

TITLE 14D

PROTECTIVE ORDER CODE ORDINANCE # 02-07

OF THE HOOPA VALLEY TRIBE HOOPA VALLEY INDIAN RESERVATION

**APPROVED BY TRIBAL COUNCIL
APRIL 5, 2007**

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HOOPA VALLEY TRIBAL PROTECTIVE ORDER CODE

PROTECTIVE ORDER ORDINANCE
HOOPA VALLEY TRIBE
HOOPA VALLEY INDIAN RESERVATION
TITLE 14D

Ordinance No: 02-07

Date Approved: April 5, 2007

Subject: Protective Orders within the Hoopa Valley Reservation

WHEREAS, the Hoopa Valley Tribal Council is the governing body of the Hoopa Valley Indian Tribe of California pursuant to authority in Article V, Section 1 of the Hoopa Valley Tribal Constitution and Bylaws as approved by the Commissioner of Indian Affairs on August 18, 1972 and subsequently confirmed and ratified by the United States Congress on October 31, 1988 (25 U.S.C. § 1301 *et seq.*);

WHEREAS, the Hoopa Valley Tribal Council is authorized to negotiate with federal, state and local governments on behalf of the Tribe; and

WHEREAS, the Hoopa Valley Tribal Council is authorized to promulgate and enforce ordinances governing the conduct of members and non-members of the Hoopa Valley Indian Tribe within the exterior boundaries of the Hoopa Valley Indian Reservation pursuant to Article IX of the Hoopa Valley Tribal Constitution and Bylaws; and

WHEREAS, the Hoopa Valley Tribal Council is authorized to safeguard and promote the peace, safety, morals and general welfare of the Hoopa Valley Indians pursuant to Article IX of the Hoopa Valley Tribal Constitution and Bylaws; and

WHEREAS, the Hoopa Valley Tribal Council deems a Protective Order Ordinance is necessary for safeguard and promotion of peace, safety, morals and the general welfare of the Hoopa Valley Tribe as well as individual members of the Hoopa Valley Tribe.

NOW, THEREFORE BE IT RESOLVED, that the following Ordinance governing the issuance and effect of protective orders issued by the Hoopa Valley Tribal Court, and recognition and enforcement of protective orders from other jurisdictions, is hereby adopted and shall be effective upon approval by the Hoopa Valley Tribal Council.

CHAPTER 1 GENERAL PROVISIONS

14D.1.01. TITLE

This title shall be known as the Hoopa Valley Tribal protective order code.

14D.1.02 AUTHORITY

14D.1.03 PURPOSE

The purposes of this Code are to:

- (1) insure the safety and protection of all persons within the community from violence, threats of violence, or harassment, including domestic violence; and
- (2) to protect elders or dependant adults from abuse; and
- (3) to insure that community members are able to seek protection from their community when necessary; and
- (4) to provide equitable injunctive relief in cases where monetary damages will not adequately protect or restore the plaintiff.

It is the intent of this code to afford the appropriate protection for any person who petitions for a protective order under this title.

14D.1.04 CONSTRUCTION

(a) Rules of Construction

Chapter 1 through Chapter 7 shall be exempted from the rules of strict construction and shall be liberally construed to give full effect to the objectives and purposes for which they were enacted. The terms and provisions of Chapter 1 through Chapter 7 shall be construed according to the fair import of their terms, but when the language is susceptible to differing construction, it shall be interpreted to further the general purposes stated in this Chapter

(b) Definition of Terms

- (1) Where a term is not defined herein, it shall be given its ordinary meaning.
- (2) Any reference to "he," "him" or other masculine terms shall include male and female persons.
- (3) Any reference to a singular term includes the plural.
- (4) "Shall" is mandatory and "may" is permissive.

14D.1.05 INCONSISTENT PROVISIONS OF OTHER LAW

If any provision of Hoopa Valley law is found to be inconsistent with this Title, the provisions of this Title shall govern in protective order proceedings unless there is good cause shown that application of this Title would not be in the interests of justice and that application of this title would defeat one of the purposes described in Section 14D.1.03

above, or in any of the purpose statements for the individual chapters of this code. The civil procedure provisions of title 2 of the Hoopa Valley Tribal Code apply to cases filed under this code, unless a specific provision of this code contradicts Title 2. Whenever a specific provision exists in this code, that provision will govern the procedure in protective order and injunction cases.

14D.1.06 SEVERABILITY

If any part of this Ordinance is held to be invalid, the remainder will continue to be in full force and effect to the maximum extent possible.

14D.1.07 SOVERIEGN IMMUNITY NOT WAIVED

Nothing in this code shall be deemed to constitute a waiver by the Hoopa Valley Indian Tribe of its sovereign immunity, rights, powers or privileges.

14D.1.08 EFFECTIVE DATE AND AMENDMENT

This Ordinance shall be effective from the date of its approval by the Tribal Council. This Ordinance may be amended as provided in Title 6 of the Hoopa Valley Tribal Code.

14D.1.06 JURISDICTION

The Hoopa Valley Tribal Court has the authority to issue civil protective orders in all cases of harassment, violence, threats of violence, domestic violence, or elder abuse situations, as defined within this code that arise within the exterior boundaries of the Hoopa Valley Reservation. The Hoopa Valley Tribal Court has the authority to issue injunctions, as defined within this code, in any civil matter that arises within the exterior boundaries of the Hoopa Valley Reservation. This includes the power to enforce subpoenas, orders of contempt, and any other orders as appropriate.

14D.1.07. CRIMINAL PENALTIES

This code in no way interferes with or limits the state's right to prosecute any criminal case arising out of the same facts for which a civil protective order is sought. Further, the Court may refer cases filed under this title to the Humboldt County District Attorney's office for prosecution, where appropriate.

14D.1.08 DEFINITIONS

The following definitions apply to all chapters in this code:

"Alarm" means to cause apprehension or fear resulting from the perception of danger.

"Causing physical harm or bodily injury" includes, but is not limited to causing physical pain, serious illness, or an impairment of a physical condition.

"Coerce" means to restrain, compel or dominate by force or threat.

"Contact" includes but is not limited to:

- 1) Coming into the visual or physical presence of the other person; or
- 2) Following the other person; or
- 3) Repeatedly keeping a person under surveillance by remaining present outside his or her residence, school, place of employment, vehicle or other place occupied by the person or by peering in the windows; or
- 4) Creating a disturbance at a person's place of employment, residence, school, or other place occupied by the person; or
- 5) Repeatedly telephoning, e-mailing, or faxing, to a person's place of employment or residence, or otherwise seeking to communicate with the person, either directly or through a third party; or
- 6) Committing a crime against the other person; or
- 7) Communicating with a third person who has some relationship to the other person with the intent of affecting the third person's relationship with the other person; or
- 8) Communicating with business entities with the intent of affecting some right or interest of the other person; or
- 9) Damaging the other person's home, property, place of work or school; or
- 10) Delivering directly or through a third person any object to the home, property, place of work or school of the other person; or
- 11) Improperly concealing a minor child from a person with sole or joint custody of the minor, repeatedly threatening to improperly remove the person's minor child from the jurisdiction or from his or her physical care, repeatedly threatening to conceal the person's minor child or making a threat following an actual or attempted improper removal or concealment, unless the removal or attempted removal was made while fleeing from an incident or pattern of domestic violence; or threatening physical force, confinement or restraint.

"Ex parte order" means an emergency order entered before notice can be given to the other party.

"Harassment" means a series of acts over any period of time directed at a specific person that would cause, or has caused, a reasonable person to be seriously alarmed, or annoyed and that serves no legitimate purpose.

"Injunction" means a court order that compels a party to do or refrain from a specific act, in order to protect a party's property, rights, or assets. As used in this code, protective orders issued under chapters 1 through 6 are excluded from the definition of injunction.

"Protection Order" includes any injunction or other order issued for the purpose of preventing violent, abusive, or threatening acts or harassment against, or contact or communication with or physical proximity to, another person, including temporary and final orders issued by the court

"Stalking" occurs where:

- (1) the person knowingly alarms or coerces another person or a member of that person's family or household by engaging in repeated and unwanted contact with the other person;
- (2) it is objectively reasonable for a person in the victim's situation to be alarmed or coerced by the contact; and
- (3) the repeated and unwanted contact causes the victim reasonable apprehension regarding the personal safety of the victim or a member of the victim's family or household.

"Repeated" means two or more times.

"Violence" means the use of physical force to injure, or attempt to injure, another person.

CHAPTER 2 PROCEDURES APPLICABLE TO CHAPTERS ONE THROUGH SIX OF THIS CODE

14D.2.01 WHO MAY PETITION THE COURT FOR A PROTECTIVE ORDER

(a). Anyone over the age of 18, who has been the victim of harassment, violence, threats, domestic violence, or elder abuse which have occurred within the boundaries of the Hoopa Valley Reservation

(b). A parent, guardian, or other representative may file a Petition for an Order for Protection on behalf of any of the following persons:

- (1) a minor victim; or
- (2) any person, regardless of age, prevented by a mental or physical incapacity or by hospitalization from seeking a protection order

(c) Family or household members, including adults, may jointly file a single petition

(d) An aggrieved party may not obtain an order of protection against a child or grandchild under the age of 16, unless it is proven by clear and convincing evidence that the child has committed the acts complained of and no lesser remedy is available.

(e) Multiple defendants may be listed on the same protective order petition so long as the named defendants have acted together to commit the complained of acts

14D.2.02. DUTY OF COURT PERSONNEL TO PROVIDE FORMS

The Clerk of Court or other designated person shall provide to a person requesting an Order for Protection:

- 1) a standard Petition form with instructions for completion,
- 2) all other forms required to petition for an Order for Protection, such as those needed for service of process.

14D.2.03. CONTENTS OF THE PETITION

(a) The Petition must contain the following information:

- (1) The names of all petitioners and respondents;
- (2) the names of all family and household members to be protected by the order
- (3) The tribal membership status of all petitioners and respondents, if known;
- (4) The physical address and mailing address of all petitioners and respondents, if known;
- (5) a physical description of all respondents;
- (6) a description of the abuse, harassment, violence, or threats, including the date, and location of the events;
- (7) any current court cases that involve the petitioners and respondents;
- (8) any past restraining orders issued that involve the current petitioners and respondents
- (9) the protection requested from the court
- (10) whether or not the petitioner requests law enforcement be present at the time of the hearing, and the reason for that request.

(b) Request that Petitioner's Physical Address Remain Confidential

The petitioner may request that his/her current physical address remain confidential and not be released by the Court except on Petitioner's written request and consent.

14D.2.04 EMERGENCY ORDERS FOR PROTECTION

(a) Basis for Issuance

The Court shall immediately grant an ex-parte Emergency Order for Protection if, based on the specific facts stated in the Petition, or at the ex parte hearing, there is probable cause to believe that the Petitioner is in immediate danger of violence or some other significant physical, emotional, or financial harm occurring prior to a hearing on the Petition.

(b) Record Relied upon for Issuance

The court may grant such an order based solely on the papers filed by the Petitioner, or based upon the papers and testimony of the Petitioner at an ex parte hearing. If an aggrieved party acting pro se requests ex parte relief, the Clerk of Court shall schedule an ex parte hearing with the Court by the end of the next day on which the Court is in session. If the Court is not in session, the clerk shall arrange for a pro tem judge to hear the motion for ex parte relief within 24 hours.

(c) Denial of Emergency Order for Protection

If the Court denies a petition for an emergency order, Court staff must inform the Petitioner of his or her right to request a hearing upon notice to the Respondent.

14D.2.05 HEARING ON PETITION

(a) Automatic Hearing

A hearing will be automatic on any petition for a protective order under this code.

(b) Scheduling of Hearing

The hearing will be set for 14 days from the date of the filing of the petition for a protective order, or as soon thereafter as available on the Court's calendar, absent good cause to extend the hearing date. The summons shall include the hearing date and time.

(c) Continuance of Hearing Date for Good Cause

The Court may continue the hearing date once for up to 14 days upon a finding of good cause.

(d) Burden of Proof

Unless specifically stated otherwise in any of the chapters, the burden of proof under this code rests with the Petitioner, who must prove by a preponderance of the evidence that the Respondent represents a threat of harm or harassment to the petitioner.

(e) Hearing Procedure

(1) Respondent's Opportunity to Admit or Deny the Allegations

The respondent may either admit or deny the allegations contained in the petition. If the respondent denies the allegations, the court may then and there proceed to hear testimony and accept evidence unless the either of the parties request a further continuance, and the court is satisfied that such a continuance is reasonable and necessary under the circumstances.

(2) Presentation of Evidence

Both parties may call such witness and offer such evidence as is deemed by the court to be relevant to the proceedings, subject to the rules of evidence contained in Title 2 of the Hoopa Valley Tribal Code. .

(3) Cross Examination

Each party has the right to cross examine any witnesses offered by the other party, including the right to cross examine the other party. The court may, on its own motion, limit or end the cross examination of one party by the other party, where it appears to the Court that the questions are being used to harass or intimidate the other party. The Court must make a factual statement on the record as to why it has made such a finding.

(4) Court Findings

Upon conclusion of the hearing the Court shall makes its findings and conclusions and enter its judgment either dismissing the proceedings or issuing an order for protection after noticed hearing. The Court must make reasonable efforts to insure that the order of protection is understood by the parties present at the hearing.

14D.2.07 CONTENT OF PROTECTIVE ORDERS

(a) All protective orders must include the following information:

- (1) The names of the parties and all protected persons;
- (2) A physical description of the Respondent(s);
- (3) A factual basis for the issuance of the protective order;
- (4) The specific acts that the respondent is prohibited from engaging in;
- (5) Any other protective orders stated clearly enough that the parties have notice as to their rights and obligations
- (6) Any ordered amount of restitution or court administrative costs.

(b) All emergency protective orders must contain in addition to the requirements listed in (a):

- (1) a factual basis for the emergency issuance of the protective order;
- (2) the date and time of the noticed hearing on the protective order; and
- (3) the following language, in bold print: "THIS ORDER FOR PROTECTION IS NOW ENFORCEABLE. You will be in contempt of Court if you violate any of the terms of this order."

14D.2.08 RESTITUTION

In addition to any other protective provisions included in a court order issued under any chapter of this title, the court may order the Respondent to pay the following restitution:

(a) Damages

The Court may order the Respondent to pay any medical bills, repairs bills, lost wages, or other damages proven by the Petitioner at hearing.

(b) Court Costs

The court may order the Respondent to pay the Petitioner the amount of any filing fee, service fee, or copy fees paid out by the Petitioner in the filing of the case.

(c) Spokesperson or Attorney's Fees

The Court may order the non-prevailing party to pay the prevailing party's reasonable spokesperson or attorney's fees.

14D.2.09 COURT ADMINISTRATION COSTS

In all cases where the Petitioner was exempted from paying a service or filing fee and the Court ordered a protective order after noticed hearing, the Court may order the Respondent to pay to the court the amount of the filing fee and service fee typically charged in a civil case to defray the Court's case administration costs.

14D.2.10 DURATION OF PROTECTIVE ORDERS

(a) Emergency Protective Orders

An emergency protective order will be valid from the date of issuance to the date of the hearing on the Petition.

(b) Order After Noticed Hearing

An Protective Order After Noticed Hearing will be good for two years from the date of issuance.

(c) Expiration Date

Each Protective order must clearly state its expiration date.

14D.2.11 PRIORITY OF SERVICE OF PROTECTIVE ORDERS

Any protective order issued under this title shall have the highest priority for service by the court service officer, law enforcement personnel, or any other official process server in the employment of the tribe. Any order issued under this title must be served within 24 hours of issuance whenever possible, or as soon thereafter as possible.

14D.2.12 MODIFICATION OR EXTENSION OF PROTECTIVE ORDERS

(a) Ex Parte Modification or Extension

(1) Grounds

The Court may immediately modify an order of protection ex parte, without notice or a hearing, as deemed necessary to protect the Petitioner where:

(A) Respondent has violated a prior or existing order of protection or has engaged in other acts of violence, harassment, threatening behavior, exploitation, or elder abuse; or

(B) There is probable cause to believe that the Petitioner is in danger of violence or some other significant physical, emotional, or financial harm occurring prior to a hearing on the Motion for Modification.

(2) Setting of Noticed Hearing

Where an order is modified ex parte, a noticed hearing must be set within fourteen (14) days of the filing of the modification petition. The hearing date and time must be included in the Modified Protective Order.

(3) Service of Modified Protective Order

The Respondent must be served with the Modified or Extended Protective Order, within 5 days of the hearing date, or the hearing may be continued.

(b) Noticed Hearing Prior to Modification

(1) Grounds

A Motion to Modify or Extend a Protective Order will be granted when the moving party proves either that

(A) circumstance have changed and the protective order is no longer needed; or

(B) circumstances have changed and a new term of the protective order is needed to ensure the Respondent's safety.

(2) Setting of Noticed Hearing

When an Motion to Modify does not qualify for an ex parte order, the Hearing date must be set within 14 days of the filing of the Motion, where the other party is personally served with a copy of the Motion, or within 19 days of the filing of the motion where the other party is served by mail with a copy of the Motion.

CHAPTER 3 COMMUNITY COUNCIL

14D.3.01 PURPOSE

The Hoopa Valley Tribal community has the right and obligation to address problems that arise from actions of community members and others who have chosen to act in a harmful manner within the boundaries of the Hoopa Valley Reservation. This chapter establishes an alternative, or supplemental, resolution process from the Court, drawing on custom and the community's value of what is just.

14D.3.02 REFERRAL TO THE COMMUNITY COUNCIL

(a) Any party to a case filed under any chapter of this title, or the court on its own motion, may request the case be referred to the community council for resolution, with the following exceptions:

(1) The respondent to a domestic violence protective order may not be granted a transfer to the community council over the objection of the petitioner;

(2) In any case where violence has been threatened or committed, the court must find that the petitioner's safety can be protected prior to, during, and immediately after the community council before referring the case to a community council;

(b) The court may order the Respondent appear before the Community Council upon a finding that s/he committed an act or acts which require that a protective order be granted against him/her under this title.

14D.3.03 COMMUNITY COUNCIL MEMBERS

(a) Members

The community council will consist of extended family members of the parties who are willing to participate, any elders in the community who are willing to participate, any community members who have experienced first hand the type of acts the respondent has

been accused of or been found to have committed; any other interested community members who are voted into the specific case by the rest of the council.

(b) Meeting Time and Location

The Council will meet at a time and place selected by the members, and send notice to the parties and the court as to the time and location.

(c) Procedure

The Council members will hear a report of the Respondent's behavior, from both the Petitioner and/or Petitioner's representative, and the Respondent and/or the Respondent's representative. The Council will discuss the problem, determine, if necessary, whether the Respondent acted in the manner complained of by the Petitioner, and if so, what the Respondent must do to make his or her behavior right in the eyes of the community. If the reaches a solution, the Court will issue an order detailing the terms of the agreement.

CHAPTER 4 CIVIL HARASSMENT ORDERS

14D.4.01. FILING FEE

(a) Petitioner Not Required To Pay

The Petitioner shall pay no filing fee for actions filed under this chapter where violence has been used or threatened.

(b) Required

A \$25.00 filing fee is required in all other actions under this chapter.

14D.4.03. SERVICE

(a) Petitioner's Responsibility

It will be the responsibility of the Petitioner to have the summons, and a copy of the Petition for Protective Order personally served on the Respondent(s).

(b) Service by Court Officer or Law Enforcement Personnel

(1) Free of Charge

The Petitioner shall pay no service fee for the Court officer and/or law enforcement service of the summons and copy of the Petition only where the Petitioner has filed a Request for No Cost Service form, and the court finds that it is likely that service of the paperwork, by anyone other than law enforcement, will likely result in violence.

(2) Service Fee

In all other cases there will be a \$25.00 service fee payable prior to the service attempts.

(3) Parties that Cannot be Served within the Boundaries of the Hoopa Valley Reservation

If the Respondent resides and works outside the boundaries of the Hoopa Valley Reservation, the court liaison officer shall complete service by certified mail, return receipt requested, to any address the Petitioner believes may reasonably insure notice to the Respondent, or by publication.

(c) Timeline for Service

The paperwork must be served on all Respondents at least 5 days prior to the hearing date. Failure to do so may result in a continuance of the hearing date to allow the Respondents adequate time to prepare any response or defense.

14D.4.04 RELIEF AVAILABLE IN PROTECTIVE ORDER

Any Order for Protection granted under this chapter, including emergency orders, may include the following relief:

- (1) prohibit the Respondent from committing or threatening to commit acts of violence against the Petitioner and the Petitioner's family and household members;
- (2) prohibit the Respondent from harassing the Petitioner and the petitioner's family and household members;
- (3) prohibit the Respondent from contacting or communicating with the Petitioner directly or indirectly;
- (4) order the Respondent to stay a stated distance away from the Petitioner, and the Petitioner's family and household members;
- (5) remove and exclude Respondent from the Petitioner's place of employment, if Petitioner is present, and other locations frequented by Petitioner;
- (6) prohibit or limit the Respondent's from ownership, possession of, purchase of, attempt to purchase, or receipt of any guns or firearms, and to sell or turn in any guns or firearms that s/he controls; or
- (7) Referral to a community council; or
- (8) such other relief as the Court deems necessary to protect and provide for the safety of the Petitioner and any designated family or household member.

14D.4.05 MODIFICATION OR DISMISSAL OF PROTECTIVE ORDERS

(a) Motion Required

Either party may file a motion with the Court seeking the modification or dismissal of a protective order, however, a protective order cannot be dismissed over the objection of the Petitioner unless the respondent proves by a preponderance of the evidence that there is no longer a need for such an order.

(b) Petitioner's Disregard of Terms of Protective Order

Where the petitioner disregards the terms of the protective order, the court may do one of the following

(1) Dismissal of Order

The court may find that the order is no longer needed, where the Respondent proves by a preponderance of the evidence that the Petitioner has more than once purposefully sought out and interacted with the Respondent in a manner that disregarded the terms of the protective order and despite the contact the Respondent was not violent, threatening, or harassing.

(2) Modification to Mutual Protective Order

The court may modify the protective order to mutually restrain each party from contacting the other where the Respondent proves by a preponderance of the evidence that the Petitioner has more than once purposefully sought out the and interacted with the Respondent by making threats, being violent, or harassing the Respondent

CHAPTER 5 DOMESTIC VIOLENCE PROTECTION ORDERS

14D.5.01 PURPOSE

The purpose of this Chapter is to insure the safety and protection of all persons within their homes from violence or threats of violence and from harassment, and to insure that whenever an offense of domestic violence occurs, the victim is able to seek protection from the community. The strength of the Hoopa Valley Tribe is founded on healthy families, and families damaged by domestic abuse must be healed by the immediate intervention from the community through law enforcement, education, counseling, and other appropriate services. Violent behavior in the home will not be excused or tolerated within the territory of the Hoopa Valley Tribe.

14D.5.02. DEFINITIONS.

In addition to the definitions in sections 14D.1.08, the following definition shall apply in this chapter:

“Domestic Violence” means the occurrence of one or more of the following acts by a family or household member, but does not include acts of self-defense:

- (1) An unlawful attempt, coupled with apparent ability, to commit a violent injury on another family or household member;
- (2) Causing physical harm or bodily injury to another family or household member;
- (3) Placing a family or household member in fear of the infliction of physical harm, bodily injury or assault. This fear may be produced by behavior which induces fear in the victim, including, but not limited to, psychological abuse, verbal threats, harassment, stalking, destruction of property, or physical harm or threat of harm to household pets;
- (4) Causing a family or household member to engage involuntarily in sexual activity by force, threat of force or duress; or
- (5) Willfully violating a court order intended to protect a family or household member.

“Family or household members” include:

- (1) Persons who are current or former spouses.
- (2) Persons who live together or who have lived together at any time.
- (3) Persons who are dating or who have dated.
- (4) Persons who are engaged in or who have engaged in a sexual relationship.
- (5) Persons who are related within two degrees by adoption, blood or marriage.
- (6) Persons who are related, or who are formerly related, by marriage.
- (7) Persons who have a child in common, regardless of whether they have been married or lived together.

“First Disclosure Agency”: means any agency, organization, business, or service provider which receives the first report of domestic violence from a victim or witness of domestic violence.

14D.5.03. NOTICE OF RIGHTS OF VICTIMS AND REMEDIES AND SERVICES AVAILABLE--REQUIRED INFORMATION TO BE PROVIDED BY K'IMA:W MEDICAL CENTER.

(a) K'ima:w Center shall make available to its staff, and to all its patients, a written notice of the rights of victims and of the remedies and services available to victims of domestic violence. At a minimum, the notice must state:

"If you have been a victim of domestic violence **You may:**

File a petition **in Hoopa Tribal Family Court.** A Family court filing does not result in any criminal penalties to the abuser. Through Family court you may:

- (1) **Request an order of protection** from conduct constituting domestic violence, including an order for defendant to stay away from you and your children;
- (2) Seek payment of **temporary child support**
- (3) Seek **temporary custody** of any children

You may seek counseling assistance from the Division of Human Services for yourself and your children.

In addition to these civil remedies, you can **Report** the abuser to law enforcement for the crime of domestic violence."

(b) Any health care practitioner, who becomes aware that a patient is a victim of domestic violence, shall provide the patient with notice of community resources for victims of domestic violence.

(c) Written notice provided by K'ima:w Medical Center, its staff or any health care practitioner, for general distribution to the public shall not include the addresses of shelters, unless the location is public knowledge.

(d) Penalties for failure to provide notice. Those persons mandated to provide notice under this section who knowingly fail to do so or willfully prevent someone else from doing so may be subject to immediate removal from their position and such other penalties including fines and damages as may be allowed under Tribal Law including proceedings in the form of a civil action for enforcement of this provision in Court.

14D.5.04. DUTIES OF COURT TO PROVIDE NOTICE AS TO SERVICES TO PETITIONER

(a) Notice of Available Services

The Clerk of Court or other designated court personnel shall provide to the Petitioner for a Domestic Violence Protective Order written notice identifying the nearest available provider of shelter and advocacy services.

(b) DV 600 Form

In order to facilitate enforcement under full faith and credit provisions of state law, the Clerk of Court or other designated person shall complete a DV 600 form and send an authenticated copy of the Emergency Order for Protection and the Order for Protection to the court clerk for the county where Respondent is located within one business day of the signing of the DV 600 form by the Petitioner.

14D.5.05. FILING FEE

The Petitioner shall pay no filing fee for actions filed under this chapter.

14D.5.06. SERVICE

(a) Law Enforcement Service Free of Charge

In cases alleging domestic violence, the Petitioner shall pay no service fee for the Court officer and/or law enforcement service of the summons and copy of the Petition. If the court issues an order of protection under this chapter the court shall cause the order to be delivered to the Court Liaison officer, or other law enforcement, for expedited service to any of the parties who were not present.

(b) Timeline for Service

The paperwork must be served on all Respondents at least 5 days prior to the hearing date. Failure to do so may result in a continuance of the hearing date to allow the Respondents adequate time to prepare any response or defense.

(c) Parties that Cannot be Served within the Boundaries of the Hoopa Valley Reservation

If the Respondent resides and works outside the boundaries of the Hoopa Valley Reservation, the court liaison officer shall complete service by certified mail, return receipt requested, to any address the Petitioner believes may reasonably insure notice to the Respondent, or by publication.

14D.5.07 EMERGENCY ORDERS FOR PROTECTION

(a) An allegation of a recent incident of domestic violence constitutes probable cause to believe that the Petitioner is in danger of violence or some other significant physical, emotional, or financial harm occurring prior to a hearing on the Petition.

(b) Relief Available

The Emergency Order for Protection may include the following relief if requested by the Petitioner:

- (1) prohibit the Respondent from committing or threatening to commit acts of domestic and family violence against the Petitioner and the Petitioner's family and household members;
- (2) prohibit the Respondent from contacting or communicating with the Petitioner directly or indirectly, other than as required to answer the petition filed in this case, or to comply with service requirements in other current cases involving both parties;
- (3) order that the answer or other responsive paperwork be filed with the court prior to service on the petitioner. The court will then provide a copy to the petitioner;
- (4) remove and exclude Respondent from the Petitioner's residence, regardless of ownership;
- (5) remove and exclude Respondent from the Petitioner's place of employment if Petitioner is present, and other locations frequented by Petitioner;
- (6) limit or prohibit the Respondent from owning, possessing, purchasing, attempting to purchase, or receiving any guns or firearms, and to sell or turn in any guns or firearms that s/he controls;

- (7) grant the petitioner possession and use of an automobile and other essential personal items and property, regardless of ownership, and direct law enforcement to accompany the petitioner to the residence of the parties to insure that the petitioner is able to safely retrieve such items, or to supervise the respondent or petitioner in removing personal property;
- (8) grant the petitioner temporary custody of a child or children; and
- (9) such other relief as the Court deems necessary to protect and provide for the safety of the Petitioner and any designated family or household member.

(c) Prerequisite Finding for Issuance of Ex Parte Child Custody Order

A temporary ex parte order for custody shall not be entered unless the court finds that the child is exposed to a substantial risk of bodily injury, sexual abuse or emotional distress. The order must include a factual basis for this finding.

(d) Issuance of Order based on Law Enforcement Request

The court may issue a written or telephonic emergency order of protection, without notice to an alleged perpetrator of domestic violence or a crime involving domestic violence, when a law enforcement officer states to the court in person or by telephone, and the court finds reasonable cause to believe, that the petitioner is in immediate danger of domestic violence based on an allegation of a recent incident of domestic violence or a crime involving domestic violence committed by a family or household member.

14D.5.08. HEARING

All material and relevant evidence which is reliable and trustworthy may be admitted and relied upon by the Court to the extent of its probative value, including hearsay contained in a written investigative report, provided that the preparer of the report is present and available to provide testimony. The parties, shall be afforded an opportunity to examine and controvert written reports, and cross-examine individuals whose testimony is presented.

14D.5.09 REMEDIES AVAILABLE IN AN ORDER FOR PROTECTION AFTER NOTICED HEARING

(a) Remedies

In addition to the relief listed under section 14D.4.07 above, the Court may additionally grant the following relief in an Order for Protection if requested by the Petitioner and after notice and hearing, whether or not the Respondent appears:

- (1) remove and exclude Respondent from Petitioner's residence, or if Respondent owns or leases the residence and the Petitioner has no legal interest in the residence, then the Court may order the Respondent to avoid the residence for a reasonable length of time until the Petitioner relocates;
- (2) remove and exclude Respondent from specified public social events and activities;
- (3) Establish and/or restrict temporary custodial and visitation rights with the minor children;
- (4) Prohibit one or both parties from transferring, removing, encumbering, mortgaging, concealing, disposing, or altering property except as authorizing by the Court, and

requiring that an accounting be made to the Court for all authorized transfers, encumbrances, disposition and expenditure

(5) Order the respondent to make the following payments to the petitioner, the court or to another party:

(A) Rent or mortgage on the petitioner's current residence, regardless of ownership.

(B) Support of the petitioner and minor child, if under the circumstances, the respondent is found to have a duty to support the petitioner or minor child.

(C) Reimbursement for any expenses associated with the domestic violence, including but not limited to medical expenses, counseling, shelter, and repair or replacement of damaged property. Failure to reimburse any tribal program within the stated time frame shall constitute a debt to the tribe.

(6) Provide for the temporary support of the minor children, if any, of the parties,

(7) refer minors who are family or household members for assessments and services through the Hoopa Valley Department of Human Services, or other tribal program;

(8) Require the respondent to undergo evaluation to determine the need, if any exists, for counseling and treatment for anger control, substance abuse, chemical dependency, parenting, marriage, or any other form of counseling and treatment which may be reasonably required to correct the conditions which gave rise to the incident (s) of domestic abuse and/or harassment, and

(9) Require the respondent to complete any treatment program(s) recommended by the above evaluation(s), if any is recommended, and have a copy of completion submitted to the court.

(10) require Respondent participate in community service, such as cutting wood or providing other services for elderly members of the Tribe;

(11) require that notice of Respondent's act(s) of domestic and family violence be publicly posted; and

(12) any other relief as the Court deems necessary to protect and provide for the safety of the Petitioner and any designated family or household member.

(b) Order Requirements for Victim

An Order for Protection shall not contain any provisions which impose any requirements on a victim of domestic violence other than individual counseling. The Court may recommend services for the victim and shall verify that the victim is aware of locally available shelter facilities.

(c) Lapse of Time between Domestic Violence and Filing of Petition

The Court shall not deny a Petitioner the relief requested solely because of a lapse of time between an act of domestic violence and the filing of the Petition, unless such an amount of time has lapsed as to make the finding of a risk of further domestic violence unreasonable.

(d) Reconciliation Prior to Hearing

Previous reconciliation prior to filing the current action must not be grounds for denying or terminating an order for protection. The petitioner/ victim shall not be permitted to withdraw the petition after it is filed during the period pending the Hearing.

14D.5.10 NOTICE TO PARTIES

Attached to each order, whether issued on an emergency basis or after noticed hearing, shall be a notice to parties which must include the following language:

(a) Respondent

To respondent:

1. You must obey the protective order entered against you. If you violate the order, you are subject to imprisonment of up to 12 months in jail, as well as civil and criminal penalties and fines.
2. The protective order is valid and will be enforced against you by the Hoopa Valley Tribe as well as in all 50 states of the United States, the District of Columbia, any Indian lands, and any commonwealth, territory or possession of the United States.
3. Federal law prohibits you from possessing or purchasing any firearm while this order is in effect as long as the order is not an ex parte order. The federal law applies whether or not the domestic violence protective order entered against you by tribal court prohibits you from possessing or purchasing firearms.
4. If you travel across state or Indian lands with the intent to violate the protective order entered against you, you are subject to prosecution for a federal crime.
5. If you travel across state or Indian lands with the intent to injure, harass, or intimidate the person protected by the order entered against you or if you travel across state lines or enter Indian lands or use the mail or any facility of interstate commerce across state lines with the intent to place that person or a member of the immediate family of that person in fear of serious bodily harm, you are subject to prosecution for a federal crime.
6. You and the party protected by the order cannot change the terms of the order entered against you by your own agreement. All of the provisions of this order continue in effect until the ending date of the order unless modified by the Court. If you violate this order you can be charged with a crime even though the protected has agreed to your violation.

(b) Respondent

To the protected party:

1. You should keep a copy of the protective order on you at all times and should make copies to give to your friends and family. If you move to another jurisdiction, you may wish to give a copy to the local law enforcement agency where you move, but you are not required to do so.
2. The protective order is valid not only within the territorial jurisdiction of the Hoopa Valley Tribe, but also in all 50 states of the United States, the District of Columbia, all Indian lands, and U.S. territories.
3. You may not change the terms of the order by agreement with the other party. If you wish to change any of the terms of this order, you must come back into court to have the judge modify the order.
4. If the Respondent violates any provision of the protective order, you may call a law enforcement officer to charge the Respondent with a crime of violating a protective order. You also may go to the Clerk's Office and ask to fill out a Motion for an Order to Show Cause to have an order issued for the defendant to appear before a judge to be held in contempt for violating the order.

14D.5.11 PROHIBITION ON MUTUAL PROTECTIVE ORDERS

The Court shall not grant a mutual Order for Protection to opposing parties. Where the Court receives requests for Orders for Protection from both parties, a fact finding hearing will be held to determine who was the primary physical aggressor, and the Order for Protection will issue against the primary physical aggressor alone. In determining whether a person was the primary physical aggressor, the Court shall consider:

- (1) Prior complaints of domestic violence.
- (2) The relative severity of the injuries inflicted on each person.
- (3) The likelihood of future injury to each person.
- (4) Whether one of the persons acted in self-defense.

14D.5.12. MODIFICATION OR DISMISSAL OF ORDERS FOR PROTECTION

(a) Grounds

An Order for Protection may be modified or dismissed following notice and hearing, on the Court's own motion or upon the request of either Petitioner or Respondent if;

- (1) assessments or treatments ordered by the Court have been completed,
- (2) Respondent demonstrates behavioral changes which eliminate the risk of a recurrence of acts of domestic and family violence as verified by treatment providers or other independent sources identified by the Court, or
- (3) the Court determines that a less restrictive alternatives may be appropriate under the circumstances. The court may modify an order pursuant to this section where the order works an unreasonable hardship upon the Respondent, provided that the safety of the victim or any family or household member protected by the order remains the primary consideration.

(b) Invitation of Petitioner to Respondent

If Respondent is excluded from Petitioner's residence or ordered to stay away from Petitioner, an invitation by the Petitioner to do so does not waive or nullify an Order for Protection.

(c) Finding that Petitioner's Dismissal or Modification Request Voluntary and Knowing

The Court may not dismiss or modify a protective order at the request of the Petitioner unless the Court is convinced that the request is voluntary, and made with full knowledge of the potential danger that may result from the modification or dismissal of the order.

(1) Hearing

The court must hold a hearing and ask the Petitioner at the hearing sufficient questions to determine whether or not the request is voluntary and knowing.

(2) Requirement that Petitioner Meet with Professional to Discuss Dangers of Domestic Violence.

The court may continue the hearing and order the petitioner to meet with a domestic violence advocate, a mental health counselor, or other trained professional to discuss the pattern of domestic violence, the warning signs of violence within a relationship, a safety plan and any other relevant safety concerns prior to ruling on the request for modification or dismissal.

14D.5.13. ENFORCEMENT AND PENALTIES FOR VIOLATION

Where Respondent has violated an Order for Protection, the Court may modify the order to include any additional terms included in sections 14D.5.06 or 14D.5.07 above necessary for the protection of the petitioner, and may impose such penalties as are deemed necessary by the Court given the severity of the violation of the Order. Penalties include, but are not limited to those available for contempt, assessments of court costs and fees, any penalties stated in the Order for Protection, an award of damages to the Petitioner, referral to of the case to the Community Council, public notice of the Respondent's violation of an Order of Protection, and exclusion from the Hoopa Valley Reservation.

14D.5.14. FULL FAITH & CREDIT

(a) For purposes of this chapter, an order of protection means any injunction or other order issued for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with or physical proximity to, another person, including temporary and final orders issued by civil and criminal courts (other than support or child custody orders), however obtained, so long as any civil order was issued in response to a complaint, petition or motion filed by or on behalf of a person seeking protection.

(b) Any order of protection, except as noted in (c) below, issued by a court of any Indian Tribe or State of the United States, the District of Columbia, a commonwealth, territory or possession of the United States, shall be accorded full faith and credit by the Tribal Court of the Hoopa Valley Tribe, and shall be enforced as if it were an order of the Tribal Court, if all of the following apply:

- 1) The issuing court had jurisdiction over the parties and the matter at the time the order was issued.
- 2) The issuing court gave reasonable notice and an opportunity to be heard to the person the order is issued against, sufficient to protect that person's right to due process. In the case of ex parte orders, notice and opportunity to be heard were given within a reasonable time after the order is issued.
- 3) The order must contain a conspicuous notice to the respondent named therein of the specific conduct that will constitute a violation of the order.
- 4) The protected person submits an affidavit stating that to the best of that person's knowledge the order is presently in effect as written.

(c) A foreign mutual protection order shall not be enforceable against the Petitioner unless both:

(1) The Respondent filed a cross or counter petition, complaint or other written pleading seeking such a protection order.

(2) The issuing court made specific findings of domestic violence or a crime involving domestic violence against both the Petitioner and Respondent and determined that each party was entitled to such an order.

(d) Filing of a foreign order of protection shall be without fee or cost.

(e) Upon receipt of a foreign order of protection, the Court Clerk shall:

1) Forward a copy of the foreign order of protection to an officer of the Hoopa Valley Tribal Police Department.

2) Provide the Petitioner with a document bearing proof of filing with the court.

3) Maintain a registry in which to enter certified orders for protection issued by other tribal or state courts that are received for filing; and

4) At the request of another tribal or state court or at the request of a person who is affected by or has a legitimate interest in an order for protection, certify and forward a copy of the order to that court or person at no cost to the requesting party.

(f) No notice is required to the Respondent when a previously issued foreign order for protection, issued after noticed hearing, is filed with the Hoopa Valley Tribal Court.

(g) The Court will enforce all provisions of a registered foreign order for protection whether or not such relief is available in the Court.

14D.5.15 INFORMATION DISCLOSURE REQUIREMENTS FOR THOSE WHO COMMIT DOMESTIC VIOLENCE

Where services are ordered by the court for someone found to have committed an act or acts of domestic violence, the individual who is ordered to receive services shall be required by the Court to sign the following releases:

(1) allowing the provider of services to inform the victim and victim's advocate whether or not the batterer is in treatment pursuant to the Order, whether or not the batterer is in compliance with treatment provisions, and whether or not the safety of the victim and family or household members of the victim is at risk;

(2) allowing prior and current treating agencies to provide information about the batterer to the service provider; and

(3) allowing the service provider to provide information about the batterer to relevant legal entities including courts, parole and probation officers, and child protective services.

14D.5.16 RIGHTS OF VICTIMS OF DOMESTIC VIOLENCE

(a). Duty of Confidentiality

A victim of domestic abuse may refuse to disclose and may prevent any volunteer or employee of a program for victims of domestic abuse from disclosing, the content of oral communication and written records and reports concerning the victim.

(1) Waiver of confidentiality

This privilege may be waived only by the victim. It must be in writing and must identify what information may be disclosed, to whom, and for what purpose. Such a waiver is not valid after thirty (30) days or after the victim revokes the waiver.

(2) Exceptions to Rule

A) This privilege will not bar disclosure of information in any situation where the victim or another's immediate physical safety is threatened and the disclosure will likely prevent the threatened injury.

B) This privilege does not relieve a person from a duty imposed under Tribal Law to report child abuse or neglect or from providing evidence about child abuse in Family Court.

C) These provisions on confidentiality for victims shall not prevent the disclosure of information compiled about incidents of domestic and family violence which protects the identity of the victim and family or household members of the victim.

(3) Notice of Right

A victim of domestic violence seeking tribal services must be notified both verbally and in writing of applicable confidentiality laws and policies and the scope and limitations of those laws and policies.

(b) Duty of Warning

Tribal programs must make a good faith effort to provide warning to the victim of domestic violence that has sought program services when the program is aware of a specific development or occurrence that places the victim in the immediate and present danger of domestic violence unless the program has reasonable cause to believe that the victim is already aware of the specific development or occurrence.

(1) A good faith effort for purposes of this subsection may include –

(A) attempting to call the victim at a phone number previously indicated by the victim as a means to contact the victim;

(B) attempting to call the victim at a phone number program staff believes victim is at;

(C) sending a warning by mail to the victim; or

(D) attempting to locate the victim in person.

(2) Program staff must not warn a victim in a way that will place the victim in greater danger.

(c) Security and confidentiality of domestic violence shelter/program; Restrictions.

(1) Advocates and shelter staff will not substantiate, verify, or deny placement information or the whereabouts of any domestic violence victim, or his/her children unless after noticed hearing to the victim and the shelter, good cause is shown, and the court orders the release of information to an agency or individual bound by confidentiality rules. Under no circumstances will the court order the shelter to provide placement information to the alleged perpetrator of domestic violence.

(2) Law enforcement officers and/or criminal investigators must contact the domestic violence shelter/program with any message for individual victims concerning investigations or victim information. Law enforcement officers must not attempt coercion, duress, or intimidation of shelter staff or advocates to gain access to the shelter or information on the whereabouts of any victim. The shelter advocates shall pass along any messages from law enforcement to shelter residents, and will facilitate off site law enforcement interviews with the shelter residents when necessary.

(3) No judge or officer of the Tribal Court will issue or initiate any summons or any notice of court proceedings specifying the domestic violence shelter/program as the individual's residence and/or location, though the post office box of the domestic violence program may be used as the victim's mailing address where no other address is available. Nor shall the shelter or domestic violence program be named as a party in any court action involving individual victims that may or may not be receiving advocacy services from the domestic violence shelter/program.

(4) While the domestic violence shelter/program may not be named as party to any individual's court proceedings, an individual may give permission for a domestic violence shelter/program advocate to obtain court paperwork on his or her behalf. Such action shall not be construed by the court or law enforcement to mean that the domestic violence shelter/program is party to any court proceedings, civil and/or criminal between the two parties.

(d) Penalties for Violation of this Section

A civil action for damages resulting from a violation of this subsection may be brought in the Court against any individual alleged to have violated these code provisions. Actual damages must be proved and may include emotional distress and pain and suffering. The amount of damages awarded may not exceed \$500 for one violation and \$1000 for multiple violations from the same initial report of domestic violence. An action under this paragraph must be commenced no later than one (1) year from the date the violation of this subsection occurred or one (1) year from the date the person filing the complaint knew or should have known of the violation, whichever is later.

14D.5.17 POLICY AND PROCEDURE REQUIREMENT FOR FIRST DISCLOSURE AGENCIES

Tribal programs and other organizations within the jurisdiction of the Tribe which provide services to the public and are likely to be a first disclosure agency for domestic violence shall develop and put into effect written policies and procedures concerning an effective response to the occurrence of domestic violence within ninety (90) days of the effective date of this enactment. The effected agencies include: any

health care providers within the exterior boundaries of the Hoopa Valley Reservation; the Division of Human Services; Tribal Police; the Court; all schools and public daycare providers within the exterior boundaries of the Hoopa Valley Tribe; any public or private programs which provide assistance to victims or perpetrators of domestic violence.

(a) Policies and Procedures

The policies and procedures shall, depending on the role of the agency -

(1) address the interaction of tribal programs and other entities within the jurisdiction of the Tribe,

(2) establish standards for tribal service providers concerning domestic violence, and

(3) establish protocols for intervention and referrals for services for suspected victims or batterers, and their families.

(4) provide for continuing education of employees concerning domestic violence, as necessary, on the following topics:

(A) The nature, extent, and cause of domestic violence.

(B) Practices designed to promote safety of the victim, including safety plans.

(C) Resources available to victims, perpetrators and families such as advocacy, health care, alcohol and mental health treatment, and shelter programs.

(D) Sensitivity to gender bias and cultural, racial, and sexual issues.

(E) The lethality of domestic violence.

(b) Availability of Policies and Procedures

A copy of the policies and procedures developed pursuant to this section will be provided to the Domestic Violence Response Team and to any program responsible for coordinating or providing services to victims or perpetrators of domestic violence upon completion.

14D.5.18 DOMESTIC VIOLENCE RESPONSE TEAM

(a) Purpose of Domestic Violence Response Team.

A Domestic Violence Response Team is hereby created within the Tribe to coordinate and involve various agencies to achieve the following purposes:

(1) provide for safety and other needs of victims of domestic violence,

(2) make clear to batterers and the community at large that domestic violence is intolerable, and

(3) enhance the provision of domestic violence response services to victims and their batterers.

(b) Advisory Nature of Response Team

The Domestic Violence Response Team is advisory in nature. It is in no way intended to supplant the authority or responsibility of individual agencies. It is intended to promote cooperation, communication, and consistency.

(c) Composition of the Team.

The Team shall consist of:

- (1) a Tribal Council member;
- (2) a tribal department service provider for victims of domestic violence;
- (3) a tribal department service provider for perpetrators of domestic violence;
- (4) a representative from any private service provider for either victims or perpetrators of domestic violence operating within the exterior boundaries of the Hoopa Valley Reservation;
- (5) a representative from Humboldt county programs which provide services to victims or perpetrators of domestic violence, if available;
- (6) a tribal law enforcement officer specifically trained in domestic violence issues, if available;
- (7) a representative from K'ima:w Medical Center knowledgeable in intake and patient treatment procedures;
- (8) a representative of the tribal court familiar with court procedures;
- (9) two community members approved by the Tribal Council who have demonstrated knowledge about or experience in providing services to victims of domestic violence and their families.

(d) Duties of the Domestic and Family Violence Response Team.

The duties of the Domestic Violence Response Team will include the following:

- (1) establishing regular meetings that occur at least quarterly;
- (2) advising the Tribal Council and all relevant service providers on the development of plans, policies, and procedures on the response to the occurrence of domestic violence;
- (3) developing a long term plan to promote the Domestic Violence Response Team's purposes as described in subsection (a);
- (4) identifying resources, programs, and services necessary in the community to promote the Domestic Violence Response Team's purposes;
- (5) gathering information relevant to the occurrence of domestic violence in the community;
- (6) providing for public education efforts in the community;

(7) Creating a public notice to be posted by all possible first disclosure agencies, listing the types and locations of available assistance for victims of domestic violence and perpetrators of domestic violence seeking prevention and intervention services.

(8) monitoring adherence to the long term plan; and

(9) reporting on its activities to the Tribal Council biannually.

(e) draft policies and procedures for victim advocates and service providers

Within 1 year of the enactment of the Domestic Violence Code, the Domestic Violence Response Team will approve draft policies and procedures for programs and service providers to victims of domestic violence. During the drafting process, the team must consult with public and private agencies that provide programs for victims of domestic violence and programs of intervention for perpetrators, with advocates for victims, and with persons who have demonstrated expertise and experience in providing services to victims and perpetrators of domestic violence and their children.

(1) Subject Matter of Rules and Regulations

The rules or regulations must include:

(A) Standards of treatment for programs providing victim services;

(B) Criteria concerning a person's appropriateness for the program;

(C) Roles and duties of victim advocates; and

(D) A rapid notification system of communication between advocate organizations and law enforcement to notify law enforcement of any immediate danger that arises in the service provider's office or in any shelter for victims of domestic violence.

(2) Goals of Victim Service Programs:

The goals of any victim service program must include all of the following:

(A) stopping the acts of violence and ensuring the safety of the victim and children or other family or household members.

(B) addressing any mental health, substance abuse, or parenting issues the victim may be struggling with;

(C) Recognizing that violence is a behavior for which the perpetrator must be held accountable.

(f) Draft Policies and procedures for Service Providers to Perpetrators of Domestic Violence

Within 1 year of the enactment of the Domestic Violence Code, the Domestic Violence Response Team will approve draft rules or regulations for programs of intervention for perpetrators of domestic violence. During the drafting process, the team must consult

with public and private agencies that provide programs for victims of domestic violence and programs of intervention for perpetrators, with advocates for victims, and with persons who have demonstrated expertise and experience in providing services to victims and perpetrators of domestic violence and their children.

(1) Subject Matter of Rules and Regulations

The rules or regulations must include:

- (A) Standards of treatment for programs of intervention;
- (B) Criteria concerning a perpetrator's appropriateness for the program;
- (C) Systems of communication and evaluation among the referring court, the public and private agencies that provide programs or services for victims of domestic violence and the programs of intervention for perpetrators; and
- (D) Required education and qualifications of providers of intervention.

(2) Goals of Intervention Programs:

The goals of any intervention program must include all of the following:

- (A) stopping the acts of violence and ensuring the safety of the victim and children or other family or household members.
- (B) Recognizing that violence is a behavior for which the perpetrator must be held accountable.
- (C) Recognizing that substance abuse is a problem separate from domestic violence which requires specialized treatment.

(3) Mandatory Procedures for Intervention Programs

Providers of programs of intervention for perpetrators must do the following:

- (A) Screen the perpetrator for all other tribal services currently being received including, but not limited to, TANF, tribal housing, counseling from the Division of Human Services; and
- (B) require a perpetrator who is ordered into the program by a court to sign the following releases:
 - (i) Allowing the provider to inform the victim and victim's advocates that the perpetrator is in treatment with the provider, and to provide information of safety to the victim and victim's advocates;
 - (ii) Allowing prior and current treating agencies to provide information about the perpetrator to the provider;

(iii) Allowing the provider to provide information about the perpetrator's compliance to tribal TANF or other tribal agencies who the perpetrator is receiving services from; and

(iv) Allowing the provider to provide information about the perpetrator to relevant legal entities, including courts, probation officers, parole officers, and children's protective services.

(v) Allowing the provider to report to the court, the victim, and any appropriate law enforcement agencies, any assault, failure to comply with the program, failure to attend the program, and threat of harm made by the perpetrator.

14D.5.19 DOMESTIC VIOLENCE LEAVE ACT

(a) Purpose.

Victims of Domestic Violence are oftentimes forced to flee from a perpetrator in order to avoid future danger and violence. In so fleeing victims who are employed frequently miss days of employment and employers respond by terminating or disciplining such employees. It is the purpose of this section to preclude all employers within the boundaries of the Reservation of the Hoopa Valley Tribe from terminating any employee who can document an instance of domestic abuse which significantly contributed to her absence from employment. Employers have the option of granting such employees leave with pay or leave without pay because of domestic violence related absences.

(b) Discharges for Absence of Employment Due to Domestic Violence Prohibited.

It will be a violation of this ordinance for any employer located within the exterior boundaries of the Hoopa Valley reservation to terminate or otherwise discipline any employee who has missed work or is tardy to work when such employee demonstrates, either through the filing of criminal or civil proceedings in a court of law or by such other method satisfactory to the employer, that she has been the victim of domestic violence and that such violence caused her absence(s) from work or tardiness to work. In lieu of disciplinary action, the employer will grant the employee leave with or without pay, dependent upon the policies of the employer, for such absences or tardiness.

(c) Penalty for Violation.

Any employer who willfully violates this section shall be subject to a civil penalty of \$500.00 payable to the Tribe in addition to any other remedies the wrongfully discharged employee may have against the employer. Nothing in this section shall preclude a private party from commencing a wrongful termination action against an employer for violation of this section.

Chapter 6 TRIBAL ELDER AND DEPENDANT ADULT PROTECTIVE ORDERS

14D.6.01. Definitions.

In addition to the definitions in sections 14D.1.08, the following definitions shall apply in this chapter:

“Caretaker”:

1. A person who is required by Tribal or State law or Tribal custom to provide services or resources to an elder or vulnerable adult; or
2. A person who volunteers to provide services or resources to an elder or vulnerable adult; or
3. An institution or agency and its employees who are required by Tribal, State, or Federal law, Tribal custom or through any other agreement to provide services or resources to an elder or vulnerable adult.

“Elder”: A family member who has reached the age of fifty-five (55) years or a person of such age or condition that requires care in order to meet their daily needs of food, shelter, clothing, maintenance, emotional support, medical, or any other care on behalf of the elder.

“Elder Abuse”: means either of the following:

- (a) Physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering.
- (b) The deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering. This includes situations where an individual deprives an elder of medication legally prescribed to the elder.

“Dependant Adult” means any person between the ages of 18 and 54 years who resides in this state and who has physical or mental limitations that restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities, or whose physical or mental abilities have diminished because of age.

“Financial abuse” of an elder or dependent adult occurs when a person or entity does any of the following:

- (1) Takes, secretes, appropriates, or retains real or personal property of an elder or dependent adult to a wrongful use or with intent to defraud, or both.
- (2) Assists in taking, secreting, appropriating, or retaining real or personal property of an elder or dependent adult to a wrongful use or with intent to defraud, or both.
- (b) A person or entity shall be deemed to have taken, secreted, appropriated, or retained property for a wrongful use if, among other things, the person or entity takes, secretes, appropriates or retains possession of property in bad faith.
 - (1) A person or entity shall be deemed to have acted in bad faith if the person or entity knew or should have known that the elder or dependent adult had the right to have the property transferred or made readily available to the elder or dependent adult or to his or her representative.
 - (2) For purposes of this section, a person or entity should have known of a right specified in paragraph (1) if, on the basis of the information received by the person or entity or the person or entity' s authorized third party, or both, it is obvious to a reasonable person that the elder or dependent adult has a right specified in paragraph (1).
- (c) For purposes of this section, "representative" means a person or entity that is either of the following:

(1) A conservator, trustee, or other representative of the estate of an elder or dependent adult.

(2) An attorney-in-fact of an elder or dependent adult who acts within the authority of the power of attorney.

“Neglect”: means either of the following:

(1) The negligent failure of any person having the care or custody of an elder or a dependent adult to exercise that degree of care that a reasonable person in a like position would exercise.

(2) The negligent failure of an elder or dependent adult to exercise that degree of self care that a reasonable person in a like position would exercise.

(b) Neglect includes, but is not limited to, all of the following:

(1) Failure to assist in personal hygiene, or in the provision of food, clothing, or shelter.

(2) Failure to provide medical care for physical and mental health needs. No person shall be deemed neglected or abused for the sole reason that he or she voluntarily relies on treatment by spiritual means through prayer alone in lieu of medical treatment.

(3) Failure to protect from health and safety hazards.

(4) Failure to prevent malnutrition or dehydration.

(5) Failure of an elder or dependent adult to satisfy the needs specified in paragraphs (1) to (4), inclusive, for himself or herself as a result of poor cognitive functioning, mental limitation, substance abuse, or chronic poor health.

“Necessary Services”: means all services that an elder or dependant adult must receive by in order to assure that person’s mental or physical health.

14D.6.02. PETITION BY THE DIVISION OF HUMAN SERVICES

(a) Authorization for Petition

In addition to those authorized to file under section 14D.2.01, a caseworker from the Division of Human Services may file a petition for a protective order under this chapter where the division has received a report of abuse or neglect of an elder or dependant adult, has investigated the report, and reasonably believes that a protective order is necessary to ensure the health, safety, and well being of the elder or dependant adult.

14D.6.03 EMERGENCY SERVICES PROTECTIVE ORDER

(a) Grounds for issuance

(1) *Preponderance of the evidence*

The Court may issue an ex parte emergency protective order, upon a showing by preponderance of the evidence that an elder or dependant adult:
is at risk of immediate physical, financial, or serious emotional harm; or

(2) *Clear and convincing evidence*

No protective order may issue under any provision of this chapter where the elder or dependant adult objects to its issuance, unless there is a finding by clear and convincing evidence that order is necessary to protect the elder or dependant adult.

(b) Relief Available

The Emergency Order for Protection may include the temporary following relief if requested by the Petitioner:

- (1) Enjoining the Respondent from committing further abusive acts; and
- (2) prohibiting Respondent from accessing or possessing petitioner's cash, bank accounts, credit cards, food stamps, or other financial resources of the petitioner; and
- (3) Requiring compensatory damages to be paid by the wrongdoer to the elder or dependant adult for injuries resulting from the wrongdoer's actions; and
- (4) prohibiting the Respondent from contacting or communicating with the Petitioner directly or indirectly;
- (5) prohibiting respondent from attending petitioner's medical appointments;
- (6) prohibiting respondent from accessing or possessing petitioner's medication;
- (7) prohibiting respondent from possessing or driving petitioner's automobile
- (8) limiting or prohibiting the Respondent from owning, possessing, purchasing, attempting to purchase, or receiving any guns or firearms, and to sell or turn in any guns or firearms that s/he controls;
- (9) such other relief as the Court deems necessary to protect and provide for the safety of the Petitioner and any designated family or household member.

14D.6.04 PROTECTIVE ORDER AFTER HEARING

In addition to, or instead of, the remedies available above in section 14D.6.05, the court may additionally order the following after hearing:

- (1) remove and exclude respondent from petitioner's residence, or if Respondent owns or leases the residence and the petitioner has no legal interest in the residence, then the Court may order the respondent to avoid the residence for a reasonable length of time until the Petitioner relocates; and
- (2) remove and exclude respondent from specified public social events and activities;
- (3) Prohibit respondent from transferring, removing, encumbering, mortgaging, concealing, disposing, or altering any of petitioner's property except as authorizing by the Court, and requiring that an accounting be made to the Court for all authorized transfers, encumbrances, disposition and expenditures.
- (4) Order the respondent to make the following payments to the petitioner, the court or to another party: requiring compensatory damages to be paid by the wrongdoer to the elder or dependant adult for injuries resulting from the wrongdoer's actions including but not limited to medical expenses, counseling, shelter, costs of conservator if one is appointed under the Elder And Dependant Adult Protective Code, and repair or replacement of damaged property. Failure to reimburse any tribal program within the stated time frame shall constitute a debt to the tribe.
- (5) Require the respondent to undergo evaluation to determine the need, if any exists, for counseling and treatment for anger control, substance abuse, chemical dependency, or any other form of counseling and treatment which may be reasonably required to correct the conditions which gave rise to the incident (s) of elder or dependant abuse or neglect, and
- (6) Require the respondent to complete any treatment program(s) recommended by the above evaluation(s), if any is recommended, and have a copy of completion submitted to the court.
- (7) require respondent participate in community service, though respondent's community service cannot involve any unsupervised time with tribal elders or dependant adults;

- (8) require that notice of Respondent's act(s) of elder and dependant abuse or neglect be publicly posted; and
- (9) any other relief as the Court deems necessary to protect and provide for the safety of the Petitioner and any designated family or household member.

CHAPTER 7: INJUNCTIONS

14D.7.01 WHEN INJUNCTION MAY BE GRANTED

(a) An injunction may be granted in the following cases:

- (1) When it appears from the complaint that the plaintiff is entitled to the relief demanded, and the relief, or any part thereof, consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually.
- (2) When it appears from the complaint or affidavits that the commission or continuance of some act during the litigation would produce waste, or great or irreparable injury, to a party to the action.
- (3) When it appears, during the litigation, that a party to the action is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the rights of another party to the action respecting the subject of the action, and tending to render the judgment ineffectual.
- (4) When monetary compensation would not afford adequate relief.
- (5) Where it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief.
- (6) Where the restraint is necessary to prevent a multiplicity of judicial proceedings.
- (7) Where the obligation arises from a trust.

(b) An injunction cannot be granted in the following cases:

- (1) To stay a judicial proceeding pending at the commencement of the action in which the injunction is demanded, unless the restraint is necessary to prevent a multiplicity of proceedings.
- (2) To stay proceedings in a United States federal court.
- (3) To stay proceedings in a state court.
- (4) To prevent the execution of a public statute by officers of the law for the public benefit.
- (5) To prevent the breach of a contract the performance of which would not be specifically enforced, other than a contract in writing for the rendition of personal services from one to another where the promised service is of a special, unique, unusual, extraordinary, or intellectual character, which gives it peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in an action at law.
- (6) To prevent the exercise of a public or private office, in a lawful manner, by the person in possession.

14D.7.02. CONTENTS OF THE PETITION

(a)The Petition must contain the following information:

- (1) The names of all petitioners and respondents;
- (2) The tribal membership status of all petitioners and respondents, if known;
- (3) The physical address and mailing address of all petitioners and respondents, if known;

- (6) a factual statement which describes what property, rights, or assets are to be protected, and what behavior of the respondent has led the petitioner to request an injunction;
- (7) a description of the harm, if any, that will come to the petitioner if the order is not granted;
- (8) a description of what behavior the petitioner is seeking to compel or restrain the respondent from;
- (8) any current court cases that involve the petitioner and respondent.

14D.7.03 CONTENTS OF THE RESPONSE

In addition to admitting or denying the information contained in the petition, the response must include a description of the harm, if any, that the respondent will suffer if the injunction is granted. The statement of harm must be specific. If applicable, it must include estimates of the monetary damage to the respondent, including a statement of how the estimate amount was arrived at.

14D.7.04 Preliminary Injunction.

(a) Notice.

No preliminary injunction shall be issued without notice to the adverse party. In cases where time is of the essence to preserve the petitioner's property, rights, or assets, the court will set a hearing date, whenever possible, prior to the date of the threatened destruction of the petitioner's property, rights or assets. If no such specific date exists, or the threat is ongoing, the court will set the hearing within 10 days of the filing of the preliminary injunction petition. It will be the responsibility of the petitioner to have a copy of the petition, the original summons, and the notice of hearing served on the respondent within five days of the hearing date. If the Respondent is not served within five days of the hearing date, the court must grant the respondent a continuance where requested, though it may also order a preliminary injunction upon the petitioner's posting of the security required under subsection (c).

(b) Consolidation of Hearing with Trial on Merits.

Before or after the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. Even when this consolidation is not ordered, any evidence received upon an application for a preliminary injunction which would be admissible upon the trial on the merits becomes part of the record on the trial and need not be repeated upon the trial.

(c) Security.

(1) Setting of Amount of Security

No preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

(2) Respondent's Right to contest security amount

Within five days after the service of the injunction, the person enjoined may object to the security amount. If the court determines that the applicant's security is insufficient and a sufficient security is not filed within the time ordered by the court, the order granting the injunction must be dissolved.

(3) Exemptions from Security Requirement

This section does not apply to either spouse against the other in a proceeding for legal separation or dissolution of marriage, or to any petitioner under chapters four through six of this code.

(d) Form and Scope of Injunction

Every order granting an injunction shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained or required; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

14D.7.05 HEARING ON PETITION

(a) Automatic Hearing

A hearing will be automatic on any petition for an injunction under this code.

(b) Scheduling of Hearing

The hearing will be set for 14 days from the date of the filing of the petition for an injunction, or as soon thereafter as available on the Court's calendar, absent good cause to extend the hearing date. The summons shall include the hearing date and time.

(c) Continuance of Hearing Date for Good Cause

The Court may continue the hearing date once for up to 14 days upon a finding of good cause.

(d) Burden of Proof

The burden of proof under this code rests with the Petitioner, who must prove by clear and convincing evidence that the property, rights, or assets of the petitioner will be irreparably harmed if the respondent is not compelled to act, or restrained from acting, as requested in the petition.

TITLE 14D
PROTECTIVE ORDER CODE
OF
THE HOOPA VALLEY TRIBE

Approved by Tribal Council
April 5, 2007
Ordinance No. 02-07

CERTIFICATION

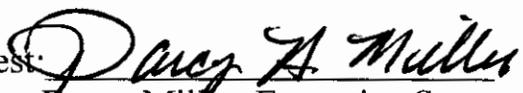
I, the undersigned, as Chairman of the Hoopa Valley Tribal Council so certify that the Hoopa Valley Tribal Council is composed of eight (8) members of which six (6) members were present, constituting a quorum, at a regular meeting thereof; duly and regularly called, noticed, convened, and held this fifth day of April, 2007; and that this ordinance was adopted by a vote of five(5) for, zero (0) opposed, and zero (0) abstaining; and that since approval, this ordinance has not been rescinded, amended, or modified in any form.

DATED THIS FIFTH DAY OF APRIL, 2007



Leonard Masten Jr., Vice-Chairman
Hoopa Valley Tribal Council

Attest:



Darcy Miller, Executive Secretary
Hoopa Valley Tribal Council