

# OMAHA TRIBAL CODE (2013)

## TITLE 11. DOMESTIC VIOLENCE

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## TITLE 11. DOMESTIC VIOLENCE

### CHAPTER 1. GENERAL

#### SECTION 11-1-1. Purpose.

The Omaha Tribe of Nebraska hereby recognizes that the domestic violence and abuse are not part of the traditional Omaha culture and that the destructive impact of such domestic violence and abuse threaten to destroy the fabric of traditional Omaha culture and family life. The Omaha Tribe hereby rejects acceptance of the activities and hereby adopts a zero tolerance policy.

The provisions of this title specifically criminalize domestic abuse and violence with the intent of breaking the circle of violence which contributes to the endemic decline of the traditional Omaha family structure and erodes traditional Omaha family values.

#### SECTION 11-1-2. Scope.

The provisions of this Title supplement the provisions of Title 5 of this code and do not otherwise limit any other civil or criminal remedies which may otherwise be available to the Tribe or any other victim of domestic violence as detailed elsewhere in the code, but shall take precedent over any general laws of applicability.

#### SECTION 11-1-3. Implementation.

The provisions of this Code shall be in effect immediately upon approval by resolution of the Omaha Tribal Council. All civil provisions are effective and available immediately and may be implemented for incidents which precede the effective date of the Title. No provision of this Title or Title 5 shall have no ex post facto effect. Additionally, any incident, Petition or action instituted under the provisions of this Code shall continue to be in force and effect and shall be maintained and survive this Code be repealed.

#### SECTION 11-1-4. Definitions.

(a) Corroborating stalking conduct: This term shall mean any evidence of harassing behavior, physical evidence at the scene, records, documents, letters, unsubstantiated alibis, recorded messages, police reports, prior stalking convictions, witness information, or any other information, which would indicate a willful pattern of conduct or threat.

(b) Credible Threat: This term shall mean a verbal or written threat, or a threat implied by a pattern of conduct, or combination of such verbal/written statements and conduct. Such threat shall be conveyed either directly or through a third party, made with the intent to place the person who is the target of the threat in reasonable fear for his or her safety. The standard for establishing a credible threat is the victim's perception of a threat to his/her safety as well as the apparent ability of the defendant to carry out his threat, whether verbal, written or implied through a willful pattern of conduct. There must be a showing of an identifiable pattern of corroborated stalking behavior.

(c) Domestic Violence: This term shall mean any action or omission which would constitute a violation of Sections 11-2-1, 11-2-2 or 11-2-4 under this Title whether reported to law enforcement authorities or not.

(d) Family or Household members: This term shall mean any of the following:

- (1) Adults or Minors who are current or former spouses;
- (2) Adults or minors who are dating or who have dated;
- (3) Adults or minor who engage in or have engaged in a sexual relationship;
- (4) Adults or minors who are related or formerly related by marriage as recognized by Omaha traditions.

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(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).

(e) Harass: This term shall mean a knowing and willful pattern of conduct directed at a specific person, either directly or through a third party, which seriously alarms, annoys, torments, or terrorizes the person, and which serves no legitimate purpose. Harassing behavior shall include but is not limited to:

(1) Vandalism or Criminal Mischief;

(2) Annoying or threatening telephone calls;

(3) Following or other violations of an order for protection;

(4) Assaults or attempted assaults;

(5) Sending unwanted letters;

(6) Sending unwanted messages or threats through third parties;

(7) Showing up at a victim's home or workplace;

(8) Attempting to obtain private information about the victim through others;

(9) Leaving gifts for the victim;

(10) Disabling or otherwise tampering with the victim's mailbox;

(11) Taking mail from the victim's mailbox.

(12) Entering the victim's home or place of residence whether the victim is home or not;

(13) Parking near or driving by the victims residence or workplace for no legitimate reason;

(14) And, using agencies or institutions that constitute a pattern of conduct consistent with retaliation by initiating investigations or sanctions against the victim.

(f) Pattern of Conduct: This term shall mean conduct which has caused the victim to suffer substantial emotional distress or fear. This course of conduct should contain a series of acts carried out by the Defendant over a period of time; however short, which demonstrates a continuity of purpose (i.e. to harass, annoy, follow etc...), and which would cause a reasonable person to suffer like emotional distress or fear.

(g) Program of intervention for perpetrators: This term shall mean a specialized program that accepts court orders and voluntary participants that:

(1) Offers intake, orientation and placement in a domestic violence class;

(2) Offers a minimum of twenty-four (24) re-education classes;

(3) Utilizes historical or cultural information in re-educating perpetrators of domestic violence regarding responsible Omaha behavior in the family, community and Nation.

(4) Makes available and integrates the specialized function, knowledge and expertise of elders and other culturally oriented traditional religious or tribal members.

(5) Or, in the event that the specific programs are not available, the Court may specify a program or variety of programs or resources that best implement the spirit of this Title.

(h) Program for victim of domestic violence: This term shall mean a specialized program for the victims of domestic violence and their children that includes or is not limited to advocacy, shelter, crisis intervention, supportive services, referral and the ability to make available specialized knowledge and expertise of elders or other culturally oriented traditional religious or tribal members. In the absence of such a specific program the Court may delineate a substitute "program" comprises of services available at the time and designed to accomplish the same goals under this Title as best possible.

(i) Safety Program: This term shall mean a written and/or oral plan, as ordered by the Court, of

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actions taken by a victim of domestic violence to secure protection and support after making an assessment of the dangerousness of the situation.

### SECTION 11-1-5. Severability Clause.

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

## CHAPTER 2. CRIMINAL PROVISIONS

### SECTION 11-2-1. Domestic Abuse.

(a) Any physical contact with purposefully, knowingly or recklessly results in bodily injury to a household member or former household member shall constitute Domestic Abuse.

(1) Voluntary intoxication shall not be defense to this section.

(2) Provocation shall not be a defense for this section and self defense shall only be an affirmative defense which the Defendant must prove by proof beyond a reasonable doubt. Notice of intent to present any such claim must be filed in writing at least five (5) working days prior to the scheduled trial date.

(b) Any sexual contact with a household member or former household member that is forcible or accomplished through the use of intimidation, intimidation being defined as the use of threat of imminent bodily injury directed towards the victim or any other person shall be a Domestic Abuse.

(1) The provisions of Section 5-4-22 Provisions Applicable to Sexual Offenses of the Omaha Tribal Code shall not apply to any action under this Title.

(c) Any threat of imminent bodily injury directed towards any household member or former household member with the intent to terrorize the household or former household member or place them in fear of imminent bodily injury to themselves or another.

(1) Threat may be inferred from actions and may be the result of non-verbal action(s).

(d) The determination of whether the threat of bodily injury was imminent shall not be an objective analysis, but a subjective analysis of whether a reasonable person in the victim's position would find the threat credible.

(e) Violations of subsections (a) or (b) above shall constitute a Class A offense.

(f) Violation of subsection (c) above shall constitute a Class B offense.

### SECTION 11-2-2. Domestic Disturbance.

(a) Any offensive physical conduct made with a household or former household member, not covered under Section 11-2-1 above, and is not a legitimate exercise of parental discipline constitutes Domestic Disturbance.

(b) Any verbal confrontation between household members or former household members where no physical contact occurs, but results in the destruction of property, regardless of ownership of the damaged or destroyed property constitutes Domestic Disturbance.

(c) Any verbal confrontation between household or former household members where no physical contact occurs, but the attendant circumstances are such that it may be reasonably assumed that the circumstances represent an imminent breach of the peace constitutes Domestic Disturbance.

(d) That any such confrontation or other actions that result in a violation of subsections (a) through (c) above was the result of mutual action shall not be a defense to this provision.

(e) Any violation of subsections (a) or (b) above shall be a Class B offense while any violation of subsection 3 above shall be a Class C offense as defined under Title 5 of this Code.

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## SECTION 11-2-3. Hindering Prosecution.

(a) Any such person who may be the victim of Domestic Violence or Domestic Abuse as defined in subsections 11-2-1 or 11-2-2 above, or witness to the same who refuses to cooperate in the investigation of any such offense or refuses to testify in any subsequent criminal proceeding shall be guilty of a violation of this provision.

(b) Violation of this section shall be a Class C offense as defined by Title 5 of this Code except:

(1) The first offense shall be punishable by only Court costs and an order of appropriate counseling and/or evaluations and these provisions may be enforceable by the contempt powers of the Court.

(2) Subsequent violations of this provision where minor children are present shall support the allegations of an abuse or neglect minor in need of care petition under Title 12 of this Code.

## SECTION 11-2-4. Stalking.

(a) Any person who, either directly or through a third party, willfully, maliciously and repeatedly follows or harasses another person, and who makes a credible threat with the intent to place that person in reasonable fear of his or her safety, or the immediate safety of his or her family, shall be deemed guilty of stalking under this section.

(b) Stalking shall be a Class A Offense under this Title.

(c) The location of the threatening action by the perpetrator, either directly or through a third party, as corroborated through telephone records, postmarks, or order/delivery records, and/or witnesses as being outside the boundaries of the Omaha Tribal reservation, will not bar prosecution under this section. The Act is considered to be a credible threat when full transmittal of the threat has been completed to the victim, when said victim is within the boundaries of the Omaha Tribal Reservation.

(d) Corroborated initial or intervening acts, used to establish a pattern of conduct for the purpose of probable cause, corroboration or to establish the "repeated" nature of the conduct under this section, but which occurred outside the boundaries of the Omaha Tribal Reservation, may be used to establish and corroborate said patterns for prosecution of a violation of this section. However, initial or intervening acts occurring outside the boundaries of the Omaha Tribal Reservation are not prosecutable as separate offenses under this section.

(e) Prosecution under this sentence shall not be barred due to the incarceration, at the time of the threat, of the party making the threat.

(f) No relationship as defined by Family or household members in section 11-1-4 of this Title.

## CHAPTER 3. PROCEDURES APPLICABLE TO THIS TITLE

### SECTION 11-3-1. Spousal Privilege.

All spousal privileges are hereby abrogated as may impact any provision of this Title.

### SECTION 11-3-2. Conditions of Release.

(a) The Court shall order as a condition of any bond for violations of Section 11-1-1 or 11-2-2 or 11-2-4 above a no contact provision that shall be in absolute effect for seven (7) days from the date of offense.

(1) This absolute no contact can not be waived by the abused or allegedly abused party.

(2) Any violation of this no contact provision shall result in the immediate arrest of the violating party with no further bond to be set prior to trial.

(b) The Court may order as conditions of release temporary orders as may relate to the following:

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- (1) Custody and Visitation regarding minor children of the parties.
- (2) Child Support and Spousal maintenance.
- (3) Exclusive use or residence or property.
- (4) Orders preventing the sale, transfer, hypothecation, hiding or otherwise disposing of marital or mutually held property without prior approval of the Court, except in the ordinary course of business.

### SECTION 11-3-3. Exceptions to the Hearsay Rule.

The following exceptions to the hearsay rules of evidence are specifically authorized for any proceeding under this Title.

(a) Statements made by any person to, or in the presence of, law enforcement officers, detention officers, members of child protective services during the course of their investigations or processing of persons after their arrest or detention.

(b) Statements made to counselors, advisors or other persons involved in assisting victims and perpetrators of domestic abuse.

(c) Statements made by minor children to any mandatory reporter.

(d) Statements which fall under the auspices of subsections (a), (b) or (c) above shall be admissible following a demonstration by the party desiring to have such evidence admitted that the party making the statement (Declarant) is:

- (1) Physically located outside the boundaries of the Omaha Tribal Reservation; or
- (2) Location unknown after a demonstration of due diligence by the party seeking to have the statement admitted; or
- (3) Available, but unwilling to testify, or unable to testify due to memory loss or a demonstrable lack of ability to effectively communicate to the Court due to age, disability, fear or other such factor as the Court may find good cause.
- (4) Pattern evidence shall be admissible, including evidence of prior bad acts, upon a finding that the evidence is both relevant and more probative than prejudicial.

### SECTION 11-3-4. Sentencing.

(a) Class A offenses contained within this title carry the additional sentencing provisions:

- (1) Second offense shall carry a minimum penalty of four (4) months incarceration and fine.
- (2) Subsequent offenses shall carry a mandatory minimum penalty of (6) months incarceration and fine.
- (3) Multiple previous Class B or Class C offenses shall constitute a single Class A offense for the purposes of sentence enhancement.

(b) Class A offenses contained within this title carry the additional sentencing provisions:

- (1) A second Class B Offense shall carry a minimum penalty of sixty (60) days incarceration and fine.
- (2) Subsequent Class B offenses shall carry a minimum penalty of ninety (90) days incarceration and fine.
- (3) Class A offenses or multiple Class C offenses shall constitute a single Class B offense for enhancement purposes.

(c) Class C offenses contained within this title carry the additional sentencing provisions:

- (1) A second Class C offense shall carry a minimum penalty of twenty-one (21) days incarceration.

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(2) Subsequent offenses shall carry a minimum penalty of forty-five (45) days incarceration.

(3) Class A or Class B offenses under this Title shall apply to this section for purposes of enhancement.

(d) For any conviction under Sections 11-2-1 through 11-2-4 above the Court shall order domestic violence counseling and education and shall make other evaluation or counseling orders as shall be appropriate and such orders are enforceable by the contempt powers of the Court.

(e) For purposes of sentence enhancement under Sections 11-3-4(a) through 11-3-4(c) above, for offenses occurring prior to the effective date of this Title, the Court may use prior offenses for enhancement purposes upon a finding of fact by the Court that such offense were based upon facts which would support a conviction under sections 11-2-1 through 11-2-4 of this Title.

(1) Notice of the proposed use of such earlier conviction must be filed with the Court at least five (5) working days prior to trial, or sentencing in the event of a guilty plea at arraignment.

(2) The proposed use of such earlier conviction is grounds for rescinding a guilty plea made at arraignment, unless notice of the proposed use of earlier conviction was given at or before the time of arraignment.

### **SECTION 11-3-5. Authority of the Court to Reject Plea.**

(a) The Court may, upon its own Motion or Motion of other party in interest reject any proposed plea or plea bargain which would dispose of any charge proffered under this Title; if:

(1) Such plea would result in all charges under Sections 11-2-1, 11-2-2, 11-2-3 or 11-2-4 of this Title being dismissed; and

(2) Such dismissal appears to be for the purpose of evading the enhanced sentences provided for in this Title or the collateral effects of a conviction under this Title.

### **SECTION 11-3-6. Statute of Limitations.**

Statute of limitations shall not toll for any time period during which the Defendant is not physically to be found within the exterior boundaries of the Omaha Tribal Reservation.

### **SECTION 11-3-7. Duration of Use of Conviction for Enhancement.**

No conviction for which a defendant was sentenced more than five (5) years prior to the date of the subsequent offense shall not be used for purposes of enhancement.

### **SECTION 11-3-8. Collateral Effects of Conviction under this Title.**

(a) Any person convicted of any Class A or Class B offense or subsequent Class C offense shall be ineligible for foster care placement or guardianship of a minor child for a period of five years from the date of the most recent conviction.

(b) Any person convicted of any Class A or Class B offense or subsequent Class C offense shall be the subject of a rebuttable presumption against their suitability as a custodial parent in any child custody proceeding for a period of five years from the date of the most recent conviction.

(c) Any person convicted of any Class A or subsequent Class B offense shall not own, use or possess any firearm for a period of twenty-four (24) months following the date of the most recent conviction. This section is enforceable by the contempt powers of the Court.

(d) Any person convicted of any offense under this Title may be disqualified for certain positions or types of employment with the Omaha Tribe of Nebraska, its wholly owned subsidiaries, or companies or agencies doing business with the Omaha Tribe or on the Omaha Tribal Reservation.

(e) All of these collateral effects shall be made part of the rights advisory at arraignment for any offense under this Title.

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## SECTION 11-3-9. Jurisdiction Over the Victim.

(a) No alleged victim of an offense under Sections 11-2-1, 11-2-2, 11-2-3 or 11-2-4 shall be permitted to post bond for any person arrested under this Title.

(b) Any alleged victim approaching the Court for a bond reduction, suspension of a condition of release or otherwise indicating a desire for reconciliation must voluntarily submit to the jurisdiction of the Court. The Court may make any reasonable demands upon such an alleged victim which are in keeping with the stated purposes of this Title.

## SECTION 11-3-10. Specific Authorization for Release of Information.

The Court shall specifically order the release of any potentially probative information in the possession of any third party, institution or legal entity upon request of either party without the necessity of securing the consent of either the defendant, alleged victim or parent/guardian of any such party.

## SECTION 11-3-11. Orders Implementing the Purposes of this Title.

The Court may make any order reasonably calculated to advance the interest of justice and the purpose detailed in this Title by exercise of the Court's plenary powers.

## SECTION 11-3-12. Persons Not Subject to Jurisdiction.

In the event that any person who is not subject to the criminal jurisdiction of the Omaha Tribe commits any action which would meet the element of offense for any Class A offense or subsequent Class B offense, the Tribal Court shall make application to the Omaha Tribal Council to begin proceedings to expel, ban or exclude such person from the exterior boundaries of the Omaha Tribal Reservation.

## CHAPTER 4. ARREST AND INVESTIGATION PROCEDURES.

### SECTION 11-4-1. Mandatory Arrest.

(a) Any sworn officer of the Omaha Nation Law Enforcement shall effect an arrest without a warrant, under the provisions of this Title in the following circumstances:

- (1) The Officer witnesses any action which constitutes an offense under Sections 11-2-1, 11-2-2, 11-2-3 or 11-2-4 of this Title; or
- (2) The officer has reasonable grounds to believe that any person is committing actions which constitute an offense under this Title, or has committed such actions in the last twenty-four (24) hours; and one of the following circumstances exist:
  - (A) Probable cause for the officer to believe that further domestic abuse or domestic violence directed against the same victim or another is likely; or
  - (B) Evidence physical injury; or
  - (C) Evidence of damage to property; or
  - (D) Probable cause to believe that one party has reasonable grounds for fear of imminent bodily injury from another party.

(3) In the event that the disturbance appears to the officer to be of a mutual nature the Omaha Nation Law Enforcement shall endeavor to determine which party is the aggressor.

(A) If the Law Enforcement Officer can determine that there is probable cause to believe that one party is the aggressor and circumstances exist under Section 11-4-1(a)(1) or (2) above the officer shall effect an arrest.

(B) If both parties reasonably appear to be under the influence of alcohol or other intoxicating substance both parties shall be arrested.

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(i) In the event such a multiple arrest is made, all parties shall be administered a mechanical breath test and a field sobriety test. If the party tests at .08 or higher B.A.C. or higher a rebuttable presumption shall be created that the party was a mutual combatant.

(ii) Failure to submit to the breath test shall have the same effect as a test of .08 or higher under subsection (3)(B)(i) above.

(4) In the event that all parents, guardians or custodians present are arrested Child Protective Services (CPS) shall be contacted even in the event that the officer makes temporary placement with a family member prior to CPS arrival.

(b) It shall not be necessary for the victim to cooperate or desire that an arrest be made in order for the officer to effect an arrest. All alleged victims and abusers shall be informed that it is the prerogative of the Omaha Nation to proffer criminal charges and not a prerogative of the alleged victim.

(c) In ascertaining whether an arrest shall be made and/or which party may be the aggressor there shall exist no presumption or bias to the fault or detriment of either gender.

(d) All arrest reports under this Title shall be submitted within twenty-four (24) hours or by the beginning of the next regular work day for the Tribe. Each such report shall include an affidavit of probable cause.

(e) In the event that an officer shall respond to a domestic disturbance and no arrest is made a report shall still be filed within twenty-four (24) hours or by the beginning of the next regular work day for the Tribe, indicating the circumstances and the reasons that no arrest was made.

(f) In the event that no arrest was made because the alleged abuser had fled the scene, active efforts shall be made to locate and arrest the abuser. Application shall be made for an arrest warrant if the alleged abuser is not located and arrested within twenty-four (24) hours.

### **SECTION 11-4-2. Notice of Victims Rights and Responsibilities.**

A statement of victim's rights and responsibilities shall be formulated and such shall be approved by the Chief Judge of the Omaha Tribal Court. A copy of this statement shall be delivered to each victim at the scene with signed copy to be included with the police report.

### **SECTION 11-4-3. Civil Liability – Immunity.**

(a) Any person reporting an incident of domestic violence or abuse on a good faith basis shall be immune from civil liability for such action.

(b) Law enforcement officers who operate on a good faith basis shall be immune from civil liability for decisions to arrest or not.

### **SECTION 11-4-4. Bond.**

Any person arrested under Section 11-4-1 above for a violation of Sections 11-2-1, 11-2-2 or 11-2-4 shall not be eligible for bond for at least twenty-four (24) hours following the arrest, not including weekends and holidays.

### **SECTION 11-4-5. Victim Advocates.**

Any person may be qualified and approved by the Tribal Court to act as a victim advocate, either on a single case or routine basis. Such advocates may be authorized to assist in the processing and filing of protective orders on behalf of the victim and may be authorized to speak on the victims behalf at bond hearings, modification or review of bond hearings or sentencing hearings.

## **CHAPTER 5. PROTECTION ORDERS**

### **SECTION 11-5-1. Eligibility.**

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(a) Any person who has been the victim of any crime under Sections 11-2-1, 11-2-2 or 11-2-4, whether or not such crime has been reported to the police or other authorities, is eligible for a domestic violence protection order.

(b) Any parent, guardian or family member of a minor child or an incapacitated adult who has been a victim of any crime under Sections 11-2-1, 11-2-2 or 11-2-4, whether or not such crime has been reported to the police or other authorities, on behalf of such minor child or incapacitated adult.

### SECTION 11-5-2. Cost Waived.

No victim, or authorized advocate, shall be charged any fee for the filing, service or associated costs of the protection order being processed.

### SECTION 11-5-3. Uniform Form Required; Required Language.

(a) The Court shall formulate and adopt uniform forms for the Petition for a protection order and temporary and final protection orders and provide such forms to the Clerk of Court.

(b) Each Petition shall contain a listing of each civil action involving both parties, a listing including birth dates and current residence of any common children and a listing of common residences and automobiles.

(c) Each petition must contain a clear and concise statement of the nature of the alleged domestic violence.

(d) Each petition must be sworn under oath before a Clerk of the Omaha Tribal Court or other such Court personnel so designated and shall be subject to criminal penalties for providing false information to the Court. Such penalties must be printed in bold faced capital letters of the Petition form.

(e) All protection orders must have the following printed in bold faced capital letters on the protection order:

(1) **“THIS ORDER COMPLIES WITH THE PROVISIONS OF THE FEDERAL VIOLENCE AGAINST WOMEN ACT (VAWA) AND AS SUCH IS VALID ACROSS ALL STATE, TRIBAL AND FEDERAL LANDS.”**

(2) **“CONSEQUENCES FOR VIOLATION OF THIS PROTECTION ORDER INCLUDE...”**

(3) **“THE RESPONDENT SHALL NOT OWN OR POSSESS A FIREARM FOR ONE YEAR FOLLOWING THE EFFECTIVE DATE OF ANY FINAL ORDER FOR PROTECTION AND CONSEQUENCES FOR VIOLATION OF THIS CONDITION ARE...”**

(4) **“IF SO ORDERED BY THE COURT, THE RESPONDENT IS FORBIDDEN TO ENTER OR STAY IN THE PETITIONER’S RESIDENCE, EVEN IF INVITED TO DO SO BY THE PETITIONER OR ANY OTHER PERSON. IN NO EVENT SHALL THE ORDER FOR PROTECTION BE VOIDED BY OTHER THAN THE OMAHA TRIBAL COURT AFTER FULL HEARING.”**

### SECTION 11-5-4. Jurisdiction; Venue; Residency not Required.

(a) The Omaha Tribal Court shall have jurisdiction under this Title to hear any Petition for protection orders if:

(1) The Petitioner is domiciled or to be found within the boundaries of the Omaha Tribal Reservation.

(2) The Respondent is domiciled or to be found within the boundaries of the Omaha Tribal Reservation.

(3) Any act of domestic violence as defined in Section 11-1-4 of this Title has been committed within the boundaries of the Omaha Tribal Reservation.

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- (4) The Court is being asked to recognize and enforce a valid order of another Court of competent jurisdiction.
- (b) The Court shall construe this provision broadly in order to provide maximum possible jurisdiction.
- (c) All motions or other proceeding designed to alter, void or challenge a court order for protection from another Court of Competent jurisdiction shall be heard in the Court granting the Original protection order unless the party bringing the proceeding can show overwhelming evidence why venue should be transferred to this Court.
- (d) There is no minimum residency requirement to petition this Court for an order of protection.

### SECTION 11-5-5. Ex-Parte Relief Available.

- (a) The Court may, upon a valid filing for an order of protection under this Title, without notice or hearing, order any relief available under this Section 11-5-8 of this Title, except Section 11-5-8 (9), on a temporary basis until such time as a hearing may be held provided:
- (1) The Court finds that the Petition and any attached statements, medical or police reports articulate reasonable grounds to believe that domestic violence has occurred between the parties and that an order for protection is reasonably necessary to protect the victim and/or the victim's children.
- (b) If the Court makes such an ex-parte order the Court shall schedule a hearing within fourteen days and the order shall include:
- (1) A notice of hearing providing all pertinent information to the Respondent regarding the scheduled hearing.
- (2) The following statement in bold faced capital letters:
- “THE RESPONDENT SHALL BE ADVISED THAT IF A HEARING, THIS ORDER SHALL REMAIN IN FORCE UNTIL SUCH TIME AS SERVICE IS COMPLETED OF THE FINAL ORDER OF PROTECTION. THE RESPONDENT SHALL BE FURTHER ADVISED THAT IF HE/SHE FAILS TO APPEAR AT THE HEARING FOR A FINAL ORDER OF PROTECTION THE COURT MAY GRANT THE RELIEF REQUESTED. THE RESPONDENT SHALL BE FURTHER ADVISED THAT IF THE RESPONDENT FAILS TO APPEAR, SUCH FAILURE SHALL NOT BE USED AS A DEFENSE BY THE RESPONDENT TO A VIOLATION OF RIGHTS.”**
- (3) The Court shall transmit any such order to the Omaha Nation Police Department by the end of the working day and to all other law enforcement agencies within the exterior boundaries of the Omaha Tribal reservation within seventy-two (72) hours.
- (4) The Omaha Nation Law Enforcement shall make active efforts to serve the Respondent with a copy of the ex-parte order within seventy-two (72) hours of the Department receiving the order.
- (5) If possible and applicable the Respondent shall be served at the time of his/her arraignment.
- (c) If the Court denies a Petition for relief on an ex-parte basis, without notice or hearing, the Clerk of Court shall notify in person or by regular U.S. Postal mail that they still have the right to request a hearing with notice to the Respondent.

### SECTION 11-5-6. Required Notice.

- (a) If the Respondent has not been served with a copy of the ex-parte Order for Protection by the time of the scheduled hearing and:
- (1) The Court is provided with sworn affidavits or testimony of Omaha Nation Law Enforcement personnel detailing reasonable efforts at service; and

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(2) The Petitioner advises under sworn oath in open Court that he/she believes that the Respondent is avoiding service by concealment or otherwise, is unaware of the current whereabouts of the Respondent, or is aware of the current whereabouts of the Respondent and the Respondent has removed his/herself from the exterior boundaries of the Omaha Tribal Reservation.

Then the Court shall order the Clerk to set another hearing within fourteen (14) days of the date of the original hearing date.

(b) If the Court orders a second hearing set, the Omaha Nations Law Enforcement shall be provided with the notice of the second hearing and shall continue to attempt service of the ex-parte order along with the second notice of hearing.

(c) If the Court orders a second hearing set, the Clerk of Court shall mail notice by regular U.S. Postal mail to the last and best known address of the Respondent. If no address is known, or the Respondent's last known address was the home of the Petitioner and the Respondent has removed him/herself from the residence, or has been ordered to remove himself from the residence, the Clerk of Court shall mail by regular U.S. Postal mail to two of the Respondent's relatives known to reside within the exterior boundaries of the Omaha Tribal Reservation or to the Respondent's last known place of employment if no known relatives are found. The Clerk shall provide an affidavit of service to the Court.

(d) If the Respondent fails to appear at the second hearing the Court shall hold the hearing, regardless of any proof of actual service.

### SECTION 11-5-7. Hearing for Final Order.

(a) The Court shall hear all evidence available and shall use the standards of reliability and probative value as overriding considerations when applying rules of evidence with the goal of ascertaining the facts surrounding the Petition.

(b) If the either party fails to appear the Court may issue default orders, either for dismissal or for entry of a Final Order of Protection.

(c) The Court shall make all findings to the standard of preponderance of the evidence.

### SECTION 11-5-8. Available Relief.

(a) The Court may order any of the following types of relief as part of an Order of 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 otherwise communicating with the Petitioner or other named household or family member directly or indirectly through friends, co-workers or relatives etc...

(3) Order the Respondent to stay a minimum distance away from the residence, school, or place of employment or any other specified place frequented by the Petitioner and/or any designated family or household member.

(4) Order the seizure of and prohibit the respondent from using or possessing a firearm or other weapon seized by the Court.

(5) Remove and exclude the Respondent from the residence of the Petitioner, regardless of ownership or lease of the residence. The Court may direct the appropriate law enforcement agency to accompany the Petitioner to ensure that they are safely restored to possession of the residence, motor vehicle or other personnel property, effects or documents, or to supervise the Petitioner's or Respondent's removal of personal belongings.

(6) Prohibit the destruction, liquidation, disposal or concealment of any and all joint assets or property and any and all specific assets of the Petitioner.

(7) Grant temporary custody of any minor children to the Petitioner.

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(8) Specify arrangements for visitation of any minor child(ren) by the Respondent, and may require any visitation to be supervised by a independent third party; or the Court may deny visitation to protect the minor child(ren) or the Petitioner.

(9) Order the Respondent to pay:

(A) Reimbursement to the Petitioner for any expenses related to the act of domestic violence incidence, including but not limited to medical expenses, counseling, shelter and repair or replacement of damaged property;

(B) Reasonable attorney's fees;

(C) Any costs or fees incurred by the Petitioner in bringing the action.

(10) Order any such relief as the Court deems necessary and reasonably related to the goal of providing for the safety and welfare of the Petitioner and any designated family or household member.

### **SECTION 11-5-9. Petitioner Cannot Violate or Waive Protection Order**

(a) If the respondent is excluded from the residence of a Petitioner or ordered to stay away from a Petitioner, an invitation to do so does not waive or nullify the order for protection.

(b) The Petitioner cannot violate or be arrested for a violation of his or her own order of protection, ex parte or final.

(c) Abuse of process by a Petitioner intentionally creating or causing to be created a situation for the purpose of causing a violation of the Protection order by the Respondent shall upon a finding by the Court be punishable by the Civil Contempt powers of the Court.

### **SECTION 11-5-10. Mutual Orders Prohibited.**

The Court shall not grant a mutual order for protection, ex parte or final, to opposing parties, unless supported by a finding of clear and convincing evidence that such a mutual order shall be required.

### **SECTION 11-5-11. Time Limits.**

(a) The Court shall not deny a Petitioner relief requested under this Title solely because of a lapse of time between the act of domestic violence and the filing of the Petition, except where the Statute of Limitations for the underlying criminal offense have expired.

(b) An initial protection order issued after notice and hearing shall be for a term of one year. If, at the expiration of that term the Petitioner requests that the order be continued, the Court may, after proper notice and hearing to the Respondent, extend the period of the Protection order for up to three years. There is no limit to the number of additional three year terms which may extend the duration of the Protection order.

(c) At any time during the duration of a protection order either party may petition the Court for a modification or dismissal of the Protection order. After proper notice and hearing the Court may, at its discretion and upon a finding, by clear and convincing evidence, of a material change in circumstance, modify or dismiss the order of protection.

### **SECTION 11-5-12. Mediation Prohibited.**

The Court shall not order the parties into counseling, mediation, restorative justice, peace-making, circle sentencing, traditional Omaha ceremonies or any other type of mediation 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 of Protection.

### **SECTION 11-5-13. Enforcement of Foreign Orders.**

(a) A copy of an order for protection issued by another tribal, state, county or other Court of competent jurisdiction, shall be given full faith and credit by Omaha Tribal law enforcement authorities and the Court and shall have full force and effect as if issued by the Omaha Tribal Court.

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(b) Law enforcement officers shall attempt to verify the existence or validity of any foreign order of protection. In the event that the victim does not have a copy of the order, the officer cannot verify the existence of such an order or the copy is not clear enough to determine its validity, the officer should arrest the subject on any applicable violation of the Omaha Tribal Code and shall assist the victim in obtaining verification of the order and/or explain the procedure for obtaining a Protection Order through the Omaha Tribal Court.

(c) Valid foreign orders shall be entered in the Tribal Protection Order registry.

(d) FAX copies of foreign protection orders shall be considered valid.

### SECTION 11-5-14. Tribal Registry for Orders of Protection.

(a) The Omaha Tribal Court shall maintain a registry of all orders for protection issued or recognized by the Omaha Tribal Court.

(b) A Current copy of such registry shall be maintained in the Dispatch Center of the Omaha Nations Law Enforcement Center and apprised dispatch of any withdrawals, revocations or modifications of such orders.

(c) FAX copies shall be recognized.

### SECTION 11-5-15. Violation of Protection Order.

(a) Violations of Orders of Protection shall be Class A offenses which shall require mandatory arrest with no bond available to the violator until the violator is arraigned; except:

(b) If the violation of the Protection Order was for the possession or use of a prohibited firearm or weapon the violator shall be subject to a penalty of up to one year incarceration and a one thousand (\$1,000) dollar fine with a minimum incarceration of at least six (6) months for any such violation.