

LEGISLATURE OF THE
IPAY NATION OF SANTA YSABEL
8th Legislative Session

BILL

To Enact Iipay Nation of Santa Ysabel Domestic Violence Code

BILL NO: LB 15-06
DATE INTRODUCED: 04/01/2015
SPONSORING LEGISLATOR(S): ALL LEGISLATORS
SUBJECT: Iipay Nation of Santa Ysabel Domestic Violence Code

ARTICLE I – TITLE.

1.01. Title. This law shall be referred to as the “Domestic Violence Code” (“Code”).

ARTICLE II – FINDINGS.

2.01. Findings. The Legislature finds:

- (a) that domestic violence and abuse, including physical, mental and emotional abuse, stalking and date violence, are serious offense against society, the Iipay Nation of Santa Ysabel (herein “Tribe”) and families; and
- (b) families damaged by abuse must be healed by the immediate intervention of law enforcement, prosecution, education, counseling, and other appropriate services; and
- (c) this Code will provide the victim of domestic violence the maximum protection from further abuse which the law can provide.

ARTICLE III – PURPOSE.

3.01. Purpose. The purpose of this Domestic Violence Code is to adopt law for the Nation which recognizes that domestic violence and abuse, including physical, mental and emotional abuse, stalking and date violence, are serious offense against society, the Iipay Nation of Santa Ysabel (herein “Tribe”) and families.

ARTICLE IV – ENACTMENT OF THE DOMESTIC VIOLENCE CODE

4.01. Enactment.

- (a). The Legislature hereby enacts the attached Code entitled Domestic Violence Code
- (b). All acts, laws or customs and traditions in conflict with this Code are hereby repealed.

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ARTICLE V – SEVERABILITY

5.01. Severability. If any provision of this Code is held to be void, or unenforceable, it shall be considered deleted from this Act and the invalidity of such provision shall not affect the validity or enforceability of any other provision which shall be given effect in the absence of the invalid provision. The remaining provisions shall continue in full force and effect without being invalidated.

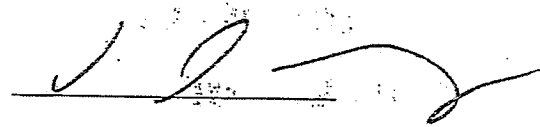
SO ENACTED this 198th day of 2015, by the Legislature of the lipay Nation in the 8th Session, by a vote of 5 FOR, 2 AGAINST, AND 0 ABSTAINING as follows:

		<u>FOR</u>	<u>AGAINST</u>	<u>ABSTAIN</u>	<u>ABSENT</u>
Bonnie Salgado	Legislative Speaker	1			
Sunni Dominguez	Legislator	1			
Misty Taylor	Legislator	1			
Stan Rodriguez	Legislator	1			
Michael Baay	Legislator		1		
Anthony Baay	Legislator		1		
Brandie Taylor	Legislator	1			

LEGISLATIVE HISTORY

Date of Formal Introduction	<u>04/01/2015</u>
Date of Reading into the Legislative Record	<u>04/01/2015</u>
Date of Publication into the Legislative Calendar	<u>04/01/2015</u>
Date of Legislative Hearing	<u>05/20/2015</u>
Date of Approval by the Legislature	<u>06/17/2015</u>
Date of the Chairman's Signature	<u>06/18/2015</u>
Date of Chairman's Veto	_____
Date of the Legislature's Veto Override	_____
Deadline of receipt of Verified Petition to General Council	_____
Date of Receipt of Verified Petition	_____
Date of General Council Repeal	_____

Chairman's Signature



IIPAY NATION OF SANTA YSABEL

DOMESTIC VIOLENCE CODE ORDINANCE

TITLE I. PURPOSE

The purpose of this Domestic Violence Code is to recognize that domestic violence and abuse, including physical, mental and emotional abuse, stalking and date violence, are serious offense against society, the Iipay Nation of Santa Ysabel (herein "Tribe") and families. Further, this Code will provide the victim of domestic violence the maximum protection from further abuse which the law can provide. The strength of the Tribe is founded on healthy families. Families damaged by abuse must be healed by the immediate intervention of law enforcement, prosecution, education, counseling, and other appropriate services. Violent behavior will not be excused or tolerated within the territory of the Iipay Nation of Santa Ysabel.

TITLE II. AUTHORITY

This Code has been adopted pursuant to Article V, Section 3 of the Iipay Nation of Santa Ysabel Constitution.

TITLE III. JURISDICTION

The Iipay Nation of Santa Ysabel Tribal Court shall have jurisdiction under this Code:

1. When the Petitioner or Respondent is domiciled, resides or is found on the Iipay Nation of Santa Ysabel Reservation and when the act of domestic violence occurs within the boundaries of the Iipay Nation of Santa Ysabel Reservation; or
2. When the Court is being asked to recognize and enforce a valid Protection Order of another court of competent jurisdiction.

TITLE IV. DEFINITIONS

1. "Domestic Violence/Abuse" means the occurrence of one or more of the following acts by a person against a family or household member, but does not include acts of self-defense:

- (a) Attempting to cause or causing physical harm or bodily injury to another family or household member, which shall include, but is not limited to attempting to cause or causing physical pain, serious illness, or an impairment of a physical condition.

(b) Placing a family or household member in fear of the infliction of physical harm, bodily injury or assault, which shall include but is not limited to harassment, psychological abuse, or the utterance of verbal threats, which causes a person to reasonably fear, physical harm, bodily injury or death.

(c) Attempting to cause or causing “emotional distress” to family or household member. Causing “emotional distress” means engaging in conduct that Respondent knows, or has reason to know, would cause the Petitioner or the person on whose behalf the petition is filed, emotional distress and does in fact cause emotional distress to the person. Examples of conduct which may cause emotional distress include but are not limited to:

(i) Creating a disturbance at a person’s place of employment, residence, school, or other place occupied by the person’

(ii) 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 indirectly through a third party;

(iii) Repeatedly keeping a person under surveillance by remaining present outside his or residence, school, place of employment, vehicle or other place occupied by the person;

(iv) 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 attempted improper removal or concealment, unless the removal was made or attempted removal was made while fleeing from an incident, or pattern of domestic violence.

(v) Threatening physical force, confinement, or restraint.

;

(d) Causing a family or household member to engage involuntarily in sexual activity by force, threat of force or duress;

(e) Willfully violating a court order intended to protect a family or household member.

2. “Family or Household Member” means:

(a) Persons who are current or former spouses;

(b) Persons who are dating or who have dated. For purposes of this section, dating means a dating relationship wherein the parties are romantically involved in a relationship generally over time and on a continuous basis. ;

(c) Persons who live together or who have lived together;

- (d) Persons who are engaged in or who have engaged in a sexual relationship;
- (e) Persons who are related by blood or adoption;
- (f) Persons who are part of an extended family of the victim or abuser and who commonly interacts with the victim or the abuser;
- (g) Persons who are related or formerly related by marriage as recognized by the state law or tribal tradition;
- (h) Persons who have a child in common;
- (i) Persons who have a biological, legal or step parent relationship;
- (j) Indian custodians;
- (k) Minor children of a person in a relationship that is described in paragraph (a) through (j) above.

TITLE V. DUTIES OF TRIBAL LAW ENFORCEMENT

A. Protecting Victims of Domestic Violence and Notice

1. A tribal law enforcement officer who responds to an allegation of domestic violence shall use all “reasonable means” to protect the victim and others that are present from further violence and has a duty to make an arrest pursuant to applicable tribal, state and/or federal authority and detain the aggressor until the San Diego County Sheriff’s Officer can take custody of the aggressor or transport the aggressor if authorized under state, federal or tribal law to an appropriate holding facility. Upon finding probable cause to believe that domestic violence has occurred, the tribal law enforcement officer need not obtain a search warrant in order to enter a residence where he or she has probable cause to believe a crime of domestic violence is occurring or has just occurred, nor to seize property under this subsection. ”Reasonable Means” as used in this section includes but are not limited to:

- (a) Taking any lawful action necessary to provide for the safety of the victim;
- (b) Confiscating any weapon involved in the alleged domestic violence.
- (c) Transporting or obtaining transportation for the victim and any child(ren) to a shelter or any other place of safety.
- (d) Assisting the victim in removing essential personal effects.
- (e) Assisting the victim and any child(ren) in obtaining medical treatment, including obtaining transportation to a medical facility.
- (f) Giving the victim immediate and adequate notice of the rights of victims and or the remedies and services available to victims of domestic violence.

(g) Enforcing a valid order for protection issued by a Tribal or State court.

2. As part of the notice required by paragraph (f) of Section 1, the law enforcement officer shall give, in addition to verbal notification, written notice to the adult victim substantially as follows:

"If you are the victim of domestic violence and you believe that law enforcement protection is needed for your physical safety, you have the right to request that the officer assist in providing for your safety, including asking for an emergency order for protection that will provide for your immediate protection. You may also request that the officer assist you in obtaining your essential personal effects and locating and taking you to a safe place, including but not limited to a shelter, a family member's or friend's residence, or a similar place of safety. If you are in need of medical treatment, you have the right to request that the officer assist you in obtaining medical treatment. You may request a copy of the report at no cost from the law enforcement department.

Please be advised that the Tribe may choose to issue a tribal citation, a state prosecutor and/or the United States Attorney office may, if appropriate, file a criminal complaint against your assailant. You also have the right to file a petition requesting a permanent order for protection from domestic violence which could include any of the following orders:

(a) An order enjoining your abuser from threatening to commit or committing further acts of domestic violence;

(b) An order prohibiting your abuser from harassing, annoying, telephoning, contacting or otherwise communicating with you, directly or indirectly through family members, relations by marriage, friends, and co-workers;

(c) An order removing your abuser from the residence for the duration of 30 days from the time of incident regardless of ownership or lease on the land, or tribal membership of the victim or abuser. Notwithstanding the forgoing if you are either a non tribal member or do not own or lease the property, after 30 days you shall have to vacate. You, the victim, shall have the right to request an extension of the 30 days. The number of days of the extension will be determined on a case by case basis by the Iipay Nation of Santa Ysabel Domestic Violence Advisory Council.

(d) An order directing your abuser to stay away from your or any other designated household/family member's place of residence, school, place of employment, or any other specified place frequented by you;

(e) An order prohibiting your abuser from using or possessing any firearm or other weapon specified by the court;

(f) An order granting you possession and use of an automobile and other essential personal effects, regardless of ownership;

(g) An order granting you custody of your child or children;

(h) An order denying your abuser visitation;

(i) An order specifying arrangements for visitation, including requiring supervised visitation; and

(j) An order requiring your abuser to pay certain costs and fees, such as rent or mortgage payments, child support payments, medical expenses, expenses for shelter, court costs and attorney's fees.

The forms you need to obtain an order for protection are available from Tribal Court, Tribal Law Enforcement Office, Tribal Social Services, Indian Health clinic, and the Tribal Administrative Office. Tribal social services is available to assist you in obtaining information relating to domestic violence, treatment of injuries, community resources, community services, and places of safety and shelter. You also have the right to seek reimbursement for losses suffered as a result of the abuse, including medical and moving expenses, loss of earnings or support, and other expenses for injuries sustained and damage to your property. This can be done through Tribal or State court."

3. The written notice:

- (a) Must not include the addresses or locations of shelters, and
- (b) Must be provided in the native language of the victim, if practicable, when the native language of the victim is not English.

4. Any law enforcement officer who enforces this section in good faith shall be immune from suit by any person alleging a violation of this Section or any other Section of tribal, state or federal law.

TITLE VI PROSECUTING ACTS OF DOMESTIC VIOLENCE

A. Mandatory Citation for an Act Involving Domestic Violence.

1. A Tribal Law Enforcement Officer shall cite any person whom he or she has probable cause to believe committed any act involving Domestic Violence/Abuse as defined in Article IV either in the presence of the officer or within 24 hours of a report to law enforcement of the commission of such an act.

2. Regardless of the elements of any other crime committed in conjunction with an act of domestic violence, a tribal citation for Domestic Violence/Abuse shall be considered a separate and distinct offense and shall be cited in addition to any other infraction or crime the aggressor may be charged with under tribal, federal or state law.

B. Determination of Predominate Aggressor

1. If a Tribal Law Enforcement Officer receives complaints of domestic violence from two or more opposing persons, the officer shall evaluate each complaint separately to determine who was the predominate aggressor. If the officer determines that one person was the predominate aggressor, the officer need not cite the other person alleged to have committed domestic violence. In determining whether a person is the predominate aggressor, the officer shall consider:

- (a) The history of domestic violence, both documented prior complaints and convictions and the law enforcement officer's own prior knowledge of the family;

- (b) The relative severity of the injuries inflicted on each person, i.e., who in this relationship poses the most danger to the other;
- (c) The likelihood of future injury to each person, i.e., who is at the most risk of future harm;
- (d) Whether one of the persons acted in self-defense and/or in defense of others; and
- (e) The degree to which one of the persons has acted with more deliberate intent to control, isolate, intimidate, emotionally demean, cause injury or pain or fear of harm to the other person or to a third party.

2. A law enforcement officer shall not threaten, suggest, or otherwise indicate the possible citing of all parties to discourage requests for intervention by any party.
3. A law enforcement officer shall not consider the use or abuse of alcohol by either party in making a determination as to whether or not domestic violence has been committed.
4. The employment, economic, educational, social, physical and/or mental health and political status of the alleged perpetrator and/or victim shall not be considered in making issuing a citation. .
5. The Tribal Law Enforcement Officer is not required to issue a citation based on who hit who first but shall consider the dynamics of domestic violence and the definition of predominate aggressor in determining which party to cite...

C. Domestic Violence Citation and Service

1. Citation: The citation shall include the following:
 - a. A statement that the civil citation is a non-criminal offense for which imprisonment is not an available sanction;
 - b. A statement briefly describing the conduct of the person which lead to the violation;
 - c. A statement identifying the penalties that may be imposed for the civil violation;
 - d. A statement on how the person may contest the citation;
 - e. A statement that the person must respond to the citation within thirty (30) days from the date of service of the citation; and
 - f. A statement that failure to respond to the citation or failure to appear at a requested hearing will result in a default judgment against the person and that the Court may impose any and all penalties available to the Court.

2. Service of the Citation

1. The citation may be served on the person in the following manner;
 - a. Personal service; or
 - b. Mailing the civil citation by certified or registered mail, return receipt requested, addressed to the person at his or her mailing address if known, or such other place which is believed to give the occupant or owner actual notice of the civil citation by the enforcement officer.
2. Service is deemed effective on the date of the personal service or when the certified mail is either delivered or delivery is attempted. If the certified mail receipt is returned unsigned, then service shall be deemed effective on the date three days following deposit in the mail.
3. A copy of civil citation, the officer's report and, if applicable, the proof of service shall be filed with the Tribal Court within seventy-two (72) hours of issuance, excluding weekends and holidays. If the Tribal Court within this timeframe does not receive the citation, the Tribal Court may dismiss the citation without prejudice.

D. Tribal Court Hearing

1. Upon receipt of the citation the Tribal Court shall schedule a hearing within 10 days from the date the citation was filed and provide written Notice of Hearing to the Respondent and the Tribal Law Enforcement Department. The Notice of Hearing shall state the date, time and place of hearing and shall be issued at least 5 days prior to the date of the hearing.
2. Respondent may obtain a copy of the Tribal Law Enforcement's report upon request to Tribal Court.
3. The Respondent or the Nation/Tribe may request 1 continuance for any reason, provided that Tribal Court is given the request for a continuance at least forty-eight (48) hours in advance of the scheduled hearing and that the deferred hearing shall not be deferred more than 20 days after the citation was filed.
4. All hearings shall be open to public unless the Respondent or the Nation/Tribe (tribal representative) request that hearing be closed. At the hearing, both the Nation/Tribe and the Respondent shall be given the opportunity to testify and to present evidence and cross-examine witnesses

concerning the civil citation. The Nation/Tribe and Respondent may appear personally or through an attorney. Pre-hearing discovery is not authorized, but subpoena of witnesses and documents shall be permitted as authorized by tribal law or the Tribal Courts Rules of Court. The Tribal Court is authorized to conduct the hearing informally, both as to rules of procedure and admission of evidence, in any manner which will provide a fair hearing.

5. The civil citation and any additional report submitted by the enforcement officer shall constitute presumptive evidence of the respective facts contained in those documents.
6. The Tribal Court may continue the hearing and request additional information from the Tribal Law Enforcement Officer or the Respondent prior to issuing a written decision.

E. Tribal Court Decision

1. After considering all the testimony and evidence submitted at the hearing, the Tribal Court Judge shall issue a written decision to uphold or dismiss the civil citation and the reasons for that decision, including written findings on each violation. The decision of the Tribal Court Judge shall be issued within 5 calendar days following completion of the hearing.
2. If the Tribal Court Judge determines the civil citation should be upheld, he or she may apply any of the following remedies:
 - a. A fine not to exceed \$5,000 for each violation; and/or
 - b. Community service as determined appropriate by the Court; and/or
 - c. If the Respondent has been found guilty of Domestic Violence twice or more within the last 5 years, the Court may issue an order of banishment of the Respondent from the Reservation for a specified time; and
 - d. Any and all other penalties the Court deems just and necessary.
3. If the Tribal Court Judge determines the civil citation should be dismissed, he or she shall issue a decision dismissing the civil citation.
4. The Respondent and the Tribe shall be served with a copy of the decision within seven (7) calendar days of its issuance.
5. The decision of the Tribal Court shall be final upon service on the Respondent and not subject to further review.

TITLE VII. PETITION FOR PROTECTIVE ORDER

A. The Petition

1. Any person may seek relief under this Code on behalf of:
 - a. Herself or himself;
 - b. On behalf of a minor child, a family or household member;
 - c. On behalf of any person prevented by a mental or physical incapacity or by hospitalization,
 - b. By tribal law enforcement on behalf of the victim if so request.

2. A person (herein "Petitioner") may file for a Protective Order under this Section if she or he, a family or household member has been the victim of domestic violence or the person has reasonable cause to believe that there is a danger of acts of domestic violence which may cause serious or immediate injury (either physical or emotional) to the person, his or her family or household member.

3. A Protective Order may be obtained by filing a "Petition for Family Abuse Protection Order." Petitioner may complete the pre-printed form(s), which can be obtained at the Tribal Court, Tribal Law Enforcement Office, Tribal Social Services, Indian Health clinic, and the Tribal Administrative Office. Alternatively, the Petitioner may file a written Petition in any form as long as the following information is included in the Petition:
 - a. Identify Petitioner's tribal affiliation and stating that he or she is domiciled, resides or is on the Iipay Nation of Santa Ysabel Reservation;
 - b. Identify the Respondent, his or her tribal affiliation, and address or other contact information;
 - c. Identify what family or household relationship Petitioner has with the Respondent;
 - d. Describes the domestic violence acts the Respondent has committed, where these acts occurred and the date;
 - e. Identify whether the Respondent has a history of domestic violence, including dates, locations and description of said acts;
 - f. Describe the injury (physical, mental and emotional, destruction of property, loss of employment, etc.) Petitioner has suffered;
 - g. Identify any past orders that have been issued (criminal and civil) that have been issued against the Respondent;

h. List all children Respondent has with Petitioner, including their names, DOB, tribal affiliations, in whose custody the children currently are in and where the children reside;

i. Whether the Respondent has abused the children. If yes, describe when how, and where.

4. A hearing on such a Petition shall be set within 14 days from filing. If the Petitioner is proceeding without an advocate, the Court Clerk shall set the date for the hearing and issue a "Notice of Hearing" and shall service the summons and Petition through appropriate tribal law enforcement. If the Petitioner is represented by an advocate, then the Petitioner shall serve the Respondent with the "Notice of Hearing" and the Petition in the manner as proscribed under the Tribal Court's Rules of Court, Civil Actions. If an immediate order is needed, then an Ex Parte Protection Order may be issued by the Court in accordance with subsection (C).

B. Tribal Court Hearing

1. The hearing on a Petition for a Protection Order shall follow the rules as set forth under the Tribal Court Rules of Court, Civil Actions. The hearing shall be informal and each party shall be allowed to be represented by an advocate at his or her own expense. Each party shall be allowed to call witnesses and to cross examine the witnesses called by the parties.

The Court may consider other prior acts of domestic violence, crimes, or any wrongs, acts, or patterns of behavior which may be relevant to the need for the protection order and this evidence shall be admissible regardless of whether the alleged crimes, wrongs, acts or patterns of behavior were committed by Respondent against the Petitioner his or her family or household member.

The Court shall not dismiss a Petition of a Protection Order because it was not filed within a particular time period after the last alleged incident of domestic violence.

Intoxication is not a defense to a violation of any provisions of this Code.

This Code shall be enforced regardless of current martial status, cohabitation or existence of a current relationship.

At the time of the hearing the Respondent may request and the Court may grant a continuance for good cause. If at the time of the hearing the Respondent is represented by an advocate and the Petitioner is not, the Petitioner may request and the Court may grant a continuance for Petitioner to retain an advocate. During the time for a continuance, all ex parte orders shall remain in effect.

C. Request for an Ex Parte Protection Order

If an Ex Parte Protection Order is immediately needed prior to the filing of or a hearing on a "Petition for Family Abuse Protection Order", the Petitioner may request, or the Court, or its designee, may issue on its own motion, an Ex Parte Protection Order. All Ex Parte requests shall be on a pre-printed form available at the Tribal Court, Tribal Law Enforcement Office, Tribal Social Services, and the Tribal Administrative Office.

To issue such an Ex Parte Protection Order it must clearly appear to the Court, or its designee, from specific facts shown by Petitioner that he or she, a family or household member, has reasonable cause to believe that there is an immediate danger of domestic violence which could result in the physical or emotional injury to the person on whose behalf the Petition is filed.

An Ex Parte Order of Custody prior to the service of process and notice shall not be entered unless the Court, or its designee, finds that the child is exposed to a substantial risk of bodily injury, sexual abuse, or emotional distress. A finding by the Court, or its designee, that there is basis for issuing an Ex Parte Protection Order constitutes a finding that sufficient reasons exist not to require notice. After the issuance of an Ex Parte Protection Order, the Court Clerk shall set matter for hearing no less than 14 days from the date it issued. If the Petitioner has not yet filed a "Petition for Family Abuse Protection Order" with the Court, he or she must do so within 24 hours from the date the Ex Parte Protection Order is issued. An Ex Parte Protection Order shall be effective until modified or vacated by the Court.

D. Protection Orders

1. Ex Parte Protection Orders: All Ex Parte Protection Orders shall contain the following information:

- (a) Respondent's name and date of birth (if known);
- (b) The names of the protected parties;
- (c) The date the order was filed;
- (d) The hearing date and time on the Petition;
- (e) The conditions that apply to the Respondent either in check list form or hand written;
- (f) Signed by the Tribal Court Judge.

The Ex Parte Protection Order shall also have the following notification:

" THE ORDER FOR PROTECTION IS NOW ENFORCEABLE. You are subject to fines and/or exclusion from the Reservation if you violate any of the terms of this order of protection. You may also be subject to a fine and imprisonment under the California state penal code. "

After the Ex Parte Protection Order is issued, hearing shall be set within 14 days. In the interim, the Ex Parte Order will remain in effect until such time as a hearing is held and a Final Protection Order is entered or the Ex Parte Order is vacated by the Court.

If the Respondent is not represented by an advocate, the Court Clerk shall immediately serve, through the appropriate law enforcement agency, the Ex Parte Protection Order on the Respondent with a copy of the "Petition for Family Abuse Protection Order" (if on file with the Court), and the Request for Ex Parte Order, along with the Notice of Hearing. If the Petitioner is represented by an advocate, the Petitioner is responsible for serving the Respondent pursuant to the Tribal Court's Rules of Court, Civil Actions.

2. Final Protection Orders: The Court may grant any protection order or approve any consent agreement to stop or to prevent acts of domestic violence. Relief granted pursuant to an ex parte order shall expire at such time a final protection order is entered. All relief granted under a final protection orders shall not exceed two years duration and may be modified or extended at a subsequent hearing upon proof and a finding by the Court that the treat of domestic violence still exists. If immediate modification or renewal is needed, it may be obtained ex parte. Permanent orders regarding matters of custody, visitation, support or division of property should be addressed by filing separate civil actions with the Tribal Court or State Court in accordance with the applicable rules of civil procedure and tribal and/or state law.

A protection order may include, but is not limited to, the following:

- (a) Direct a party responsible for domestic violence to refrain from any acts of domestic violence as defined under TITLE IV of this Code;
- (b) Grant the Petitioner the residence or household and exclude the Respondent from the residence or household;
- (c) Require a party responsible for domestic violence to provide a spouse and his or her children suitable alternate housing;
- (d) Award temporary custody of minor children, order child support, and establish temporary visitation rights of the children. Primary consideration shall be given to the least disruption to the children, the children's health, safety, education, and normal routines. All visitation orders shall provide for the rules concerning the exchange of the children (times, places, persons, and the non-custodial may be required to post bond);
- (e) Order the eviction of a party responsible for domestic violence from the residence or household and assistance to the victim in returning to it;
- (f) Order the party responsible for domestic violence to make timely payments on all family or household debts, including but not limited to, mortgage, rent, utilities,

medical expenses, health insurance coverage for the spouse and children, as well as other necessary expenses;

(g) Provide for possession of personal property of the parties, including the granting the victim use of a vehicle and other essential personal effect, regardless which party holds title to the property.

(h) Order the Respondent to refrain from any or all of the following:

1. Threatening, abusing or following the Petitioner or member of his or her family or household'

2. Visiting the home, workplace, school, or any other place the Petitioner or his or her family or household member is likely to be and wherein Respondent has no authorized business or need to be;

3. Communicating with the Petitioner or his or her family or household member by telephone, in writing through gifts, either directly or indirectly or through third parties;

4. Coming within a certain distance of the Petitioner or his or her family or household member at any time;

5. Otherwise interfering with the Petitioner or his or her family or household member or engaging in any other conduct that would result in emotional distress to the Petitioner or his or her family or household member;

6. Award costs and attorney fees to the Petitioner;

7. Prohibit a Respondent from receiving, using, possessing, purchasing or transporting a firearm or ammunition;

8. Order Respondent to attend and complete an anger management treatment program approved by the Tribe;

9. Order the Respondent to undergo a drug or alcohol assessment and treatment;

10. Order the parties or Respondent to maintain and refrain from removing funds beyond certain limits fro the parties' bank account;

11. Order one or both parties from transferring, removing, encumbering, mortgaging, concealing, disposing, or altering property except as authorized by the Court;

12. Order Respondent pay restitution to the Petitioner or his or her family or household member who has suffered a financial loss due to Respondent's actions;

13. Include any additional prohibitions or requirements the Court deems necessary to protect the Petitioner or his or her family or household member;

14. Order the Respondent to reimburse within 30 days of the Order any victim services agency/program for any services provided to Petitioner or his or her family or household members as a result of being a victim of domestic violence.

3. Mutual Orders: Protection orders shall not be mutual in nature, however, the Court may issue separate orders for protection and for restraining each opposing party when each party has properly filed and served petitions for protection orders, each party has committed domestic violence as defined in this Code, each possess a continuing risk of violence to the other, and neither party acted primarily in self-defense.

D. Notice of the Order

1. A copy of the Protection Order shall be served on the parties at the conclusion of the hearing. Within 24 hours from the entering of Protection Order, a copy will be provided the Tribal Law Enforcement Department, *the County Sheriff's office and (To be determined lodged with state Superior Court for recognition under the federal Violence Against Woman Act.)*

2. Attached to the order shall be a Notice to the parties which shall include the following information:

A. "TO RESPONDENT: You must obey this order or be subject to fines or exclusion from the Reservation and/or other penalties including fines and/or imprisonment under state law and possibly federal law.

This protection order is valid and will be enforced against you by the Tribe as well as in all 50 states of the United States, the District of Columbia, on any Indian lands and any commonwealth, territory or possession of the United States.

Federal law prohibits you from possessing or purchasing any firearms 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 protection order entered against you by tribal court prohibits you from possessing or purchasing firearms.

If you travel across state or Indian lands with the intent to violate the protection order entered against you, you are subject to prosecution for a federal crime.

If you travel across state or Indian lands with the intent to injure, harass or intimidate the person protected under this order entered against you or if you travel across state lines or Indian lands or use mail or any facility of interstate commerce across state lines with the intent to place that person or a his or her family or

household member in fear of serious bodily harm, you are subject to prosecution for a federal crime.

You and the party protected by the order cannot change the terms of the order 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 held in contempt of court and fined, excluded from the reservation, and if you violate this order while off reservation you are subject to the civil and criminal penalties of the state.”

B. “TO PETITIONER: You should keep a copy of this protection order on you at all times and should make a copy for your family and friends. 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.

The protection order is valid not only on the Iipay Nation Reservation but 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.

You may not change the terms of the order by agreement with the other party. If you wish to change any terms of this order, you must come back into Court to have the judge modify the order.

If the Respondent violates any provision of this order, you may call Tribal Law Enforcement (or the County Sheriff Office) and go to (State and/or) Tribal Court for an order of contempt, which can subject the Respondent to fines, exclusion from the reservation (and fines and imprisonment under state law.)

TITLE VIII. VIOLATION OF PROTECTION ORDER

A. Detention and Arrest for Violations of a Protection Order

When a tribal law enforcement officer has probable cause to believe that a Respondent has violated a verifiable protection order issued by the Tribal Court or State Court, the officer may:

1. If the tribal law enforcement officer holds a Special Law Enforcement Commission (SLEC) from the Office of Justice Services, arrest the Respondent if he or she has violated 18 U.S.C.A § 2262 and transport the Respondent to the appropriate federal detention facility or take other appropriate action;

2. If the protection order that has been violated was issued by a State Court, the officer holding a SLEC may arrest the Respondent pursuant to CA Penal §830.8(a) and transport the Respondent to the appropriate state detention facility;

3. If the protection order that has been violated was issued by a State Court and the officer does not hold a SLEC, the officer may restrain and detain the Respondent until the appropriate state law enforcement agency can take custody of the Respondent or transport the Respondent to the appropriate state law enforcement agency;

4. For violations of any Tribal Court issued Protection Orders (Ex Parte or Final), the officer shall cite the Respondent and the citation will be filed with the Tribal Court and proceed under subsections C through E of Title VI of this Code.

5. Such orders may include, but are not limited to:

a. An order enjoining the Respondent from threatening to commit or committing acts of domestic violence against the Petitioner or other family or household member;

b. An order prohibiting the Respondent from harassing, annoying, telephoning, contacting or otherwise communicating with the Petitioner, either directly or indirectly through family, relations by marriage, friends, and co-workers;

c. An order removing and excluding the Respondent from the residence of the Petitioner;

d. An order requiring the Respondent to stay away from the residence, school, place of employment, or a specified place frequented regularly by the Petitioner and any named family or household member;

e. An order prohibiting the Respondent from using or possessing a firearm or other weapon specified by the court;

4. The Petitioner granted a Protection Order cannot violate or be arrested for violation of her/his own order for protection.

6. A tribal law enforcement officer who has arrested or detained a Respondent for violation of a Protective Order shall file within 24 hours of such arrest or detention report and "Notice to Show Cause" as provided for in subsection B. below.

B. Any person with knowledge of Respondent's violation of a Protective Order may file a "Notice to Show Cause" why the Respondent should not be held in contempt of Court and punished for said violation. If the Petitioner is proceeding without an advocate, the Court Clerk shall set the date for the "Show Cause" hearing, issue a "Notice of Hearing" and shall service the "Notice to Show Cause" and "Notice of Hearing" through the appropriate tribal law enforcement. If the Petitioner is represented by an advocate, then the Petitioner shall serve the Respondent with the "Notice to Show Cause" and "Notice of Hearing." Service shall be in compliance with the Tribal Court's Rules of Court, Civil Actions.

After proper service of the “Notice to Show Cause” and on the Respondent and the hearing, the Court will determine if the Respondent violated any provision of the Protective Order. If the Court finds the Order has been violated he or she will find the Respondent in contempt of Court and subject to the following:

1. A fine not to exceed \$5,000 for each violation; and/or
2. Community service as determined appropriate by the Court; and/or
3. If the Respondent violates the Protection Order twice or more, the Court may issue an order of banishment of the Respondent from the Reservation for a specified time not to exceed two (2) years; and
4. Any and all other penalties the Court deems just and necessary.

TITLE VIII. FULL FAITH AND CREDIT OF FOREIGN PROTECTION ORDERS

A. Enforcement of Foreign Protection Orders

Whenever any Tribal Law Enforcement Officer or the Tribal Court is presented with an order, either ex parte or permanent, or verifies the existence of such an order with the court or law enforcement agency of the issuing jurisdiction, which restrains any person from harassing, annoying, stalking, contacting or coming within a certain proximity to another person that was issued by another Tribal or State court, the Tribal Law Enforcement Officer and Tribal Court shall enforce such order and all provisions of such order, including the award of custody and property in such Protection Order, as if it were issued by the Tribal Court.

B. Immunity for Good Faith Enforcement of Foreign Protection Order

An officer or any Tribal Law Enforcement official who acts in good faith in enforcing a foreign Protection Order and its terms shall be immune from suit for any civil or criminal action. This immunity shall extend to a tribal officer who affects the arrest of a non-Indian for violation of a Protection Order pursuant to state or federal law.

C. Role of Tribal Court in Enforcing This Section

The Tribal Court shall enforce a Protection Order, either ex parte or permanent, and all provisions of that protection order, including child custody and property awards, if all the following are satisfied:

1. The Respondent received notice of the order in compliance with requirements of the issuing jurisdiction;
2. The Order remains in effect in the issuing jurisdiction;
3. The issuing court had jurisdiction over the parties and subject matter;
4. The Respondent was afforded reasonable notice and the opportunity to be heard prior to the issuance of a permanent protection order or in the case of an ex parte order it appears from the face of the order that a hearing will be conducted within

reasonable time to allow the Respondent to raise any defenses he may have to the issuance of a permanent Protection Order.

D. Registration of Foreign Protection Order with the Tribal Court

Any person who has received a Protection Order, either ex parte or permanent, from another Tribal or State Court, may file the Protection Order with the Clerk of the Tribal Court and request that the Tribal Court grant full faith and credit to the Protection Order. Immediately upon the filing of that Protection Order with the Court Clerk, the Tribal Court Judge shall review such filing and if it appears from the face of the Protection Order it meets the requirements of the Section 3 above, shall enter an order recognizing the Protection Order. Said Order shall immediately be forwarded to Tribal and local law enforcement. A person shall be not charged a filing or registration fee for the filing of a foreign Protection Order. A person protected by a Protection Order issued by another Tribal or State Court need not file that Protection Order with the Tribal Court in order to receive law enforcement protection from the Respondent under this Chapter.

E. Violation of Foreign Protection Order

Any violation of the foreign Protection Order shall subject the Respondent to penalties set forth in this Code and any federal or state penalties as provided under federal or state law.