



CODE DEVELOPMENT TO SUPPORT PROTECTION ORDERS AND ENFORCEMENT



Author: Michelle Rivard Parks, Associate Director, Tribal Judicial Institute, UND School of Law
Editorial Credit: Tribal Law and Policy Institute

Code Development Fact Sheet

A. JURISDICTION TO ISSUE AND ENFORCE PROTECTION ORDERS

The Violence Against Women Reauthorization Act of 2013 amended 18 U.S.C. 2265(e):

“(e) TRIBAL COURT JURISDICTION.—For purposes of this section, a court of an Indian tribe shall have full civil jurisdiction to issue and enforce protection orders involving any person, including the authority to enforce any orders through civil contempt proceedings, to exclude violators from Indian land, and to use other appropriate mechanisms, in matters arising anywhere in the Indian country of the Indian tribe (as defined in section 1151) or otherwise within the authority of the Indian tribe.”

B. ISSUING TRIBAL PROTECTION ORDERS

An order of protection generally provides a legal directive to an offender to stay away from a victim or to prohibit other forms of contact that the court deems unacceptable, including contact through third parties. Order of protection provides a legal basis to hold offenders accountable if they violate the commands of the court. It is important to note that an order of protection:

- Must comply with Tribal Law;
- Must comply with Federal Law (specifically VAWA, 18 U.S.C. 2265); and
- Should include specific findings.

SPECIFIC FINDINGS TO BE MADE BY THE TRIBAL COURT IN THE PROTECTION ORDER SHOULD INCLUDE:

- Tribal Court jurisdiction (personal and subject matter);
- Due process (notice and an opportunity to be heard);
- Findings of violent, harassing or threatening behavior; and
- Declaration of enforcement authority or directives for law enforcement and/or other jurisdictions.

Best Practice: When making findings relevant to jurisdictional authority, the Tribal Court should be very specific and state all factors considered by the court in making the finding.

C. TRIBAL CODES TO SUPPORT PROTECTION ORDERS

1. PROCEDURAL LAWS

Tribal Code provisions pertaining to protection orders should provide guidance to the court including provisions that:

- Clarify the Jurisdictional authority of the Tribal Court to both issue and enforce an order of protection;
- Clarify eligibility or standing of individuals to seek an order of protection;
- Provide procedural guidance clarifying how an individual can seek and obtain an order of protection. Procedural standards in Tribal Codes should:
 - Provide guidance to individuals on how to initiate a cause of action in the Tribal Court should they wish to seek an order of protection (typically this is done by specifying that an individual may initiate a cause of action by first filing a Petition for an order of protection);
 - Specify factual findings that must be made and the process applicable to temporary (ex parte) emergency order of protection;
 - Specify factual findings that must be made and the process applicable to an order of protection; and
 - Identify circumstances (such as residency or venue requirements) and timeframes for scheduling and conduct of hearings associated with order of protection proceedings.
- Specify the required findings and provisions that the Tribal Court must make within the written order of protection;
- Be sure to include any additional provisions within the protection order that may be appropriate, such as property distribution, custody, support, visitation or remedies; and
- Clarify the applicable procedural and substantive remedies for alleged violations of order of protection.

2. DEFINED CRIMES

Tribal Criminal Codes should include specified crimes applicable to a violation of a protection order. Such crimes will need to define what will constitute a qualifying order of protection and will further need to define what will constitute a violation of an order of protection. In addition, to specifically defined crimes for violations of protection orders, tribes may consider incorporating a criminal contempt statute into the tribal criminal code. (Note: incorporation of a criminal contempt statute should be considered distinctly from inclusion of civil contempt process).

3. CRIMINAL REMEDIES

Any number of criminal remedies may be imposed once an individual has been found guilty of an offense for violation of an order of protection or for criminal contempt. Tribes may want to include remedial measures or sentencing options in tribal codes such as:

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| • Jail Time | • Exclusion/ banishment |
| • Fines | • Loss of tribal benefits or licenses |
| • Restitution | • Counseling or re-education |
| • Community Service | • Forfeiture of weapons |

4. CIVIL REMEDIES

Any number of civil remedies may be imposed if tribal codes support such remedies. Tribes may want to include remedial measures in tribal codes such as:

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| • Civil fines | • Loss of tribal benefits or licenses |
| • Community Service | • Counseling or re-education |
| • Exclusion/ banishment | • Forfeiture of weapons |
| • Restitution to victim | |
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D. TRIBAL CODES, RULES, AND PROCESSES: SUPPORTING VICTIM-CENTERED ADJUDICATION

- **PERSONAL INFORMATION:** Oftentimes the address of the filing party is required on petitions. For protection orders, the tribal code or Tribal Court rules may restrict the inclusion or release of personal information of petitions for protection orders, such as place of residence of the victim, to alleviate safety concerns. Some jurisdictions have developed standardized petitions for protection orders to alleviate safety concerns relevant to personal information.
- **ACCESSIBLE FILING PROCESS:** Many tribal codes require filings be made at the Tribal Courthouse. Adapting codes/rules to enable a victim to file for an order of protection via telephone, facsimile, e-filing or in person can assist in court accessibility. This is especially important during times of crisis when a victim is in emergency shelter or when circumstances such as poverty or lack of access to transportation is a factor.
- **DEFENDANT/RESPONDENT NOTIFICATION:** Tribal Codes or rules should also contemplate how service will be made upon a defendant or respondent and what information will be included in the notification. Personal information about the victim such as place of residence or place of employment should not, as a best practice, be included in documents that are served upon the Defendant/ Respondent. If service of responsive pleadings are a concern, it may be advisable to have those pleadings filed with and served by the Tribal Court. In tribal jurisdictions that permit electronic filings (via email or online database), the service of responsive pleadings and questions relative to party residence becomes less of an issue.

COURTROOM SAFETY

Measures to safeguard victims during court hearings may be reinforced through established court roles or codes. Courtroom safety measures might include:

- Permitting victim advocates to accompany victims to and inside of the courtroom;
- Having a courtroom security officer (bailiff or law enforcement officer) present at all hearings; and
- Creating sufficient physical separation between the victim and offender inside of the courtroom.

STANDARDIZED PROTECTION ORDER

Many jurisdictions, including tribal jurisdictions, implement standardized protection orders and cover sheets to ensure consistency in language and to further ensure that necessary information is available to law enforcement should a violation be reported.

VICTIM'S RIGHTS LEGISLATION

This is important to empowering the victim, minimizing further trauma throughout the criminal adjudication process and to supporting victim safety. Victim's Rights legislation should clearly establish rights of victims to participate in the adjudicatory process, to be informed, to be safe and to be self-determining. It is important that Victim's Rights legislation not only articulate the rights of victims but also establish a process for enforcement of those rights.

Note: Law Enforcement plays a critical role in the service and enforcement of orders of protection. It is therefore important to provide ongoing training and education for law enforcement relevant to protection orders and to further encourage law enforcement participation in any coordinated community response efforts. Tribal Codes should provide direction to law enforcement relevant to service, arrest and enforcement options whenever possible.

Resources

For more information and tips on drafting orders of protection, please visit <http://TribalProtectionOrder.org/Drafting-Protection-Orders/>.

For more information and tips on enforcement of protection orders, please visit <http://TribalProtectionOrder.org/Online-Resources/>.