal Code shall be used for the effective prosecution of the crime of domestic violence.

#### **SECTION 10-1-5 DUTIES OF DOMESTIC VIOLENCE PROGRAM AND CIRT**

A. The Pueblo of Jemez Domestic Violence Prevention Program will provide services to victims of domestic violence, sexual assault, stalking, and develop and coordinate a community wide response to domestic violence. The Domestic Violence Prevention Program shall establish a relationship with tribal law enforcement, tribal court and tribal officials to strengthen the Pueblo of Jemez's traditional justice system in response to violence against victims so batterers are held accountable for their actions.

B. Personnel of the domestic violence program and CIRT volunteers who respond to a domestic violence call shall be required to do at a minimum the following:

1. transport or obtain transportation for the victim and child(ren) to a safe place;

2. assist the victim in removing essential personal belongings if the victim chooses to leave the home;

3. assist the victim and child(ren) in obtaining medical treatment, including transportation to a medical facility if necessary;

4. give the victim immediate and adequate notice of rights, remedies and available services.

#### **SECTION 10-1-6 DUTIES OF TRIBAL COURT**

The Tribal Court shall:

1. inform the victim of all hearing dates, continuances, and dismissal of charges;

2. inform the victim of the right to file a petition for an order for protection and provide a blank copy of the petition form;

3. provide a copy of the Protection Order to the victim after it has been signed by the Judge and served upon the alleged abuser;

4. make a reasonable effort to notify the victim of the crime of domestic violence when the Court declines to prosecute or dismisses the criminal charges;

5. keep a record of all orders for protection, judgment orders, and any other applied orders.

6. perform all duties as listed in Title I, Section 1-2-4 of the Pueblo of Jemez Tribal Code.

**CHAPTER 2 LAW ENFORCEMENT/TRIBAL OFFICIAL DUTIES, PROTOCOLS  
AND PROCEDURES**

**SECTION 10-2-1 DUTIES OF LAW ENFORCEMENT OFFICER/TRIBAL  
OFFICIALS**

A. The Pueblo of Jemez Chief of Police or his designee may coordinate with other law enforcement officers in investigating and prosecuting the crime of domestic violence. In all aspects, law enforcement officers shall assure the safety of the victim and child(ren). The Chief of Police shall create written policy and procedures to direct officer conduct when responding to incidents of Domestic Violence. B. A Tribal Official or Law Enforcement Officer who responds to a domestic violence call shall use all reasonable means to protect the victim and child(ren) and prevent further violence, including but not limited to:

1. taking action necessary to assure the safety of the victim and child(ren);
2. confiscating any weapon involved in the alleged domestic violence;
3. contacting the domestic violence program or CIRT to transport or obtain transportation of the victim and child(ren) to a safe place;
4. assisting the victim in removing essential personal belongings if the victim chooses to leave the home;
5. giving the victim immediate and adequate notice of

rights, remedies and available services.

C. In felony situations involving domestic violence, the Tribal Police Department shall follow its internal police procedures or protocol in investigating crimes and cooperate with federal authorities.

1. An arrest shall be made of the suspect when there is probable cause to believe that a felony has occurred, irrespective of whether the offense could ultimately be prosecuted as a misdemeanor.

2. The crime scene shall be preserved and the criminal investigator and the chief of police, or their designee in their absence, shall be contacted.

3. The FBI shall be notified as soon as is practical when a determination has been made that a felony has occurred.

a. Officers shall automatically notify the FBI if there is a shooting, stabbing, serious debilitating injury, sexual assault, possibility of death or death resulting from the act of domestic violence.

b. Based on the circumstances of the incident, the FBI in its discretion may decide not to respond to the scene or accept the case for investigation. If the FBI does not accept the case, the officer shall continue investigation and pursue Tribal charges.

**SECTION 10-2-2 ARREST**

A. Without a warrant, a Law Enforcement Officer may arrest an alleged perpetrator if the Officer has probable cause to believe that the person has committed domestic violence, whether that crime was committed in or outside the presence of the Officer.

B. A Tribal Official may detain an alleged perpetrator if the Tribal Official reasonably believes that the alleged perpetrator has committed a domestic violence crime whether the crime was committed in or outside the presence of the Tribal Official.

C. In determining whether to arrest or detain a person, the Tribal Official or Law Enforcement Officer shall consider:

1. the Pueblo of Jemez's intent to protect victims of domestic violence;
2. the history of domestic violence between the persons involved;
3. the relative severity of the injuries inflicted or threats creating fear of bodily injury;
4. the likelihood of future injuries to each person;

**SECTION 10-2-3 MANDATORY REPORT**

A. Whenever a law enforcement officer or a tribal official investigates an allegation of domestic violence, whether or not an arrest is made, the officer or tribal official

shall make a written incident report of the alleged violence and shall make available for review a copy of the report upon request by the domestic violence program upon completion of the report.

B. When a law enforcement officer or Tribal Official responds to a domestic violence call, the Officer, or Tribal Official shall verbally notify the domestic violence program of the incident within 24-hours of the incident.

C. The mandatory written report required under this section must contain at a minimum:

1. a description of the circumstances of the persons and their surrounding environment when the officer responded to the call;

2. a description of the injuries or harm inflicted upon either or both parties;

3. summaries of the comments from the persons describing the circumstances leading to the call for law enforcement.

**SECTION 10-2-4 AUTHORITY OF TRIBAL OFFICIALS AND LAW ENFORCEMENT OFFICERS TO SEIZE WEAPONS**

A. Incident to an arrest or in the course of securing a crime scene involving domestic violence, a Tribal Official or a 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; and

2. Shall seize a weapon that is in 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 the 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.

B. If the person arrested for domestic violence pleads guilty or is convicted of the crime involving the use of or the threatened use of a weapon, the weapon, if owned by the perpetrator, shall not be returned to the perpetrator.

C. If the person arrested for domestic violence is found not guilty or the prosecution decides not to prosecute the Defendant, the owner of the weapon may file a motion with the Tribal Court for return of the weapon within 30 days from the entry of not guilty verdict or the dismissal order. If the motion is timely filed, the Tribal Court Judge may in his discretion return the weapon to the owner.

D. If the person found guilty in accordance with paragraph B is not the owner of the weapon, the true owner of the weapon may petition the court in accordance with paragraph

C.

E. All confiscated weapons otherwise not returned to the owner by the Tribal Judge shall be kept by the Tribal Police Department for destruction.

**SECTION 10-2-5 IMMUNITY OF LAW ENFORCEMENT OFFICERS AND TRIBAL OFFICIALS FOR ARRESTS IN DOMESTIC VIOLENCE INCIDENTS**

A. A Tribal law enforcement officer or Tribal Official shall have not be held liable in any civil or criminal action for an arrest based on probable cause, enforcement in good faith of a court order, or for any other act or omission in good faith under this chapter arising from an alleged domestic violence brought by any authorized party, or an arrest made in good faith without a warrant when the officer has probable cause to believe that the person has violated the provisions of a facially valid protective order, court approved agreement or a criminal court order issued by any recognizable court of law.

**CHAPTER 3 CRIMINAL PROCEDURES AND PENALTIES**

**SECTION 10-3-1 JURISDICTION**

A. The Tribal Court shall have original and exclusive jurisdiction over all criminal offenses committed within the territorial jurisdiction of the tribe by enrolled members of the tribe, or other federally recognized Indians, except to the extent that the Major Crimes Act or other federal laws provide for criminal jurisdiction on Indian Reservations, or within the territorial jurisdiction of Indian Tribes, and in that event, the jurisdiction shall be concurrent with the United States Government. The State of New Mexico shall have no jurisdiction, criminal or civil, within the reservation or territorial jurisdiction of the tribe, unless and only to the extent that approval has been given for the same by the Tribal Council.

B. The Pueblo of Jemez has original and absolute jurisdiction on any basis consistent with its inherent sovereignty and laws to prosecute any person for acts covered under this code, except as may expressly limited by the laws of the United States. This jurisdiction is not affected by nor shall it be deemed to preclude, any federal prosecution.

**SECTION 10-3-2 FILING A CRIMINAL COMPLAINT FOR DOMESTIC VIOLENCE**

A. A Tribal Official or law enforcement officer making an arrest for the crime of domestic violence shall sign a criminal

complaint charging the crime of domestic violence and file the complaint with the Tribal Court. If the alleged perpetrator has not been arrested at the time the complaint is filed, the Tribal Official or law enforcement officer shall obtain a warrant for his or her arrest from the Tribal Court Judge or the Court Clerk may issue a summons to the defendant.

B. In the absence of an arrest by a Tribal Official or law enforcement officer, a victim or an individual authorized by the Court to file on the victim's behalf, may file with the Court a criminal complaint charging the crime of domestic violence. If the defendant is not in custody at the time the complaint is charged, the Tribal Court Judge will evaluate the charges and determine whether to issue a warrant for the defendant's arrest or summons the defendant to Tribal Court.

C. The Court shall not dismiss a criminal complaint charging domestic violence for the sole reason that the victim does not want to proceed with the matter.

#### **SECTION 10-3-3 CONDITIONS OF RELEASE**

A. In making a decision as to the release of a person arrested for and/or charged with domestic violence, the Tribal Court Judge shall review the facts of the arrest and determine whether the person is a threat to the victim or family members, to public safety, and is reasonably likely to appear in Court as ordered.

B. Before releasing a person charged with domestic violence, the Court may impose conditions to assure the safety of the victim and family and to assure the defendant's appearance at subsequent court proceedings including:

1. An order enjoining the defendant from threatening to commit or committing acts of domestic violence against the alleged victim or any other family or household member;

2. An order prohibiting the defendant from harassing or intimidating the alleged victim, either directly or indirectly;

3. An order prohibiting the defendant from using or possessing a firearm or other weapon specified by the Court;

4. An order prohibiting the defendant from possession or consumption of alcohol or controlled substances and directing the defendant to attend substance abuse counseling;

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

C. The Court shall issue a written order for condition of release and distribute copies to the defendant, to the Family Advocate, to the victim, Tribal Official and to Law Enforcement. Failure to provide the defendant with a copy of the conditions of release does not invalidate the conditions if the person has notice through oral order of the Court or other means.

## SECTION 10-3-4 PENALTIES

### A. Criminal Penalties

#### 1. First Offense:

a. Any person who commits an act of domestic violence defined by this Chapter shall be deemed guilty of the offense of domestic violence. A person convicted of a first offense of domestic violence may be imprisoned for a term of up to 90 days and/or fined an amount not less than Two Hundred Fifty Dollars (\$250) but not more than One Thousand Dollars (\$1,000).

Mandatory counseling shall be part of sentencing, as well as restitution and/or community service when appropriate.

b. The Court may suspend imposition of fines and imprisonment for the first offense and place defendant on probation for one (1) year. When a sentence is suspended there must be total compliance with the orders of the Court requiring cooperation with the domestic violence program and counseling as ordered.

#### 2. Second Offense

A person convicted of a second offense of domestic violence within three (3) years of the last conviction shall be imprisoned for a term of not less than ten (10) days but not more than one (1) year and fined an amount not less than Five Hundred Dollars (\$500) but not more than One Thousand Dollars (\$1,000). Mandatory counseling shall be part of sentencing, as

well as restitution, community service and probation when appropriate.

3. Third or Subsequent Offense

A person convicted of a third or subsequent offense of domestic violence within five (5) years of the last conviction shall be imprisoned for a term of not less than thirty (30) days or but not more than one (1) year and fined an amount of not less than One Thousand Dollars (\$1,000) but not more than Five Thousand Dollars (\$5,000). Mandatory counseling shall be part of sentencing as well as restitution, community service and probation when appropriate.

**SECTION 10-3-5 OTHER SENTENCING CONSIDERATIONS AND  
CONDITIONS IN ADDITION TO PENALTIES**

A. In addition to the penalties above, the Court shall impose any condition it deems necessary to prevent further domestic violence and impose conditions that will also provide safety for family violence victims, with the objective of establishing or maintaining family relationships in a culturally sensitive manner by utilizing modern and traditional remedies and punishments. The Court in its discretion may schedule a separate sentencing hearing to give the prosecution or the victim advocate and the Defendant an opportunity to gather evidence or other information for the Judge's consideration prior to imposing sentence.

B. The Court shall consider in imposing any sentence or condition the Defendant's prior criminal history, tendencies for Defendant to engage in violent or aggressive behavior, the facts of the case that led to Defendant's arrest and prosecution, whether Defendant is a repeat offender, Defendant's employment status and the likelihood of reconciliation between victim and Defendant. In addition to the foregoing factors, the Court may consider other factors it deems relevant before imposing sentence.

1. Disqualification from Appointments.

If a person is convicted of a second, third or subsequent domestic violence offense, that person may be ineligible or disqualified for certain positions or types of employment with the Pueblo, including tribal official appointments.

2. Possession of a Firearm.

a. If a person is convicted of any domestic violence offense, and the offense involved the use or threatened use of a firearm, that person shall not use or physically possess a firearm for a period of two years from the date of conviction.

b. Any person convicted of a domestic violence offense involving the use or threatened use of a firearm, shall be ineligible to use or possess a firearm in any tribal hunts for the two year time period.

3. Work Release

If the Defendant is employed and can provide proof of employment from his employer, the court may order that the Defendant be eligible for work release.

**CHAPTER 4 CIVIL PROCEDURES**

**SECTION 10-4-1 JURISDICTION FOR CIVIL PROTECTION ORDERS**

The Tribal Court shall have jurisdiction to issue personal Protection orders and injunctions as provided in this Chapter in any case in which either the petitioner or respondent resides within tribal territory at the time the petition is filed unless both the petitioner and respondent are not Indians.

**SECTION 10-4-2 ELIGIBLE PETITIONERS**

Any victim of domestic violence or a person acting on the behalf of the victim of domestic violence may file a petition for an order for protection against a respondent. The Court shall determine, based upon the facts in the petition and affidavits, whether issuance of an order for protection is warranted. An emergency order shall be issued in accordance with Section 10-4-5 of this Chapter. Non-emergency orders for protection shall be served upon the respondent in accordance with Section 10-4-4 of this Chapter.

**SECTION 10-4-3 FILING**

A. The Clerk of the Court shall provide to a person requesting an order for protection a standard form for petitions for orders for protection.

B. The Clerk of the Court shall provide clerical assistance in filling out the forms and filing the petition. A copy of the petition shall be provided to the Petitioner.

C. Any fee required by the Court for filing such civil petitions is waived based on the special need for this relief.

D. A petitioner may omit his or her home address from all court papers, but the Court shall maintain the address under sealed record, not to be accessible without petitioner's consent.

#### **SECTION 10-4-4 SERVICE ON RESPONDENT**

A. If the respondent resides inside the exterior boundaries of the Pueblo of Jemez, timely notice must be afforded to the respondent by having a Tribal Official or a law enforcement officer personally serve the respondent.

B. If the respondent resides outside the exterior boundaries of the Pueblo of Jemez, timely notice must be afforded to the respondent by personally serving the respondent or by serving the respondent by certified mail, return receipt required.

#### **SECTION 10-4-5 TEMPORARY ORDERS FOR PROTECTION**

A. The Court may issue a written temporary order for protection ex parte when a petitioner eligible pursuant to Section 10-4-1 of this Code states to the Court that they are in immediate danger and the Court finds reasonable grounds to believe, that the petitioner is in immediate danger based on an allegation of a recent incident of domestic violence.

B. The Court may grant the following relief without

notice and hearing in an order for protection issued ex parte:

1. Prohibit the respondent from threatening to commit or committing acts of domestic violence against the petitioner or any designated family or household member;
2. Prohibit the respondent from harassing or intimidating the alleged victim, either directly or indirectly or by means of phone texting, email, etc.;
3. Prohibit the respondent from using or possessing a firearm or other weapon specified by the Court;
4. Prohibit the respondent from possession or consumption of alcohol or controlled substances;
5. Order possession and use of essential personal belongings, regardless of the ownership of the personal belongings, and direct a Tribal Official or Law Enforcement Officer to accompany or supervise the petitioner's or respondent's removal of personal belongings;
6. Determine temporary custody of any minor child(ren);  
and
7. Prohibit the respondent to stay away from the residence, school, place of employment, or a specified place frequented by a family or household member;
8. Order such other relief as it deems necessary to

provide for the safety and welfare of the alleged victim and child(ren).

C. A hearing on whether the temporary order should be extended or processed for a permanent order for protection shall be held within thirty (30) days of the issuance of the temporary order.

**SECTION 10-4-6 PERMANENT ORDERS FOR PROTECTION**

A. The Court may grant the following relief in an order for protection after notice and hearing, whether or not the respondent appears:

1. Grant the relief available in accordance with 10-4-5 (B).
2. Specify arrangements for respondent's visitation with any minor child(ren);
3. Order the respondent to do any of the following that may apply:
  - a) Pay rent or make payment on the 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 the minor child(ren);
  - b) Reimburse the petitioner or other person for expenses associated with domestic violence, including but not limited to medical expenses, counseling, the

repair or replacement of damaged property; and the expense of any temporary housing.

B. The Court shall:

1. Cause the order to be delivered as soon as possible, to a Tribal Official or Law Enforcement Officer for service on the respondent;
2. Make reasonable efforts to ensure that the order for protection is understood by the petitioner and respondent, if present;

C. A Tribal Official or Law Enforcement Officer shall provide for expedited service of orders for protection.

D. Permanent orders for protection shall be effective for a minimum time period of three months but the Court may, in its discretion, impose a longer time period of effectiveness.

**SECTION 10-4-7 TERMINATION OR MODIFICATION OF ORDER FOR PROTECTION**

A. Motion to Terminate or Modify: The petitioner, the filing party, or the respondent may file a written motion to terminate or modify the terms of an existing order for protection including an ex parte order. The motion shall be supported by an affidavit stating why the movant believes the termination or modification is warranted due to changed or unanticipated circumstances.

B. Disposition of Motion: The Court shall cause a motion

to terminate or to modify to be served on the other party. At the same time, the Court may deny the motion outright but, if the motion appears to have merit, the Court shall order a written response or schedule a hearing, or both. Under exigent circumstances, the Court may temporarily grant a motion to modify on an ex parte basis, without notice to the other party, pending a written response, a hearing, or both.

**SECTION 10-4-8 VACATION OF PROTECTION ORDERS**

A. A party who wishes to have a protection order vacated must move the court for an order.

B. A protection order shall be vacated only by court order.

C. In determining whether or not to vacate a protection order, the Court shall consider the following factors:

1. whether either or both of the parties have attended counseling and for how long;
2. whether the respondent has attended substance violence counseling and for how long;
3. whether the circumstances have changed so as to remove the danger to the petitioner from the respondent; and
4. any other factors the court deems relevant.

D. The court clerk shall provide a copy of any subsequent order to Tribal Officials and all police departments to whom a copy of the original protection order was delivered.

E. Tribal law enforcement shall enforce any protection order that has neither expired nor been vacated, regardless of the current status of the parties relationship.

**SECTION 10-4-9 EXTENSION OF PERMANENT ORDER FOR PROTECTION**

A. Prior to the expiration of a permanent order for protection, the petitioner may apply for a modification to extend the time period for which the order for protection is effective.

B. If there has been no violation of the existing order prior to the application for extension, the Court shall take this as an indication that the order for protection is effective in assuring the safety of the victim(s).

C. The Court may not use the fact that there has been no violation of the order for protection to determine that there is no further need for the order for protection.

D. The Court may, in its discretion, issue an order for protection of interminable duration, particularly if the victim has been subjected to domestic violence that required hospitalization, which resulted in life threatening injuries, significant disfigurement, impairment, or disability.

**SECTION 10-4-10 INVALIDATION AND DISMISSALS OF ORDERS FOR PROTECTION**

A. If an order for protection requires a respondent to stay away from the residence of a petitioner or to stay away

from the petitioner, an invitation by the petitioner does not invalidate the order for protection.

B. An order for protection can only be modified or rescinded by the Court.

C. To request that an order for protection be rescinded, a petitioner must file a motion with the Court. The Court, in its discretion, may require a filing fee requirement for the motion if the petitioner repeatedly files motions to rescind the Court's orders for protection.

**SECTION 10-4-11 DENIAL OF RELIEF PROHIBITED**

The Court shall not deny a petitioner relief under a petition for order for protection, or modification of an order for protection solely because of a lapse of time between an act of domestic violence and the filing of the petition.

**SECTION 10-4-12 MUTUAL ORDERS FOR PROTECTION PROHIBITED**

The Court shall not issue mutual protection orders against both parties.

**SECTION 10-4-13 VIOLATION OF AN ORDER FOR PROTECTION BY AN INDIAN**

A. If an officer has probable cause to believe that an Indian respondent has willfully violated an order for protection issued pursuant to this code, the law enforcement officer shall arrest the respondent without a warrant and hold the respondent in custody for prosecution under tribal law or federal law.

B. Violation of an order for protection by an Indian respondent shall constitute criminal contempt of court, punishable by fine, imprisonment, or both, and the Court may order that restitution be paid to the petitioner if restitution is appropriate.

C. If appropriate, law enforcement shall deliver the Indian respondent to the federal authorities for possible prosecution under the Violence Against Women Act, 18 U.S.C.A. 2265 (Interstate Violation of a Protective Order).

**SECTION 10-4-14 VIOLATION OF AN ORDER FOR PROTECTION BY A NON-INDIAN**

A. If an officer has probable cause to believe that a non-Indian respondent has wilfully violated an order for protection issued pursuant to this code, the law enforcement officer shall take any of the following actions that may be appropriate:

1. charge the non-Indian respondent with civil contempt of court, and as civil sanctions, recommend to the court that the respondent be ordered to pay restitution if appropriate to the petitioner and that the respondent be permanently excluded from the Pueblo of Jemez;
2. immediately escort the non-Indian respondent to the exterior boundary of the Pueblo of Jemez;
3. deliver the non-Indian respondent to the federal

authorities for possible prosecution under the Violence Against Women Act, 18 U.S.C.A. ' 2265 (Interstate Violation of a Protective Order).

**SECTION 10-4-15 VIOLATION OF CERTAIN ORDERS FOR PROTECTION IS AN OFFENSE**

Violation of one of the following orders issued in accordance with this Title is a criminal offense:

- A. an order enjoining the perpetrator from threatening to commit or committing acts of domestic or family violence against a family member or household member;
- B. an order prohibiting the perpetrator from intimidating, harassing, menacing, annoying, telephoning, contacting, or otherwise interfering or communicating with a family or household member, directly or indirectly;
- C. an order removing and excluding the perpetrator from the residence of a family or household member and a reasonable area surrounding the residence;
- D. an order requiring the perpetrator to stay away from the residence, school, place of employment, or a specified place frequented regularly by a family or household member;
- E. an order prohibiting the perpetrator from using or possessing a firearm or other weapon specified by the Court, or
- F. an order granting temporary custody of a minor child to the person protected by the order.

**SECTION 10-4-16 VIOLATION OF ORDER FOR PROTECTION**

A. Motion by Petitioner or Filing Party. If there is probable cause to believe that the respondent violated the terms of an order for protection, the petitioner or the filing party may file a written motion for an order to show cause, supported by an affidavit stating the specific facts and circumstances constituting the alleged violation. The court shall cause the motion to be served on the respondent. At the same time, the Court may deny the motion outright but, if the motion appears to have merit, the Court shall proceed.

B. If the Respondent violates any Protective Order, he or she may be charged with contempt of court and subject to penalties as the Court decides, including but not limited to the following:

1. A fine not to exceed \$1,000 for each violation;
2. Community service as determined appropriate by the Court;
3. In cases of repeated contempt, after notice and opportunity for a hearing, the person may be deprived of some or all benefits of tribal membership for such time as determined appropriate by the Court.

**SECTION 10-4-17 FULL FAITH AND CREDIT; JUDICIAL ENFORCEMENT OF FOREIGN PROTECTION ORDERS**

A. Full faith and credit. Pursuant to 18 U.S.C. § 2265,

any protection order issued that is valid according to the standards contained in subsection B of this section by the court of a state or another Indian tribe shall be accorded full faith and credit by the Tribal Court and the Tribal Court shall enforce a valid foreign protection order as if it were issued by the Tribal Court.

B. Requirements for valid orders. A protection order issued by a State or another tribal court shall be valid if:

1. The issuing Court had jurisdiction over the parties and matter under the law of such State or Indian tribe; and

2. Reasonable notice and opportunity to be heard was given to the person against whom the order was sought sufficient to protect that person's right to due process. In the case of an ex parte order, notice and opportunity to be heard must have been provided within the time required by State or tribal law, and in any event within a reasonable time after the order was issued, sufficient to protect the respondent's due process rights.

C. Registration not required. Registration or filing of a foreign protection order shall not be a prerequisite for Tribal Court enforcement of out-of-state or tribal orders of protection.

D. Initiation of proceedings for enforcement. A proceeding to enforce a foreign protection order may be started

in the Tribal Court by:

1. A motion filed by the petitioner holding the foreign protection order, alleging that respondent has violated the protection order and requesting that the Tribal Court enforce the order; and/or

2. An action filed by the Prosecutor alleging that respondent has violated the foreign protection order.

E. Validity of Order; affirmative defense. If a foreign protection order bears the name of an issuing court, the persons to whom it applies, a judge's signature or an equivalent sign, terms and conditions against the respondent, and does not bear an expiration date that has passed or any other obvious indication that it is not authentic, it will be deemed valid, and the Tribal Court shall enforce it, unless the party against whom the order is to be enforced proves, as an affirmative defense, that:

1. The issuing court did not have jurisdiction over the parties or the dispute under the law of the issuing court;

2. The respondent was not given due process, which means reasonable notice and an opportunity to be heard. If the foreign protection order was originally entered without the respondent having an opportunity to be heard, the respondent shall have been given notice and an opportunity to be heard within the time required by law of the issuing court, or in any

event within a reasonable time after the order is issued,  
sufficient to protect the respondent's due process rights;

3. The protection order is a support or child custody order issued pursuant to State divorce and child custody laws that it is not entitled to full faith and credit under other federal law.

F. Cross or counter petitions. Cross or counter petitions are not entitled to full faith and credit unless a petition, complaint or other written pleading was filed seeking a protection order and the issuing court made specific findings that each party was entitled to a protection order.

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