

**Cherokee Council House  
Cherokee, Qualla Boundary (NC)**

**Date: June 3, 2010**

## **Tabled**

### **ORDINANCE NO. 357 (2010)**

WHEREAS, Chapter 50B of the Cherokee Code, Domestic Violence, is in need of updates; and

WHEREAS, Changes can be made to simplify and streamline the Chapter 50B process; and

WHEREAS, These changes will not only streamline the Chapter 50B process for Tribal Court, but for the population at large.

NOW THEREFORE BE IT ORDAINED by the Tribal Council of the Eastern Band of Cherokee Indians assembled, at which a quorum is present, that the Cherokee Code Chapter 50B, Domestic Violence, be amended as follows:

#### Chapter 50B DOMESTIC VIOLENCE PREVENTION\*

Sec. 50B-1. Purposes.

Sec. 50B-2. Definitions.

Sec. 50B-3. Domestic violence prohibited--Who may seek relief.

Sec. 50B-4. Jurisdiction.

Sec. 50B-5. Prior acts.

Sec. 50B-6. Intoxication is no defense; status of relationship is irrelevant.

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Sec. 50B-8. Clerk to make forms and instructions available.

Sec. 50B-9. Contents of protective orders.

Sec. 50B-10. Duration of protective orders.

Sec. 50B-11. Mutual orders are prohibited.

Sec. 50B-12. Parties shall receive orders and notice; police to enter information.

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Sec. 50B-14. Full faith and credit.

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Sec. 50B-16. Referral requirement

Sec. 50B-17. Construction of chapter.

Sec. 50B-18. Remedies not exclusive.

Sec. 50B-19. No defense to criminal prosecution.

Sec. 50B-20. Severability.

Sec. 50B-21. Repeal of inconsistent law.

**Sec. 50B-1. Purposes.**

The purpose of this chapter is to recognize that domestic abuse is a serious crime against society, the Eastern Band of Cherokee Indians, and the family, and to provide the victim of domestic violence the maximum protection from further abuse which the law can provide. The strength of the Eastern Band of Cherokee Indians is founded on healthy families, and families damaged by domestic 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 Eastern Band.

(Ord. No. 407, 9-26-2002)

**Sec. 50B-2. Definitions.**

As used in this chapter, these terms have the following meanings:

*Advocate* means an employee of a program that provides services to victims of domestic violence.

*Causing emotional distress* means engaging in conduct that respondent/defendant knows, or has reason to know, would cause the petitioner (or would cause 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:

- (1) Creating a disturbance at a person's place of employment, residence, school, or other place occupied by the person;
- (2) 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;
- (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;
- (4) 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
- (5) Threatening physical force, confinement or restraint.

*Causing fear of the infliction of physical harm, bodily injury or assault* means any act, including, but 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.

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

*Domestic violence* occurs when a person commits one of the following acts against ~~an intimate partner or against a member of such intimate partner's family or household~~ a person in which they have a personal relationship or against a family member or household member of such person in which they have a personal relationship; but does not include acts of self-defense:

- (1) Attempting to cause bodily injury, or intentionally causing physical harm, bodily injury, or assault to ~~an intimate partner or to a member of such intimate partner's family or household~~ a person in which they have a personal relationship or against a family member or household member of such person in which they have a personal relationship, or to an animal of such person in which they have a personal relationship;
- (2) Placing ~~an intimate partner or a member of the intimate partner's family or household~~ a person in which they have a personal relationship or against a family member or household member of such person in which they have a personal relationship in fear of the infliction of physical harm, bodily injury or assault;
- (3) Forcing ~~an intimate partner or a member of the intimate partner's family or household~~ a person in which they have a personal relationship or against a family member or household member of such person in which they have a personal relationship to engage in sexual activity by force, threat of force, or duress;
- (4) Attempting to cause or causing emotional distress to ~~an intimate partner or to a member of such intimate partner's family or household~~ a person in which they have a personal relationship or against a family member or household member of such person in which they have a personal relationship;
- (5) Willfully violating a court order intended to protect ~~the intimate partner or a member of such person's family or household~~ a person in which they have a personal relationship or against a family member or household member of such person in which they have a personal relationship; or
- (6) Committing one of the following offenses, as defined by chapter 14, Cherokee Code, against ~~an intimate partner or against a family or household member of such intimate partner~~ a person in which they have a personal relationship or against a family member or household member of such person in which they have a personal relationship:

- a. Injuring real property (§ 14-10.11);

- b. Injuring telephone, wires or other communication equipment; Interfering with emergency communication (§ 14-10.14);
- c. Criminal Trespass (§ 14-10.15, 14-10.16, and/or 14-10.17);
- d. Burglary (§ 14-10.40);
- e. Breaking and entering (§ 14-10);
- f. Criminal mischief (§ 14-10.9);
- g. Arson (§§ 14-10.50, 14-10.51, and/or 14-10.52);
- h. Assault (§§ 14-40.10, 14-41.11, 14-40.12);
- i. Maiming (§ 14-40.14);
- j. Discharging a firearm into an occupied building (§ 14-40.15);
- k. Harassment; telephone harassment (§§ 14-25.13 and/or 14-5.3);
- l. Kidnapping (§ 14-40.30);
- m. False imprisonment (§ 14-40.31);
- n. Custodial interference (§ 14-40.32);
- o. Homicide (§§ 14-40..40 and/or 14-40.41);
- p. Sex offenses, including rape, taking indecent liberties with children, aggravated sexual abuse, sexual abuse, sexual abuse of minor or ward (§§ 14-20.1, 14-20.2, 14-20.3, 14-20.4);
- q. Stalking (§ 14-5.5);
- r. Communicating threats (§ 14-5.2);
- s. Weapons law violations (§§ 14-34.10, 14-34.11, 14-34.12, 14-34.13 and/or 14-34.14);
- t. Cruelty to animals (§ 14-5.20) when such cruelty is inflicted on an animal belonging to or residing in the household of the intimate partner or family member.

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



*Personal Relationship* means:

- (1) Current or former spouses; or
- (2) Persons who live together or have lived together, and are or were in a dating relationship while living together
- (3) Persons who are related as parents and children, including persons acting in loco parentis to a minor child, or as grandparents and grandchildren. For purposes of this subdivision, an aggrieved party may not obtain an order of protection against a child or grandchild under the age of 16; or
- (4) Persons who have a child in common or who are expecting a child together; or
- (5) Persons who are current or former household members.
- (6) Persons who are in a dating relationship or have been in a dating relationship. For purposes of this subdivision, a dating relationship is one wherein the parties are romantically involved over time and on a continuous basis during the course of the relationship. A casual acquaintance or ordinary fraternization between persons in a business or social context is not a dating relationship.
- (7) Persons who have engaged in an ongoing sexual relationship.

*Pro se* means without the assistance of an attorney.

*Territory of the Eastern Band of Cherokee Indians* means all lands within the Qualla Boundary, and all lands held by the United States for the benefit of the Eastern Band of Cherokee or any member of the Eastern Band of Cherokee, and all additional lands acquired by the Eastern Band of Cherokee notwithstanding the issuance of any right-of-way. (Ord. No. 407, 9-26-2002; Ord. No. 671, 3-7-2003)

**Sec. 50B-3. Domestic violence prohibited--Who may seek relief.**

- (a) Domestic violence is prohibited within the territory of the Eastern Band of Cherokee Indians.
- (b) Who may seek relief. Any person may seek relief under this chapter on behalf of themselves or a person who is a victim of domestic violence and who is residing in the Territory of the Eastern Band of Cherokee Indians by filing a small claims action (pursuant to § 1-11 Cherokee Code) to obtain an Order of Protection, or by filing a motion in any existing family law action, alleging acts of domestic violence. Persons outlined below who are entitled to seek relief under this chapter may proceed pro se, without the assistance of legal counsel. No filing fee shall be required for actions filed

under this chapter. A person may seek a protective order or file an action pursuant to this chapter in an existing family law action:

- (1) For herself or himself; or
- (2) On behalf of a minor child; or
- (3) On behalf of any person prevented by a mental or physical incapacity or by hospitalization, from seeking a protection order.

(Ord. No. 407, 9-26-2002)

#### **Sec. 50B-4. Jurisdiction.**

The Cherokee Court shall have original jurisdiction over actions instituted under this chapter. Either a trial judge or a magistrate of the Court may hear and decide any and all matters filed under this chapter. When an act of domestic violence has occurred outside of Tribal Lands and jurisdiction over the defendant/respondent has been established by an order of a competent court, personal jurisdiction over a defendant/respondent is not required when an order is issued merely to preserve the protected status of the petitioner or the person(s) on whose behalf the petition is filed and the order grants no affirmative relief against the defendant/respondent.

(Ord. No. 407, 9-26-2002)

#### **Sec. 50B-5. Prior acts.**

The Court shall not be barred by Rule 404 of the Rules of Evidence from considering evidence of any other domestic violence crimes, or of any wrongs, acts or patterns of behavior which may be relevant to the need for a protective 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 intimate partner, family or household member~~ a person in which they have a personal relationship or against a family member or household member of such person in which they have a personal relationship currently before the Court or were committed by respondent against any past ~~intimate partner, family or household member~~ person in which they have a personal relationship or against a family member or household member of such person in which they have a personal relationship. The Court shall not deny any complaint filed under this Chapter solely because it was not filed within a particular time period after the last alleged incident of domestic violence.

(Ord. No. 407, 9-26-2002)

#### **Sec. 50B-6. Intoxication is no defense; status of relationship is irrelevant.**

- (a) Intoxication is not a defense to a violation of any provision of this chapter.

(b) The provisions of this chapter shall be enforced regardless of marital status, cohabitation or the existence of a current relationship.

(Ord. No. 407, 9-26-2002)

**Sec. 50B-7. Forms of relief.**

(a) *Final order of protective relief.* A petitioner may petition or move the court for a protective order if he or she 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 ~~an intimate partner, or to a member of such intimate partner's family or household~~ a person in which they have a personal relationship or against a family member or household member of such person in which they have a personal relationship. A hearing on such petition or motion shall be set by the court within 14 days. If a party is proceeding ~~pro se~~ pro se, the clerk shall set a date for hearing and issue a notice of hearing and shall effect service of the summons, complaint, and other papers through the appropriate law enforcement agency where the defendant is to be served. If an immediate order is needed, then an ex parte order may be issued by the court in accordance with subsection (b), below.

(b) *Ex parte order.* If an immediate order is needed, the petitioner or movant may request, or the court may issue on its own motion, ex parte relief prior to the hearing specified in the above paragraph 50B-7(a). To issue such an order, it must clearly appear to the court from specific facts shown that petitioner 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.

However, a temporary order for custody prior to service of process and notice 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. A finding by the court that there is a basis for issuing an ex parte order for protection constitutes a finding that sufficient reasons exist not to require notice. 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 magistrate or judge to hear the motion for ex parte relief within 24 hours. An ex parte order for protection shall be effective until modified or vacated by the court.

(1) Upon the issuance of an ex parte order under this subsection, a copy of the order, along with a short form notification shall be immediately served on the respondent. The short form notification must include the following clauses: the respondent's name; the respondent's date of birth, if known; the names of all protected parties; the date in which the ex parte order for protection was filed; the court file number; the hearing date and time; the conditions that apply to the respondent, either in checklist form or handwritten; and the name of the judge or magistrate who signed the order. The short form notification must be in bold print in the following form:

THE ORDER FOR PROTECTION IS NOW ENFORCEABLE. You are subject to arrest and may be charged with a crime if you violate any of the terms of the order for protection or this short form notice.

(2) After an ex parte order is issued under this subsection, a hearing shall be set by the court within 14 days. In the interim, the ex parte order will remain in effect until such time as a hearing is held and a new order is entered, ~~or the ex parte order is vacated by the court,~~ or the petitioner Voluntarily Dismisses the ex parte order before the date of the hearing.

(3) If the party is proceeding pro se, the clerk shall immediately issue the short form notice to the defendant/respondent with an attached copy of the ex parte order, set a date for hearing, issue a notice of hearing, and effect service of the summons, complaint, notice of hearing, short form notice of ex parte order, ex parte order, and other papers through the appropriate law enforcement agency where the defendant/respondent is to be served.

(4) At the time of the hearing, the respondent may request and the Court may grant a continuance for good cause. During the time of any such continuance, the ex parte order shall remain in effect.

(5) At the time of the hearing, if the respondent is represented by an attorney and the petitioner is not, then the petitioner may request and the Court may grant a continuance for the aggrieved party to retain an attorney. During the time of any such continuance, the ex parte order shall remain in effect.

(Ord. No. 407, 9-26-2002; Ord. No. 671, 3-7-2003; Ord. No. 670, 3-30-2005)

**Sec. 50B-8. Clerk to make forms and instructions available.**

Standard petition forms with instructions for completion shall be available from the Clerk of Court.

(Ord. No. 407, 9-26-2002)

**Sec. 50B-9. Contents of protective orders.**

- (a) The Court may grant any protective 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 as a final protective order is entered. Relief granted pursuant to a final order shall be for a fixed period not to exceed two years duration and may be modified or extended at a subsequent hearing upon proof and a finding by the court that the threat of domestic violence still exists. If an immediate modification or renewal is needed, this may done ex parte (see section 50B-10 below). Permanent orders regarding matters of custody, visitation, support or division of property should

be addressed by filing separate civil actions with the court in accordance with the applicable rules of civil procedure. The orders or agreements may:

- (1) Direct a party responsible for domestic violence to refrain from any acts of domestic violence as defined in section 50B-2.
- (2) Grant to an aggrieved party possession of the residence or household of the parties and exclude the other party from the residence or household.
- (3) Require a party responsible for domestic violence to provide a spouse and his or her children suitable alternate housing.
- (4) Award temporary custody of minor children, order either party to make payments for the support of minor children as required by law, and establish temporary visitation rights of the minor children, with the primary consideration being the least disruption of the children, which shall include, but not be limited to consideration of the health, safety, education, and normal routines of children. If visitation is granted there shall be set rules for exchange of children for visitation, including but not limited to times, places, persons and the non-custodial parent may be required to post a bond as required by the Court. If the Court finds that the safety of the victim or the children will be jeopardized, the Court may deny visitation entirely.
- (5) Order the eviction of a party responsible for domestic violence from the residence or household and assistance to the victim in returning to it.
- (6) Order respondent to make timely payments on existing debts of the respondent, including mortgage or rental payments and necessary utilities, medical expenses, health insurance coverage for spouse and minor children, as well as any other necessary expenses and require the respondent to continue all available insurance coverage without change in coverage or beneficiary designation.
- (7) Provide for possession of personal property of the parties, including granting an aggrieved party use of a vehicle and other essential personal effects, regardless of which party holds title to such property.
- (8) Order a respondent to refrain from doing any or all of the following:
  - a. Threatening, abusing, or following ~~the intimate partner or a member of the intimate partner's household or family~~ the person in which they have a personal relationship or against a family member or household member of such person in which they have a personal relationship,
  - b. Visiting the home, workplace, school or any other place where the ~~intimate partner or intimate partner's household member(s) or family member(s)~~ person in which they have a personal relationship or against a

family member or household member of such person in which they have a personal relationship is likely to be and wherein Respondent has no authorized business or need to be;

c. Communicating with the ~~intimate partner in person or with the intimate partner's family or household member(s)~~ person in which they have a personal relationship or against a family member or household member of such person in which they have a personal relationship, by telephone, in writing, through gifts, either directly or indirectly through third persons (unless through an attorney or allowed through court ordered visitation of a minor child) or otherwise;

d. Coming within a certain distance of the ~~intimate partner or named household or family member at any time~~ person in which they have a personal relationship or against a family member or household member of such person in which they have a personal relationship, or

e. Otherwise interfering with the ~~intimate partner or household member or family member or intimate partner~~ or engaging in any other conduct that would result in emotional distress to the ~~intimate partner or any household or family members~~ the person in which they have a personal relationship or against a family member or household member of such person in which they have a personal relationship or result in reasonable fear of bodily injury to same.

(9) Award costs and attorneys' fees to the aggrieved party.

(10) Prohibit a respondent from receiving, using, possessing, purchasing or transporting a firearm or ammunition.

(11) Order a respondent to attend and complete an abuser treatment program recognized and approved by the Eastern Band of Cherokee Indians or the Tribe's program for victims of domestic violence as based on an effective established model that has a sensitivity to and focus on the Native American experience.

(12) Order a respondent to participate in drug or alcohol assessment and treatment.

(13) Order one or both parties to maintain, and refrain from removing funds beyond a certain limit from, the parties' bank account.

(14) Order 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.

(15) Order respondent to pay restitution to the aggrieved party or to any member of the aggrieved party's family or household who has suffered a financial loss due to respondent's actions.

(16) Include any additional prohibitions or requirements the court deems necessary to protect an aggrieved party or a minor child.

(17) Order respondent to reimburse within 30 calendar days of this order any victim services agency/program (including but not limited to The Tribal Domestic Violence Program, Western North Carolina Legal Services, etc.) for any services provided to petitioner/aggrieved party as a victim of domestic violence (for example, reimbursement could be ordered for such things as advocacy, shelter, legal assistance, etc.) Failure to reimburse any tribal program within the stated time frame shall constitute a debt to the tribe.

(Ord. No. 407, 9-26-2002; Ord. No. 671, 3-7-2003)

#### **Sec. 50B-10. Duration of protective orders.**

Ex parte orders shall expire upon the issuance by the Court of a final protective order. Final protective orders entered or consent orders approved pursuant to this chapter shall be for a fixed period of time not to exceed two years. Upon notice to all parties and a hearing, a judge may renew or modify all or part of the relief granted in the original or any succeeding order for successive ~~one-year~~ two-year periods with no limitation on the number of renewals, however, a temporary award of custody entered as part of a protective order may not be renewed to extend a temporary award of custody beyond a maximum one-year period. The Court may extend or modify the terms of an existing order or, if an order is no longer in effect, grant a new order upon a showing that:

(1) Respondent has violated a prior or existing order of protection or has engaged in other acts of domestic violence; or

(2) The petitioner (or person on whose behalf petition is filed) is reasonably in fear of physical or emotional harm from the Respondent

A petitioner does not need to show that physical or emotional harm is imminent to obtain an extension or a subsequent order. However, an ex parte modification or renewal may be issued immediately by the court if it finds that petitioner has reasonable cause to believe that there is an immediate danger of domestic violence which could result in immediate physical or emotional injury to the person(s) on whose behalf the petition is filed. Upon the issuance of an ex parte modification or renewal, the procedure outlined in subsection 50B-7(b) for scheduling a hearing and serving notice on the defendant/respondent shall be followed.

(Ord. No. 407, 9-26-2002)

#### **Sec. 50B-11. Mutual orders are prohibited.**

Protective orders entered or consent orders approved 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 or motions for protective orders, each party has committed domestic violence as defined in this Chapter, each poses a continuing risk of violence to the other, and neither party acted primarily in self-defense.

(Ord. No. 407, 9-26-2002)

**Sec. 50B-12. Parties shall receive orders and notice; police to enter information.**

(a) A copy of any order entered and filed under this Chapter shall be issued to each party. In addition, a copy of the order shall be issued within 24 hours of its issuance to the Cherokee Police Department and/or the police or sheriff city of the city or county of the victim's residence. If the victim does not reside in a city or resides in a city with no police department, copies shall be issued to and retained by the sheriff, and the county police department, if any, of the county in which the victim resides.

(b) The Cherokee Police Department shall provide for immediate entry of the order (as well as any modifications or renewals) onto the National Crime Information Center Registry and shall provide for access of such orders to magistrates and judges on a 24-hour-a-day basis. Modifications, renewals, terminations and dismissals of the order shall also be promptly entered.

(c) Attached to each order shall be a Notice to Parties which must include the following language:

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 Eastern Band of Cherokee Indians 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.

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 Eastern Band of Cherokee Indians, 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 or go to a magistrate 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 Form CTC-CV-307 to have an order issued for the defendant to appear before a judge to be held in contempt for violating the order.

(Ord. No. 407, 9-26-2002)

#### **Sec. 50B-13. Enforcement of orders.**

(a) Violation of order of protection. In addition to any other penalties available under law or equity, a person who knowingly violates an order of protection entered pursuant to this chapter or who knowingly violates a valid protective order entered by the courts of another Indian tribe or the courts of a state shall be subject to the penalties outlined in section 14-40.1 of the Cherokee Criminal Code, which includes punishment by imprisonment for up to 12 months, a fine of up to \$5,000.00 and, if the party is not subject to the criminal jurisdiction of the Cherokee Court, then such person is subject to exclusion from Tribal territory. In addition, a party may file a motion for contempt for

violation of any order entered pursuant to this chapter. The party may file and proceed with such motion pro se, using forms provided by the Clerk of Court.

(1) Upon the filing of a pro se motion for contempt and a proper affidavit under this subsection, the ~~clerk~~ Court shall ~~schedule and~~ issue a notice of a show cause hearing ~~with the Court~~ at the earliest possible date.

(2) The clerk shall effect service of the motion, notice, and other papers through the appropriate law enforcement agency where the defendant is to be served.

(b) A law enforcement officer shall arrest and take a person into custody without a warrant or other process if the officer has probable cause to believe that the person has violated a court order excluding the person from the residence or household occupied by a victim of domestic violence or directing the person to refrain from doing any or all of the acts specified in section 50B-9(a)(8).

(1) Nothing in this section shall prohibit a law enforcement officer from securing a warrant for the arrest of a person who is subject to warrantless arrest.

(2) The person arrested shall be brought before the Court at the earliest time possible to show cause why he or she should not be held in civil or criminal contempt for violation of the order. The person arrested may be released on bail as determined by the Court.

(c) Valid protective orders entered pursuant to this section shall be enforced by all law enforcement agencies without further order of the Court. If a defendant/respondent is excluded from the residence of the petitioner (or person on whose behalf petition is filed) or ordered to stay away from such person, an invitation by such protected party does not waive or nullify an order of protection.

(Ord. No. 407, 9-26-2002)

#### **Sec. 50B-14. Full faith and credit.**

Valid protective orders that are entered by the courts of a state or another Indian tribe and are consistent with 18 U.S.C. 2265 shall be accorded full faith and credit by the Cherokee Court whether or not the order has been registered and shall be enforced by the Cherokee Court and the Cherokee Police Department as if it were an order issued by the Cherokee Court. In determining the validity of an out-of-state order for purposes of enforcement, a law enforcement officer may rely upon a copy of the protective order issued by a state or another Indian tribe that is provided to the officer and on the statement of the person protected by the order that the order remains in effect. Even though registration is not required, a copy of a protective order may be registered in Cherokee Court by filing with the Clerk of the Court a copy of the order and an affidavit by a person protected by the order that to the best of that person's knowledge the order is presently in effect as written. Notice of the registration shall not be given to the defendant. Upon registration of the order, the clerk shall promptly forward a copy to the Cherokee Police Department. Unless the issuing state or Indian tribe has already entered the order, the Cherokee Police Department

shall provide for prompt entry of the order into the National Crime Information Center registry pursuant to Section 50B-12(b). Upon application or motion by a party to the court, the court shall determine whether an out-of-state order remains in full force and effect.

(Ord. No. 407, 9-26-2002)

**Sec. 50B-15. Emergency assistance.**

(a) A person who alleges that he or she or a minor child has been the victim of domestic violence may request the assistance of the Cherokee Police Department, and the Police Department shall respond to the request for assistance as a high priority matter.

(1) The police officer responding to the request for assistance shall take whatever steps are reasonably necessary to protect the victim and his or her minor children from harm, including without limitation:

- a. Advise the victim of sources of shelter, medical care, counseling and other services;
- b. Transport the victim to appropriate facilities such as hospitals, the Court, or public or private facilities for emergency shelter;
- c. If Court order excludes Respondent from dwelling or residence and awards temporary possession to victim; accompany victim and assist in placing victim in possession of dwelling or residence, or otherwise assist in execution or service of the order of protection.
- d. Upon request, accompany the victim to his or her residence, so that the victim may remove food, clothing, medication and such other personal property as is reasonably necessary to enable the victim and any minor children who are presently in the care of the victim to remain elsewhere pending further proceedings;
- e. Confiscate any weapon involved in the alleged domestic violence;
- f. Give the victim adequate notice of rights, remedies and services available;
- g. Arrest the alleged perpetrator as may be required by section 14-40.1(e) of the Cherokee Code;
- h. Enforce all valid protective orders entered by the Court without further order of the Court; and

i. Give full faith and credit to valid protective orders entered by the courts of any state or Indian tribe and enforce those orders without further order of the Court.

(b) All calls regarding domestic violence shall be responded to immediately. Any law enforcement officer shall have immunity from any liability, civil or criminal, in making arrests or exercising any other authorized authority if the law enforcement officer acts in good faith so as to provide protection for victims of domestic violence. Law enforcement officers shall have the same immunity with respect to participation in any court proceeding resulting from arrests made for domestic violence or any crimes involving domestic violence.

(Ord. No. 407, 9-26-2002)

**Sec. 50B-16. Referral requirement.**

(a) Any physician, physician's assistant, nurse, community health representative, social worker, psychologist, dentist, school teacher, adult services worker, law enforcement officer, or substance abuse counselor who has reasonable basis to believe that a person has been a victim of domestic violence shall provide information to the person to make such person aware of the Tribal Domestic Violence Program.

(b) Penalties for failure to make referral. Any person who knowingly fails to make a referral as required under this section shall be fined an amount not less than \$100.00 nor more than \$300.00.

(Ord. No. 407, 9-26-2002; Ord. No. 671, 3-7-2003)

**Sec. 50B-17. Construction of chapter.**

This chapter shall not be construed as granting a status to any person for any purpose other than those expressly stated herein. This chapter shall not be construed as relieving any person or institution of the duty to report to the appropriate authorities if the person or institution has cause to suspect that a child is abused or neglected.

(Ord. No. 407, 9-26-2002)

**Sec. 50B-18. Remedies not exclusive.**

The remedies provided by this chapter are not exclusive but are additional to remedies provided elsewhere in the Cherokee Code.

(Ord. No. 407, 9-26-2002)

**Sec. 50B-19. No defense to criminal prosecution.**

The granting of a protective order, approval of a consent agreement, or the granting of any other relief or the institution of any other enforcement proceedings under this chapter shall not be construed to afford a defense to any person or persons charged with a crime pursuant to the criminal laws of the Eastern Band of Cherokee Indians or other law.  
(Ord. No. 407, 9-26-2002)

**Sec. 50B-20. Severability.**

If a court finds any clause or section of this chapter to be invalid, such clause or section shall be severed, and the remainder of this chapter shall remain in full force and effect.

(Ord. No. 407, 9-26-2002)

**Sec. 50B-21. Repeal of inconsistent law.**

Ordinance 97, effective February 8, 1990, Ordinance 355-C (1998), Ordinance No. 640 (1999), Chapter 50C of the Cherokee Code, and all other ordinances or resolutions that are inconsistent with this chapter are hereby repealed.

(Ord. No. 407, 9-26-2002)

BE IT FINALLY ORDAINED that this amendment shall be effective upon ratification by the Principal Chief, and all prior ordinances and resolutions that are inconsistent with this ordinance are rescinded.

*Submitted by John Ayers*