

# **ADULT, FAMILY & CHILDREN PROTECTIVE SERVICES ACT**

GENERAL PROVISIONS .....	4
Section 1 Title .....	4
Section 2 Governmental and Legislative Authority.....	4
Section 3 Findings.....	4
Section 4 Scope, Purposes and Construction.....	5
Section 5 Jurisdiction.....	5
Section 6 Territorial Jurisdiction Defined.....	6
Section 7 Eligibility .....	7
Section 8 Civil Jurisdiction.....	7
Section 9 Definitions.....	7
Section 10 Religious Exception .....	14
Section 11 Sovereign Immunity Not Waived .....	14
Section 12 Legislative Grant of Designated Authority.....	14
Section 13 Severability .....	14
Section 14 Effective Date .....	14
 CHAPTER ONE: REPORTING ABUSE, NEGLECT, OR EXPLOITATION.....	 15
Section 101 Duty to Report Abuse, Neglect, Exploitation, or Victimization; Anonymous Reports .....	 15
Section 102 Immunity for Reporting .....	16
Section 103 Failure to Report; Civil Penalty; Damages; Criminal Liability .....	16
Section 104 False Report; Civil Penalty; Damages; Criminal Liability .....	16
Section 105 Reports .....	16
Section 106 Retaliation; Civil Penalty; Criminal Liability.....	17
Section 107 Confidentiality of Information and Identity.....	17
Section 108 Criminal Penalties.....	18
 CHAPTER TWO: PROTECTIVE SERVICES DIVISIONS.....	 19
Section 201 Adult Protective Services Division; Purpose; Authority; Policies .....	19
Section 202 Child Protective Services Division; Purpose; Authority; Policies.....	20
Section 203 Protection Services Team .....	21
 CHAPTER THREE: INVESTIGATION OF SUSPECTED ABUSE, NEGLECT, EXPLOITATION, OR VICTIMIZATION .....	 22
Section 301 Investigation of Report .....	22
Section 302 Time for Completion of Investigation .....	23
Section 303 Contact with Victimized Person; Access to Victimized Person’s Dwelling or Records .....	 23
Section 304 Self-Abuse or Self-Neglect.....	24
Section 305 Cooperation by Other Agencies.....	24
Section 306 Duty to Make Medical Records Available.....	24
Section 307 Interference with Investigation Prohibited; Civil Penalty; Criminal Liability .	24
Section 308 Investigative Report .....	24

Section 309	Summary and Written Description of Investigation Process .....	25
Section 310	Provision of Services .....	26
Section 311	Central Registry .....	26
Section 312	Reports to Attorney General .....	27
CHAPTER FOUR: PROTECTIVE SERVICES AND PROTECTIVE ORDERS .....		28
Section 401	Victim’s Notice of Rights .....	28
Section 402	Victim Protection Order.....	28
Section 403	Emergency Temporary Order of Protection – Warrantless Arrest of Certain Persons .....	28
Section 404	Nationwide Validity of Orders.....	29
Section 405	Seizure of Weapon Used in Act of Abuse .....	29
Section 406	Enforcement by Law Enforcement Officials .....	29
Section 407	Warrantless Arrest .....	30
Section 408	Immunity.....	31
Section 409	Protective Services or Placement; Voluntary; Involuntary.....	31
Section 410	Voluntary Protective Services; Payment .....	33
Section 411	Involuntary Protective Services; Payment .....	33
Section 412	Eligible Petitioners for Order.....	33
Section 413	Who May Petition for Protective Orders; Fees; Omission of Petitioner’s Address .....	34
Section 414	Uniform Form for Petitions and Orders; Required Statements .....	34
Section 415	Jurisdiction; Venue; Residency not Required for Petition.....	39
Section 416	Protective Order .....	39
Section 417	Emergency Ex Parte Protective Order; Petition; Hearing.....	40
Section 418	Leaving Residence or Necessary Force not to Effect Right to Relief .....	43
Section 419	Continuing Duty to Inform Court of Other Proceedings; Effect of Other Proceedings; Delay of Relief Prohibited.....	43
Section 420	Term of Protective Order; Modification; Extension of Protective Services.....	43
Section 421	Rights of Vulnerable Persons, Their Families, and Caregiver.....	44
Section 422	Determining Incapacity.....	44
Section 423	Guardianship and Conservator Proceedings .....	45
Section 424	Determination of Abuse, Neglect, Exploitation, or Victimization .....	46
Section 425	Statements on Protective Order .....	46
Section 426	Violation of Protective Order; Bail; Additional Conditions of Release on Bail.....	47
Section 427	Protection Order Not to Affect Title to Real Property.....	48
Section 428	Copies of Protection Order to be Issued .....	48
Section 429	Protection Plan .....	48
Section 430	Services for Family or Caregiver.....	48
Section 431	Payment for Protective Services .....	48
Section 432	Confidentiality of Records and Reports.....	48
Section 433	Jurisdiction of Court to Restrict Visitation and Contact.....	50
Section 434	Expungement .....	50

CHAPTER FIVE: UNIFORM INTER-TRIBAL OR INTERSTATE ENFORCEMENT OF PROTECTION ORDERS.....	53
Section 501 Definitions.....	53
Section 502 Judicial Enforcement of Order.....	53
Section 503 Enforcement by Law Enforcement Officials .....	54
Section 504 Registration of Order .....	55
Section 505 Immunity.....	55
Section 506 Other Remedies.....	55
Section 507 Uniformity of Application and Construction.....	55
Section 508 Severability .....	55

## GENERAL PROVISIONS

### Section 1 Title

This Public Law may be cited as the “Adult, Family and Children Protective Services Act.”

### Section 2 Governmental and Legislative Authority

- A. The Cheyenne and Arapaho Tribes has the inherent sovereign power to determine its form of government, administer its own lands, regulate persons and economic activities, protect persons and property, preserve law and order, and enact and enforce laws within the Indian country subject to the jurisdiction of the Cheyenne and Arapaho Tribes;
- B. The Cheyenne and Arapaho Tribes is a federally recognized tribe with a constitution approved by the Secretary of the Interior;
- C. The Legislature of the Cheyenne and Arapaho Tribes, in accordance with the Constitution of the Cheyenne and Arapaho Tribes, in exercising the Tribes’ inherent sovereign and conferred powers of tribal self-government and economic self-sufficiency shall enact laws necessary and proper to protect and to promote the interests, general welfare, health, and safety of the Tribes; and
- D. The Legislature of the Cheyenne and Arapaho Tribes is the duly designated representative body of the Cheyenne and Arapaho Tribes empowered to act and carry out the responsibilities pursuant to Article VI, Section 5, of the Constitution of the Cheyenne and Arapaho Tribes.

### Section 3 Findings

The Legislature of the Cheyenne and Arapaho Tribes finds as follows:

- A. There are persons within the Indian country subject to the jurisdiction of the Cheyenne and Arapaho Tribes who, because of the infirmities of minority, aging, incapacity, or other disability, or because of domestic or family violence, are unable to manage their own affairs or to protect themselves from harassment, intimidation, threats, violence, abuse, neglect, exploitation, or other forms of victimization and are in need of protective services;
- B. It is in the interest of the health, safety, and welfare of the Tribes and its people to provide procedures for protecting adults, families and children from these and other forms or methods of victimization;
- C. These protective services should, to the maximum degree feasible under programs, services, and resources available within federal, state, tribal, and local funds limits, allow the person at risk the same rights as all tribal members, and at the same time protect the person from abuse, neglect, exploitation and victimization;
- D. These protective services should place the least possible restrictions on personal liberty and the exercise of rights consistent with the Constitution and Laws and the protection from any form of violence, abuse, neglect, exploitation and victimization.

Section 4            Scope, Purposes and Construction

- A.    The purposes of this Act are to establish the tribal laws and procedures necessary to protect adults, families, and children of the Cheyenne and Arapaho Tribes who are at risk of violence, abuse, harassment, intimidation, endangerment, neglect, stalking, exploitation, or any other form of victimization, by establishing a system of:
  - 1.     Reporting these types or forms of victimization of persons;
  - 2.     Investigating such reports;
  - 3.     Providing penalties for these acts or omissions of victimization;
  - 4.     Providing services for persons in need of protection against such types or forms of victimization; and
  - 5.     Providing court services for persons in need of protection.
- B.    The Cheyenne and Arapaho Tribes Adult, Family, and Children Protective Services Act shall be construed to promote:
  - 1.     The development and administration of programs and services to protect adults, families, and children who are at risk of violence, abuse, harassment, intimidation, endangerment, neglect, stalking, exploitation, or any other form of victimization;
  - 2.     The protection and safety of all victims of violence, abuse, harassment, intimidation, endangerment, neglect, stalking, exploitation, or any other form of victimization, by act or omission, in a fair, prompt, and effective manner;
  - 3.     The detection, investigation, prosecution, and punishment of perpetrators of violence, abuse, harassment, intimidation, endangerment, neglect, stalking, exploitation, or any other form of victimization;
  - 4.     The deterrence and prevention of future victimization of individuals and families; and
  - 5.     The healing of victims and families where possible.
- C.    This Act shall be liberally interpreted and implemented in the least restrictive manner possible that gives effect to its purpose.

Section 5            Jurisdiction

- A.    This Act shall apply to all persons within the jurisdiction of the Cheyenne and Arapaho Tribes.
- B.    The Courts shall have the authority to grant to any victim, whether an individual of the Tribes, any relief available under this or any other tribal law, or any other remedy or relief under law or equity which the Courts deem advisable, appropriate, or necessary.
- C.    In any case where no particular substantial or procedural law is provided herein, resort shall be had to the Civil Procedure Act or other applicable tribal law subject always to the rights of the victim and of the accused. If no procedure is provided in either this Act or other tribal law, the Courts may proceed in any lawful fashion while protecting the rights of the victim and of the accused.
- D.    The Courts shall have full criminal jurisdiction to apply, administer, supervise, and enforce the provisions of this Act.

- E. The Courts during the pendency of any matter, may issue emergency, temporary or permanent orders of protection.
- F. The Courts may use traditional and non-traditional approaches to justice, rehabilitation, healing, treatment, care and services.

## Section 6 Territorial Jurisdiction Defined

All laws, rules, and regulations of general application herein enacted and promulgated shall be effective and in force throughout the Indian country located in the territorial jurisdiction of the Cheyenne and Arapaho Tribes. The territorial jurisdiction of the Cheyenne and Arapaho Tribes shall extend to all territory described as Indian country within the meaning of Section 1151 of Title 18 of the United States Code and all land located within the exterior of the original 1869 boundaries of the Cheyenne and Arapaho Indian Reservation created by Executive Order, as allotted by the Act of March 3, 1891, 26 Stat. 989.

“Indian country” includes, without limitation:

1. All land within the limits of the Indian Reservation described above, notwithstanding the issuance of any patent, and, including rights-of-way running through the above described reservation;
2. All dependent Indian communities, irrespective of the tribe or tribes which may have any ownership interest therein, within the above described borders, or owned by or on behalf of the Cheyenne and Arapaho Tribes wherever located, unless located within the jurisdictional area of some other Indian tribe, and including housing units or projects subject to the supervision of any Indian Housing Authority;
3. All Indian allotments the Indian titles to which have not been extinguished including rights-of-way running through the same. For the purpose of enforcement of this Act and these regulations, extinguishment of the Indian title shall mean the extinguishment of all aspects of the trust title held by the United States for the Indian beneficiaries or the removal of all restrictions imposed upon alienation by the United States to protect the Indian beneficiaries. If any interest in the land, whether surface, mineral, water, or otherwise is held in trust or restricted status, the land will be deemed to be within the Indian country;
4. Tribal Trust Land. Any lands or waters held in trust by the federal government for or on behalf of the Cheyenne and Arapaho Tribes within the jurisdiction of the Cheyenne and Arapaho Tribes;
5. Tribal Properties in Trust Status Process. Any lands or waters owned by the Cheyenne and Arapaho Tribes, its agencies or political subdivisions, in process to achieve trust status under the federal government within the jurisdiction of the Cheyenne and Arapaho Tribes;
6. Other Properties. All other lands or waters however acquired owned by the Cheyenne and Arapaho Tribes, its agencies or political subdivisions and not currently in process to achieve trust status under the federal government within the jurisdiction of the Cheyenne and Arapaho Tribes; and

7. Federally-Restricted Indian Land. All lands or waters however acquired owned by Cheyenne and Arapaho Tribes, its agencies or political subdivisions subject to restriction against alienation by the federal government.

## Section 7 Eligibility

Protective services shall be provided under this Act to any adult, family, or child identified as being at risk of violence, abuse, harassment, intimidation, endangerment, neglect, stalking, exploitation, or any other form of victimization, by act or omission. Protective services may be provided on a voluntary or involuntary basis or by an order of any court.

## Section 8 Civil Jurisdiction

- A. This Act is principally civil in nature, providing services, protection orders, and civil remedies. Criminal proceedings may run concurrently with any action under this Act for any violation of federal, tribal, state, or local criminal law, which occurs in the course of the victimization of any person.
- B. The Courts of the Cheyenne and Arapaho Tribes shall have full civil jurisdiction to apply, administer, supervise, and enforce the provisions of this Act and to enforce protection orders, including authority to enforce any orders through civil contempt proceedings, exclusion of violators from the Indian country subject to the jurisdiction of the Cheyenne and Arapaho Tribes, and other appropriate mechanisms, in matters arising within the authority of the Tribes.

## Section 9 Definitions

Unless the context otherwise requires, the terms used in this Act shall have the following meaning:

1. "Abandonment" means the failure of the person, family, caretaker, or guardian to provide reasonable support and to maintain regular contact with a vulnerable person.
2. "Abuse" means causing or permitting:
  - a. Any act of emotional, psychological, or physical or harm, or the threat of such harm, which is committed by one person against another;
  - b. The infliction of emotional, psychological, or physical pain, injury, or impairment, sexual abuse, sexual exploitation, unreasonable restraint or confinement, or mental anguish; or
  - c. The deprivation of nutrition, clothing, shelter, health care, or other care or services without which serious physical or mental injury is likely to occur to a vulnerable person by a caretaker or other person providing services to another.
3. "Active Neglect" means the willful failure by the caregiver to fulfill his or her caretaking obligation or duty. Active neglect includes, but is not limited to, acts of deliberate abandonment or denial of food or health-related services or transportation.
4. "Adult" means a person eighteen (18) years of age or older;
5. "Caregiver" or "Caretaker" means a person who has
  - a. The responsibility for the care of a vulnerable person or the financial management of the resources of a vulnerable person as a result of a family relationship;

- b. Assumed the responsibility for the care of a vulnerable person voluntarily, by contract, or as a result of the ties of friendship;
  - c. Been appointed a guardian, limited guardian, or conservator pursuant to court order; or
  - d. Undertaken the obligation or duty for the care of, custody of, or control of, or who stands in a position of trust with, a person who is dependent upon such care.
- 6. “Child” or “minor” means a person under eighteen (18) years of age.
- 7. “Conservator” means one who is appointed by a court to manage the affairs of another who is legally incapable of managing his or her affairs.
- 8. “Course of conduct” means two or more acts, serving no legitimate purpose, occurring over a period of time, however short, evidencing a continuity of purpose.
- 9. “Court” means the Courts of the Cheyenne and Arapaho Tribes.
- 10. “Dangerous weapon” means any knife, tool, or wooden, steel, plastic object, or explosive used, or capable of being used, to inflict serious physical harm or create an apprehension of serious harm.
- 11. “Division” means the Cheyenne and Arapaho Tribes Department of Social Services, Adult Protective Services Division, or officials, agents, or employees thereof, or the Cheyenne and Arapaho Tribes Department of Social Services, Child Welfare Division, Child Protective Services Division, or officials, agents, or employees thereof.
- 12. “Domestic abuse” means any act of emotional, psychological or physical harm, or the threat of such imminent harm, which is committed by one person against another who is a family or household members.
- 13. “Domestic violence” or “family 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:
  - a. Attempting to cause or causing emotional, psychological, or physical harm to another family or household member;
  - b. Placing a family or household member in fear of such emotional, psychological, or physical harm;
  - c. Causing a family or household member to engage involuntarily in sexual activity by force, threat of force, or duress; or
  - d. Causing a family or household member to be a victim of a criminal offense.
- 14. “Emotional abuse” or “psychological abuse” means the willful infliction of mental or emotional anguish by threat, humiliation, or other verbal or non-verbal abusive conduct. Emotional or psychological abuse shall include but not be limited to, being called names, treated as a child, frightened, humiliated, intimidated, threatened or isolated in violation of law.
- 15. “Essential services” means those services or things necessary to sustain a person’s life, physical and mental health, and general well-being, such as adequate food, clothing, shelter and health care. It may also include services or items considered essential under the person’s customs, traditions or religion, including but not limited to access to traditional foods and access to religious ceremonies or services.
- 16. “Exploitation” or “exploit” means an unjust or improper use of the resources of a vulnerable person for the profit or advantage, pecuniary or otherwise, of a person other than the vulnerable person through the use of undue influence, coercion, harassment, intimidation, duress, deception, false representation or false pretense.



17. "Family," "family member," and "household member" includes:
  - a. Parents or children;
  - b. Adults or minors who are current or former spouses;
  - c. Adults or minors who live together or who have lived together;
  - d. Adults or minors who are dating or who have dated;
  - e. Adults or minors who are engaged in or who have engaged in a sexual relationship;
  - f. Adults or minors who are related by blood or adoption;
  - g. Adults or minors who are related or formerly related by marriage;
  - h. Persons who have children in common; and
  - i. Minor children of a person in a relationship that is described in a. through h. of this paragraph.
18. "Family violence" means domestic violence as described in subsection 13 of this section.
19. "Financial exploitation" or "material exploitation" means illegal or improper use of funds, property, or resources of another person. Financial or material exploitation shall include, but not be limited to, act of theft, embezzlement, deeding of property committed, fraud, failing to fulfill promises of lifetime care in exchange for assets, and improperly limiting access to assets.
20. "Financial neglect" means repeated instances by a caretaker, or other person, who has assumed the role of financial management, of failure to use the resources available to restore or maintain the health and physical well-being of a vulnerable person, including, but not limited to:
  - a. Squandering or negligently mismanaging the money, property, or accounts of a vulnerable person,
  - b. Refusing to pay for necessities or utilities in a timely manner, or
  - c. Providing substandard care to a vulnerable person despite the availability of adequate financial resources.
21. "Foreign protective order" means any valid order of protection issued by a court of another tribe or state.
22. "Guardian" means one who has the legal authority and duty to care for another's person or property.
23. "Guardian ad litem" means a guardian appointed by the court to appear in a lawsuit on behalf of an incompetent or minor party.
24. "Harass" or "Harassment" means engaging in a knowing and willful course or pattern of conduct or communication by any person, which serves no legitimate purpose, directed at a specific person which would cause a reasonable person or a member of the immediate family of that person to feel seriously alarmed, annoyed, frightened, intimidated, tormented, terrorized, threatened, harassed, bullied or molested and actually causes the person being followed or harassed to feel seriously alarmed, annoyed, frightened, intimidated, tormented, terrorized, threatened, harassed, or molested. The course of conduct or communication must be such as would cause a reasonable person to suffer emotional distress, and that actually causes emotional distress to the person. Harassment shall include, but not be limited to, repeated or continuing unconsented contact, or harassing or obscene telephone calls, in violation of provisions of this Act or other law. Harassment does not include constitutionally protected activity or conduct that serves a legitimate purpose.

25. "Household member" means "family member" as described in subsection 17 of this section.
26. "Incapacitated Person" means and includes:
  - a. Any person:
    - i. who is impaired by reason of mental or physical illness or disability, dementia or related disease, mental retardation, developmental disability, chronic use of alcohol or drugs, or other cause, and
    - ii. whose ability to receive and evaluate information effectively or to make and to communicate responsible decisions is impaired to such an extent that such person lacks the capacity to manage his or her financial resources or to meet essential requirements for his or her mental or physical health or safety without assistance from others;
  - b. Any person who is unconscious;
  - c. Any person for whom a guardian, limited guardian, or conservator has been appointed by court order; or
  - d. Any person who lacks legal capacity because of age, infirmity, or other disability.
27. "Indecent Exposure" means forcing or requiring a vulnerable person to:
  - a. Look upon the body or private parts of another person or upon sexual acts performed in the presence of the vulnerable person, or
  - b. Touch or feel the body or private parts of another.
28. "Least restrictive manner" means allowing a vulnerable person independence and freedom from intrusion consistent with the person's needs by requiring that the least drastic and intrusive method of intervention be used when intervention is necessary to protect the person from abuse, neglect, exploitation, or victimization.
29. "Local law enforcement agency" means any federal, tribal, state, or local law enforcement agency.
30. "Mandatory Reporter" means any person who has reasonable cause to believe someone is suffering from abuse, neglect, exploitation or other victimization.
31. "Meet essential requirements for mental or physical health and safety" means those actions necessary to provide the health care, food, shelter, clothing, personal hygiene and other care without which physical injury or illness to the vulnerable person is likely to occur.
32. "Mental Anguish" means to subject a vulnerable person to fear, agitation, confusion, severe depression, or other forms of serious emotional distress through abandonment, threats, harassment, verbal abuse, or other forms of intimidating behavior.
33. "Neglect" means:
  - a. The failure to provide protection for a vulnerable person who is unable to protect his or her own interest,
  - b. The failure to provide a vulnerable person with adequate shelter, nutrition, health care, or clothing, or
  - c. Negligent acts or omissions that result in harm or the unreasonable risk of harm to a vulnerable person through the action, inaction, or lack of supervision by a caretaker providing direct services.
34. "Passive neglect" means the non-willful failure to fulfill a caretaker obligation or duty. Passive neglect includes, but is not limited to, an act or omission to act involving

- abandonment, failure to provide health-related services, or failure to appreciate the value of prescribed services, treatment, hygiene, or care necessary, proper, or required.
35. “Program of intervention for perpetrators” means a specialized program that:
    - a. Accepts perpetrators of neglect, exploitation, domestic abuse, or family violence into treatment, counseling, or educational classes to satisfy court orders;
    - b. Offers treatment or counseling of perpetrators of neglect, exploitation, abuse, or family violence;
    - c. Offers classes or instruction to perpetrators of neglect, exploitation, abuse, or family violence; or
    - d. Is voluntary or is involuntary by court order.
  36. “Program for victims of neglect, exploitation, abuse, domestic abuse, or family violence” means a specialized program for victims of neglect, exploitation, abuse, domestic abuse, or family violence and their children that provides advocacy, protection, shelter, crisis intervention, social services, treatment, counseling, education, or training.
  37. “Protective order” or “order of protection” means and includes any injunction or other order issued for the purpose of preventing violent acts or threatened acts of violence or harassment or victimization against, or contact or communication with or physical proximity to, another person, including any temporary or final order issued by civil and criminal court whether obtained by filing an independent action or as a pendent elite order in another proceeding so long as any civil or criminal order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection; and any support, child custody or visitation provisions, orders, remedies or relief issued as part of a protection order, restraining order, or injunction pursuant to a tribal, state, territorial, or local law authorizing the issuance of protection orders, restraining orders or injunctions for the protection of victims of abuse, neglect, exploitation or other forms of victimization. Protective orders and orders of protection include, but are not limited to, emergency protective orders, temporary restraining orders, permanent protective orders, permanent restraining orders and no contact orders;
  38. “Protective Services” means services which are necessary to aid a vulnerable person in meeting the essential requirements for mental or physical health and safety that the vulnerable person is unable to provide or obtain without assistance. The term "protective services" includes, but is not limited to, services provided to or obtained for such person in order to prevent or remedy the abuse, neglect, exploitation, or victimization of such person.
  39. “Respondent” means a person who must answer to a civil petition or criminal complaint.
  40. “Retaliation” means threatening a reporter of abuse, neglect, exploitation, or victimization, or the reporter’s family, causing or attempting to cause bodily harm to the reporter or the reporter’s family; causing the reporter or any of the reporter’s family to be terminated or suspended from employment or reprimanded by an employer, or damaging the reporter’s or the reporter’s family’s real or personal property in any way. “Reporter” in this instance also includes any person who cooperates with an investigation of abuse, neglect, exploitation, or victimization.
  41. “Safety plan” means a written or oral outline of actions to be taken by a victim of neglect, exploitation, abuse, domestic abuse, family violence, or victimization to secure protection and support after making an assessment of the dangerousness of the situation.

42. "Self-Neglect" means the action or inaction of a vulnerable person which causes that person to fail to meet the essential requirements for physical or mental health and safety due to the vulnerable person's lack of awareness, incompetence or incapacity;
43. "Sexual abuse" means:
  - a. Oral, anal, or vaginal penetration of a vulnerable person by or through the union with the sexual organ of a caretaker or other person providing services to the vulnerable person, or the anal or vaginal penetration of a vulnerable person by a caretaker or other person providing services to the vulnerable person with any other object;
  - b. For the purpose of sexual gratification, the touching, feeling or observation of the body or private parts of a vulnerable person by a caretaker or other person providing services to the vulnerable person;
  - c. Indecent exposure by a caretaker or other person providing services to the vulnerable person; or
  - d. The non-consensual sexual contact of any kind with another person. Sexual abuse includes, but is not limited to, rape, deviate sexual intercourse, or sexual assault as may be defined under federal, tribal, or state law.
44. "Sexual Exploitation" includes, but is not limited to, a caretaker's causing, allowing, permitting or encouraging a vulnerable person to engage in prostitution or in the lewd, obscene, or pornographic photographing, filming or depiction of the vulnerable person as those acts are defined by tribal, federal or, if applicable, state law.
45. "Stalking" means the willful, malicious, and repeated following or harassment of a person by another, with the intent of placing that person in reasonable fear for his or her safety or the safety of his or her family, or in reasonable fear of being frightened, intimidated, threatened, harassed, or molested, or in reasonable fear of imminent harm, death, or great bodily injury.
46. "Tribes" means the Cheyenne and Arapaho Tribes.
47. "Verbal Abuse" means the use of words, sounds, or other communication including, but not limited to, gestures, actions or behaviors, by another or by a caretaker or other person providing services to a vulnerable person that are likely to cause a reasonable person to experience humiliation, intimidation, fear, shame or degradation.
48. "Victim support person" means a person affiliated with a tribal or state program for victims of abuse, neglect, exploitation or other form of victimization who provides support and assistance for a person who files a petition for a protective order.
49. "Victimization" or "victimize" includes, but is not limited to, violence, abuse, harassment, bullying, intimidation, endangerment, neglect, stalking, exploitation, or any other form of victimization, by act or omission.
50. "Vulnerable person" means and includes a child, and includes a person eligible for services found within the Cheyenne and Arapaho jurisdiction, regardless of age, who is an incapacitated person or person who, because of age, physical or mental disability or illness, incapacity, chronic use of alcohol or drugs, or other disability, is substantially impaired in the ability to provide adequately for the care or custody of himself or herself, or is unable to manage his or her property and financial affairs effectively, or to meet essential requirements for mental or physical health or safety, or to protect himself or herself from violence, abuse, harassment, intimidation, endangerment, neglect, stalking,

exploitation, or any other form of victimization, by act or omission, without assistance from others.

## Section 10 Religious Exception

Nothing in Section 9 shall be construed to mean a vulnerable person is abused, neglected, exploited, or victimized for the sole reason the vulnerable person, in good faith, selects and depends upon spiritual means alone through prayer, in accordance with the practices of a recognized religious method or traditional custom of healing, for the treatment or cure of disease or remedial care, or a caretaker or other person responsible, in good faith, is furnishing such vulnerable person spiritual means alone through prayer, in accordance with the tenets and practices of a recognized church, religious denomination, or traditional custom for the treatment or cure of disease or remedial care in accordance with the practices of or express consent of the vulnerable person.

## Section 11 Sovereign Immunity Not Waived

Nothing contained in this Act shall be construed to be a waiver of the sovereign immunity of the Tribes, its officers, employees, agents, or political subdivisions thereof, or to be a consent to any suit beyond the limits now or hereafter specifically and unequivocally granted by tribal law.

## Section 12 Legislative Grant of Designated Authority

The adoption and enactment of this Act into tribal law confirms the Cheyenne and Arapaho Tribes governmental responsibility by providing law enforcement and protective services and preserving law and order in the Territory and jurisdiction of the Cheyenne and Arapaho Tribes.

The Governor of the Cheyenne and Arapaho Tribes shall have the authority to administer and enforce the provisions of this Act, including, but not limited to, the negotiation and execution of all grant applications, intergovernmental cooperative agreements, contracts, and agreements with public entities and private individuals and organizations in furtherance of the purposes, scope, administration, enforcement, and funding of programs and services under this Act. No further action by resolution or enactment of the Legislature shall be necessary.

## Section 13 Severability

If any Chapter, Section, clause, sentence, or provision of this Act, or its application to any person or circumstance, is held to be invalid, such holding shall not affect the validity of the remaining parts of this Act.

## Section 14 Effective Date

This Act shall be effective upon its enactment in accordance with the public legislative process set forth by the Cheyenne and Arapaho Constitution.

## CHAPTER ONE: REPORTING ABUSE, NEGLECT, OR EXPLOITATION

### Section 101 Duty to Report Abuse, Neglect, Exploitation, or Victimization; Anonymous Reports

- A. Any person having knowledge of or a reasonable cause to believe or suspect that abuse, neglect, exploitation or victimization of a vulnerable person has occurred or will occur shall make a report as soon as the person is aware of the situation to:
  1. The Cheyenne and Arapaho Department of Social Services, Adult Protective Services Division, if an adult person is the subject of the report;
  2. The Cheyenne and Arapaho Department of Social Services, Child Protective Services Division, if a child is the subject of the report;
  3. The tribal police department. The tribal police department shall notify the appropriate Department or Division as soon as possible of any reports concerning possible abuse, neglect, exploitation, or other victimization of a vulnerable person; or
  4. Any law enforcement agency.
- B. Persons required to make reports pursuant to this section shall include, but not be limited to:
  1. Law enforcement officials;
  2. Adult Protective Services program officials;
  3. Domestic violence programs officials;
  4. Child welfare officials;
  5. The person's family;
  6. The person's caregiver;
  7. An elected official of the Tribes;
  8. Physicians and other health care professionals, including, but not limited to, dentists or dental hygienists, nurses, health aides, physician's assistants, and home health providers;
  9. Mental health professional or counselor, social workers, and similar service providers;
  10. Operators of emergency response vehicles and other medical professionals;
  11. Long-term care facility personnel, including staff of nursing facilities, intermediate care facilities for persons with mental retardation, assisted living facilities, and residential care facilities;
  12. Any person with a fiduciary duty to the person, including but not limited to an accountant, guardian, or property manager.
- C. Except for those persons listed above, persons reporting abuse, neglect, exploitation, or victimization of a vulnerable person may remain anonymous.

## Section 102 Immunity for Reporting

Any person with a legal duty to report and any person who in good faith and exercising due care in the making of a report makes a report of abuse, neglect, exploitation or victimization of a vulnerable person pursuant to this Act shall have immunity from any civil or criminal liability based upon that person's report that might otherwise be incurred or imposed. Any such person shall have the same immunity with respect to participation in any judicial proceeding resulting from the report.

## Section 103 Failure to Report; Civil Penalty; Damages; Criminal Liability

Any person required by this Act to report who knowingly and willfully fails to promptly report or prevents another from reporting any abuse, neglect, exploitation, or victimization as required by this Act, may be subject to a civil penalty of up to One Thousand Dollars (\$1,000.00). The Trial Court shall assess a penalty only after petition, notice, opportunity for hearing in Trial Court, and a determination that the person had a duty to report, had good reason to suspect abuse, neglect, exploitation or victimization and failed to report it as required by this Act. Further, a person failing to report suspected abuse, neglect, exploitation or victimization shall be subject to civil suit brought by or on behalf of the vulnerable person for damages or injuries suffered as a result of the failure to report, and to any criminal penalties set forth Section 108 of this Act or the criminal laws of the Cheyenne and Arapaho Tribes.

## Section 104 False Report; Civil Penalty; Damages; Criminal Liability

Any person who willfully or recklessly makes a false report of abuse, neglect, exploitation or victimization shall be subject to a civil penalty of up to One Thousand Dollars (\$1,000.00). The Trial Court shall assess a penalty only after petition, notice, opportunity for hearing in Trial Court, and a determination that the person willfully or recklessly made the false report. Further, any person making a false report shall be subject to civil suit brought by or on behalf of the person(s) named as suspected abusers, neglecters, exploiters or victimizers of a vulnerable person for damages or injuries suffered as a result of the report and to any criminal penalties set forth in Section 108 of this Act or in the criminal laws of the Cheyenne and Arapaho Tribes.

## Section 105 Reports

- A. Reports of suspected abuse, neglect, exploitation or victimization of a vulnerable person shall be made to the Tribes' Department of Social Services, Adult Protective Services Division. If the report is not made in writing in the first instance, as soon as possible after it is initially made by telephone or otherwise, the report shall be reduced to writing by the Division or by the tribal police, whichever entity received the initial report. If possible, the written report should contain the name of the reporter and the reporter should sign the report. The report shall contain the following information:
  1. The name and address or location of the vulnerable person;
  2. The name and address or location of the caretaker, family member, guardian, or person having power of attorney over the vulnerable person's resources if any;



3. The name, address or location of the person(s) suspected of abusing, neglecting, exploiting, or victimizing the vulnerable person;
  4. The name, address, or location of any witness(es);
  5. A description of the current condition of the vulnerable person, including the suspected nature and degree of incapacity, if any;
  6. A description of the situation, acts, or omissions which may constitute abuse, neglect, exploitation, or victimization of the vulnerable person; and
  7. Any other information that the reporter believes might be helpful in investigating or determining abuse, neglect, exploitation, or victimization.
- B. When a report is received pertaining to a vulnerable person who has a legal guardian, a copy of the investigative report of the Division shall be filed with the court to which the guardian is accountable.

Section 106          Retaliation; Civil Penalty; Criminal Liability

No person shall retaliate by any means against any person who has made a report or who cooperates with an investigation of alleged or suspected abuse, neglect, exploitation, or victimization of a vulnerable person. Any person who retaliates shall be subject to an injunction and civil penalty of up to One Thousand Dollars (\$1,000.00) per occurrence. The Court will assess a penalty only after petition, notice, opportunity to be heard, and a determination that acts of retaliation have been committed. Further, any person who retaliates by any means against any person who has made a report or who cooperates with an investigation of an alleged or suspected abuse, neglect, exploitation, or victimization of a vulnerable person shall be subject to any criminal penalties set forth in Section 108 of this Act or by the criminal laws of the Cheyenne and Arapaho Tribes.

Section 107          Confidentiality of Information and Identity

- A. Information contained in written reports and records of oral reports that includes the vulnerable person's identity shall be kept confidential by the Division and shall not be released unless:
1. The vulnerable person consents after being fully informed of the right to confidentiality, the nature of the information being released, and the intended use of the information and has signed a release to this effect;
  2. The information is needed for a court proceeding or police investigation;
  3. The Court orders the release upon petition and for good cause shown; or
  4. Agencies of the Tribes, Federal or State government that provide services to vulnerable persons need to know the information in performance of their duties.
- B. The identity of a person filing a report shall be kept confidential and shall not be released unless essential for an administrative proceeding, court proceeding or police investigation.
- C. The use of confidential information released shall be restricted to the purposes for which it is authorized.

Section 108      Criminal Penalties

- A. Any person required by this Act to report who knowingly and willfully fails to promptly report or prevents another from reporting any abuse, neglect, exploitation, or victimization as required by this Act, shall be, upon conviction, guilty of a crime in violation of tribal law punishable by imprisonment in the tribal jail for a term not to exceed one (1) year or by a fine not more than Five Thousand Dollars (\$5,000.00), or by a combination of both.
- B. Any person who willfully or recklessly makes a false report of abuse, neglect, exploitation or victimization shall be, upon conviction, guilty of a crime in violation of tribal law punishable by imprisonment in the tribal jail for a term not to exceed one (1) year or by a fine not more than Five Thousand Dollars (\$5,000.00), or by a combination of both.
- C. Any person who retaliates by any means against any person who has made a report or who cooperates with an investigation of an alleged or suspected abuse, neglect, exploitation, or victimization of a vulnerable person shall be, upon conviction, guilty of a crime in violation of tribal law punishable by imprisonment in the tribal jail for a term not to exceed one (1) year or by a fine not more than Five Thousand Dollars (\$5,000.00), or by a combination of both.
- D. Any person who assaults, resists, opposes, impedes, intimidates, or interferes with any official, agent, employee, or law enforcement officer while engaged in or on account of performance of official duties associated with a lawful investigation of suspected abuse, neglect, exploitation, or victimization of a vulnerable person shall be, upon conviction, guilty of a crime in violation of tribal law punishable by imprisonment in the tribal jail for a term not to exceed one (1) year or by a fine not more than Five Thousand Dollars (\$5,000.00), or by a combination of both, for each occurrence.
- E. Any person releasing or publishing confidential information in violation of this Act shall be, upon conviction, guilty of a crime in violation of tribal law punishable by imprisonment in the tribal jail for a term not to exceed one (1) year or by a fine not more than Five Thousand Dollars (\$5,000.00), or by a combination of both.

## CHAPTER TWO: PROTECTIVE SERVICES DIVISIONS

### Section 201 Adult Protective Services Division; Purpose; Authority; Policies

- A. The Adult Protective Services Division is a division of the Department of Social Services.
- B. The purpose and authority of the Adult Protective Services Division is to provide protective services to adult vulnerable persons who, because of the infirmities of aging, incapacity, alcohol or drug use, or other disability, or because of domestic or family violence, are unable to manage their own affairs or to protect themselves from harassment, intimidation, threats, violence, abuse, neglect, exploitation, or other forms of victimization without such assistance. The services provided by the Division shall include, but not be limited to:
  - 1. Those services required to meet essential requirements for mental or physical health and safety of vulnerable persons;
  - 2. Assisting the vulnerable person in developing a safety plan;
  - 3. Programs for victims of neglect, exploitation, abuse, domestic abuse, family violence, or other victimization;
  - 4. Programs of intervention for perpetrators;
  - 5. Referral to other federal, tribal, local, and state programs or services which may assist the vulnerable person; and
  - 6. Assistance in seeking a protective order if needed.
- C. The Department of Social Services shall establish uniform policies detailing the responsibilities and duties of employees of the Adult Protective Services Division when providing or arranging services for vulnerable persons.
- D. The policies shall include, but not be limited to:
  - 1. The handling of the personal resources, such as bank accounts, cash, checks, notes, mortgages, deeds, leases contracts, or other liquid assets of a vulnerable person without prior approval of the supervisor;
  - 2. Specific procedures for obtaining and handling repairs, personal services or other necessary actions to provide health care, food, shelter to or on behalf of a vulnerable person;
  - 3. Prohibiting an employee from any type of solicitation or charging, requesting or accepting any fee, gift, reward, or payment of any kind from individuals or staff for any services rendered as a volunteer, intern, or employee relating to vulnerable persons;
  - 4. Prohibiting an employee from using contact with clients or any member or the client's support system for personal gain or personal relationships;
  - 5. Prohibiting an employee, upon termination of any assignment, from making personal contact with former clients or any member of the client's support system and from using former contact with clients for personal gain;
  - 6. Prohibiting an employee from buying items from clients;
  - 7. Ensuring that no employee whose responsibilities relate in any manner to services provided to or on behalf of a vulnerable person is subject to a conflict of interest which would impair the ability of the employee to carry out his or her employment duties in an impartial manner;

8. Sufficient oversight by administrative heads of local offices of the Department as to the provision for and arrangement of services to vulnerable persons; and
  9. Such other requirements as deemed necessary by the Department of Social Services.
- E. The Adult Protective Services Division and the Executive Director of the Department of Social Services are hereby authorized to seek any federal, tribal, state, or local grants or contracts to be used to provide programs, services, and assistance.

Section 202          Child Protective Services Division; Purpose; Authority; Policies

- A. The Child Protective Services Division, or Child Welfare Division, is a division of the Department of Social Services.
- B. The purpose and authority of the Child Protective Services Division is to provide protective services to children who are unable to protect themselves from harassment, intimidation, threats, violence, abuse, neglect, exploitation, or other forms of victimization without such assistance. The services provided by the Division shall include, but not be limited to:
1. Those services required to meet essential requirements for mental or physical health, education, and safety of the child;
  2. Develop a safety plan for the child;
  3. Programs for victims of neglect, exploitation, abuse, domestic abuse, family violence, or other victimization;
  4. Programs of intervention for perpetrators;
  5. Referral to other federal, tribal, local, and state programs or services which may assist the child; and
  6. Assistance in seeking a protective order if needed.
- C. The Department of Social Services shall establish uniform policies detailing the responsibilities and duties of employees of the Child Protective Services Division when providing or arranging services for children.
- D. The policies shall include, but not be limited to:
1. The handling of the personal resources, such as bank accounts, cash, checks, notes, mortgages, deeds, leases contracts, or other liquid assets of a vulnerable person without prior approval of the supervisor;
  2. Specific procedures for obtaining and handling repairs, personal services or other necessary actions to provide education, health care, food, shelter to or on behalf of a child;
  3. Prohibiting an employee from any type of solicitation or charging, requesting or accepting any fee, gift, reward, or payment of any kind from individuals or staff for any services rendered as a volunteer, intern, or employee relating to children;
  4. Prohibiting an employee from using contact with clients or any member of the client's support system for personal gain or personal relationships;
  5. Prohibiting an employee, upon termination of any assignment, from making personal contact with former clients or any member of the client's support system and from using former contact with clients for personal gain;
  6. Prohibiting an employee from buying items from clients;

7. Ensuring that no employee whose responsibilities relate in any manner to services provided to or on behalf of a child is subject to a conflict of interest which would impair the ability of the employee to carry out his or her employment duties in an impartial manner;
8. Sufficient oversight by administrative heads of local offices of the Department as to the provision for and arrangement of services to children; and
9. Such other requirements as deemed necessary by the Department of Social Services.

Section 203          Protection Services Team

- A. The Protection Services Team shall be composed of a multi-disciplinary group of professionals representing various tribal disciplines and agencies who meet on a regular basis to assist in developing a case plan and coordination of protective services for vulnerable person's who are victims of abuse, neglect, exploitation, or any other forms of victimization.
- B. The Protection Services Team shall be charged with the responsibility of helping a victim, vulnerable person, or person in need of services to resolve any civil conflict or problems that may prevent the proper care or treatment of the elder or vulnerable person involved. The Protection Services Team may suggest and encourage resolutions based on tribal custom and tradition.
- C. The Protection Services Team shall be chosen by the Director of Social Services and shall be composed of at least five (5) people, but not more than seven (7) people.
- D. The Protection Services Team shall be composed of individuals who are knowledgeable in one or more of the following areas:
  1. Tribal culture;
  2. Tribal Health and Social Services and programs available to children, families, and vulnerable persons;
  3. Legal remedies;
  4. Available medical services; and
  5. Tribal administrative procedure.
- E. If the Protection Services Team determines that it cannot be effective in helping resolve the person's situation, it shall refer the matter back to the referring authority within ninety (90) days of receipt of the case.
- F. The case records and personal information regarding any victim, vulnerable person, or person in need of services that a member of the team provides shall be kept confidential and shall be used only by team members for the purpose of assessing the needs of the vulnerable person, and developing and monitoring a protective services plan.

### **CHAPTER THREE: INVESTIGATION OF SUSPECTED ABUSE, NEGLECT, EXPLOITATION, OR VICTIMIZATION**

#### Section 301 Investigation of Report

- A. Upon receiving a report of alleged abuse, neglect, exploitation, or victimization of a vulnerable person pursuant to this Act, the Division receiving the report shall make a prompt and thorough investigation to determine whether abuse, neglect, exploitation, or victimization exists and whether the person is in need of protective services.
- B. The investigation shall include, but not be limited to, the following:
  - 1. Notification of local law enforcement agency.
    - a. Upon the request of the law enforcement agency, the Division shall submit copies of any results or records of an examination on the vulnerable person who is alleged to have been abused, neglected, exploited, or victimized and any other clinical notes, x-rays, photographs, or previous or current records relevant to the case;
    - b. Any findings of abuse, neglect, exploitation, or victimization of a vulnerable person shall also be sent to any agency with concurrent jurisdiction over persons or issues identified in the investigation;
  - 2. Every reasonable effort to locate and notify, pursuant to Section 309 of this Act, the custodian, caretaker, legal guardian and family of the vulnerable person who may be in need of protective services;
  - 3. Personal interviews with the vulnerable person, provided, however, that multiple interviews of the victim should be avoided where serious physical injury or sexual abuse is present or suspected;
  - 4. Personal interviews with the vulnerable person's family, caregiver, other people living in the person's residence, suspected or alleged perpetrators of the abuse, neglect, exploitation, or victimization, employees of agencies with knowledge of the person's circumstances, and any other person who may have relevant information;
  - 5. Diagnostic evaluation to determine whether the person needs protective services;
  - 6. Any photographs necessary to document injuries or conditions which have resulted or may result in an injury or serious harm to the person;
  - 7. A statement of the least restrictive services needed;
  - 8. Whether services are available from the Division or in the community and how the services can be provided;
  - 9. Whether the person would be capable of obtaining services for himself or herself and could bear the cost or would be eligible for services from the Division;
  - 10. Whether a caretaker or legal guardian would be willing to provide services or would agree to their provision;
  - 11. Whether the person desires the services;
  - 12. A statement of any follow-up investigation or monitoring of the services that may be needed; and
  - 13. Any other relevant information.

- C. The Division's investigation shall include a visit to the home or other place of residence of the person who is the subject of the report, a private interview with such person, and consultation with persons who have knowledge of the circumstances.
- D. When a report is received pertaining to a vulnerable person who has a legal guardian or who is a ward of the Court a copy of the investigative report of the Division shall be filed with the Court to which the guardian is accountable.
- E. When a report is received pertaining to a vulnerable person residing in a facility other than the home of the vulnerable person, where persons are employed to provide care and those employees have been named as persons responsible for the abuse, neglect, exploitation or victimization of the vulnerable person, the Division shall forward its final findings to the owner or administrator or the facility to prevent further incidents.

Section 302            Time for Completion of Investigation

- A. If the initial report to Adult Protective Services, Child Protective Services, or tribal law enforcement indicates that the person may be in imminent danger of serious harm, an initial investigation shall be completed within twenty-four (24) hours by the tribal police department with a follow-up report to be written by the Division.
- B. If the initial report to Adult Protective Services, Child Protective Services, or tribal law enforcement indicates that the person is not in imminent danger of serious harm, the initial investigation shall be completed within fifteen (15) days.

Section 303            Contact with Victimized Person; Access to Victimized Person's Dwelling or Records

- A. The Division shall make all reasonable attempts to interview the custodian, caretaker or other persons alleged to be involved in the abuse, neglect, exploitation, or victimization of a vulnerable person in order to enhance service provision and to prevent additional incidents of abuse, neglect, exploitation or victimization.
- B. If, in the course of an investigation of this nature, the Division is denied entrance to the home or other place of residence of a person believed to be in need of protective services, or is denied a private interview with the vulnerable person, the Division may petition the Court for an order allowing entry to the premises or private access to the vulnerable person.
- C. If documentation, or access to records or other information relating to such person as provided by this section is denied, the Division may petition the Court for an order allowing entry or access.
- D. The petition in subsections B and C shall state the name and address of the person who is the subject of the report and shall allege specific facts sufficient to show that the circumstances of the person are in need of investigation and that access to the victimized person, the victimized person's dwelling or the victimized person's records or other relevant information has been denied. The Court shall make a finding of probable cause of the vulnerability of the person before issuing the order.
- E. If it is necessary to forcibly enter the premises, the representative of the Division shall make the entry accompanied by a police officer.

#### Section 304 Self-Abuse or Self-Neglect

If any individual is found, upon investigation by the Division, to have self-inflicted his own abuse or neglect, and is in imminent danger of causing serious physical harm to himself or herself and such person refuses assistance, the Division may submit a petition to the Court to determine the capacity of the person or to appoint a temporary or permanent guardian or conservator.

#### Section 305 Cooperation by Other Agencies

The Bureau of Indian Affairs, Indian Health Services, and any other public or private agency shall assist the Division, at its request, in conducting the investigation. If otherwise confidential information is needed from such agency, the Division may obtain the person's authorization for the release of information or seek a court order for the release of information.

#### Section 306 Duty to Make Medical Records Available

A person having custody or control of medical or financial records of a vulnerable person, from whom a report is required or authorized under this Act, shall make such records, or a copy of such records, available to an official of the Division investigating the abuse, neglect, exploitation, or victimization of the vulnerable person upon written request for the records signed by the Director of the Division. Records disclosed pursuant to this Section are confidential and may be used only in a judicial or administrative proceeding or investigation required or authorized under this Act, or other tribal or federal law.

#### Section 307 Interference with Investigation Prohibited; Civil Penalty; Criminal Liability

No person shall interfere with a lawful investigation of suspected abuse, neglect, exploitation, or victimization of a vulnerable person. Any person who assaults, resists, opposes, impedes, intimidates, or interferes with any official, agent, employee, or law enforcement officer while engaged in or on account of performance of official duties associated with a lawful investigation of suspected abuse, neglect, exploitation, or victimization of a vulnerable person shall be subject to an injunction and civil penalty of up to Five Thousand Dollars (\$5,000.00) per occurrence. The Court shall assess a penalty only after petition, notice, opportunity to be heard, and a determination that interference has occurred. Criminal proceedings may be sought according to the provisions of this Act or the criminal laws of the Cheyenne and Arapaho Tribes.

#### Section 308 Investigative Report

Every investigative report made by the Division shall be in writing and contain all of the information required by Section 105 of this Act and the results of interviews, observations, and all other information obtained during the investigation. All investigative reports shall be maintained, filed, and adequately kept to ensure confidentiality and safety by the Division, and shall remain on file for a period of three (3) years.



- A. As soon as possible after initiating an investigation regarding alleged or suspected abuse, neglect, exploitation, or victimization of a vulnerable person, the Division shall provide to the custodian, caretaker, legal guardian, and family of the alleged victim notification of the investigation, including an easily understood written description of the investigation process and whether or not the caretaker, guardian or family is alleged to be the perpetrator of the abuse, neglect, exploitation, or victimization of the vulnerable person.
- B. If the vulnerable person retains capacity to consent to voluntary services, and does not wish for a caretaker or family to receive notification of the investigation, the Division shall abide by the wishes of the vulnerable person.
- C. The notification specified by subsection A of this section shall include:
  1. A statement that the investigation is being undertaken by the Department of Social Services, Adult Protective Services Division or Child Protective Services Division pursuant to the requirements of the Adult, Family and Children Protective Services Act in response to a report of abuse, neglect, exploitation, or victimization and shall include the name and office telephone number of the Division representative with primary responsibility for the investigation;
  2. A statement that the identity of the person who reported the incident of abuse, neglect, exploitation, or victimization is confidential and may not even be known to the Division since the report could have been made anonymously;
  3. A statement that the investigation is required by tribal law to be conducted in order to enable the Division to identify incidents of abuse, neglect, exploitation, or victimization in order to provide protective services to vulnerable persons who are in need of such services;
  4. An explanation of the procedures of the Division for conducting an investigation of alleged abuse, neglect, exploitation, or victimization, including:
    - a. A statement that the alleged victim of abuse, neglect, exploitation, or victimization is the Division's primary client in such an investigation,
    - b. A statement that findings of all investigations are provided to the Office of the Attorney General, and
    - c. A statement that tribal law enforcement may conduct a separate investigation to determine whether a criminal violation has occurred;
  5. An explanation of services which may be provided as a result of the Division's investigation, including:
    - a. A statement that the caretaker, legal guardian and family will be involved in the process of developing a plan of services for the vulnerable person insofar as that involvement is consistent with the best interests of the vulnerable person,
    - b. A statement that voluntary services may be provided or arranged for based on the client's needs, desires and acceptance, and
    - c. A statement that involuntary services may be provided through the judicial system when immediate services are needed to preserve the life

or physical health of the vulnerable person or preserve the resources of the vulnerable person which may later be needed to provide care for the vulnerable person;

6. A statement that, upon completion of the investigation, the identified caretaker, legal guardian and family will receive a letter from the Division which will inform such caretaker, legal guardian and family:
  - a. That the Division has found insufficient evidence of abuse, neglect, exploitation, or victimization; or
  - b. That there appears to be probable cause to suspect the existence of abuse, neglect, exploitation, or victimization in the judgment of the Division, and
  - c. The recommendations of the Division concerning the vulnerable person;
7. The procedures concerning the process the caretaker, legal guardian and family may use to acquire access to the vulnerable person in the event the vulnerable person is removed from the residence of the vulnerable person and the circumstances under which access may be obtained;
8. The procedures to follow if there is a complaint regarding the actions of the Division and the procedures to request a review of the findings made by the Division during or at the conclusion of the investigation;
9. Information specifying that if the caretaker, legal guardian and family of the vulnerable person have any questions as to their legal rights, that such persons have a right to seek legal counsel at their own expense;
10. References to the statutory and regulatory provisions governing abuse, neglect, exploitation, or victimization and how the caretaker, legal guardian and family may obtain copies of those provisions; and
11. An explanation that the custodian, caretaker, legal guardian and family may review specific information gathered during the investigation and pertaining to the service needs of the vulnerable person subject to the requirements and exceptions provided in Section 432 of this Act.

#### Section 310 Provision of Services

After an investigation of abuse, neglect, exploitation, or victimization of a vulnerable person is completed, the Division shall determine if the person or any other individual involved in the alleged abuse, neglect, exploitation, or victimization is in need of services under this Act.

#### Section 311 Central Registry

The Division shall establish a central registry for reports of and convictions of abuse, neglect, exploitation, or victimization of a vulnerable person. The information in the central registry shall be confidential and may only be released upon court order after the court determines the information is necessary to prevent abuse, neglect, exploitation, or victimization of a vulnerable person or to treat those convicted of such abuse, neglect, exploitation, or victimization. Any unauthorized release of confidential information shall carry penalties set forth in this Act and the criminal laws of the Cheyenne and Arapaho Tribes.

Section 312      Reports to Attorney General

Whenever the Division determines that abuse, neglect, exploitation, or victimization of a vulnerable person has occurred, the Division shall submit a request with the accompanying reports and files to the Attorney General to determine if there is sufficient evidence to establish the jurisdiction of the Trial Court in the matter. The Division shall furnish such information as requested by the Attorney General

## CHAPTER FOUR: PROTECTIVE SERVICES AND PROTECTIVE ORDERS

### Section 401 Victim's Notice of Rights

Upon the preliminary investigation of any abuse, neglect, exploitation, or other victimization, it shall be the duty of the law officer who interviews the victim to inform and give notice to the victim, or a responsible adult if the victim is a minor child or an incompetent person, of certain rights of the victim. The notice shall consist of handing such victim or responsible adult a written statement in substantially the following form:

"As a victim, you have certain rights. These rights are as follows:

1. The right to request that charges be pressed against your assailant;
2. The right to request protection from any harm or threat of harm arising out of your cooperation with law enforcement and prosecution efforts as far as facilities are available and to be provided with information on the level of protection available;
3. The right to be informed of financial assistance and other social services available to victims, including information on how to apply for the assistance and services;
4. The right to a free forensic medical examination; and
5. The right to be informed by the Attorney General of other victim's rights available."

### Section 402 Victim Protection Order

A victim protection order for any victim of abuse, neglect, exploitation, or other form of victimization shall be substantially similar to a protective order in such cases pursuant to Section 416 of this Act. No law officer shall discourage a victim from pressing charges against any assailant of the victim.

### Section 403 Emergency Temporary Order of Protection – Warrantless Arrest of Certain Persons

- A. When the Court is not open for business, the victim of abuse, neglect, exploitation, or other form of victimization may request a petition for an emergency temporary order of protection. The peace officer making the preliminary investigation shall:
  1. Provide the victim with a petition for an emergency temporary order of protection and, if necessary, assist the victim in completing the petition form. The petition shall be in substantially the same form as provided by Section 414 of this Act for a petition for protective order in such cases;
  2. Immediately notify, by telephone or otherwise, a judge of the Trial Court of the request for an emergency temporary order of protection and describe the circumstances. The judge shall inform the peace officer of the decision to approve or disapprove the emergency temporary order;
  3. Inform the victim whether the judge has approved or disapproved the emergency temporary order. If an emergency temporary order has been approved, the officer shall provide the victim, or a responsible adult if the victim is a minor child or an

incompetent person, with a copy of the petition and a written statement signed by the officer attesting that the judge has approved the emergency temporary order of protection;

4. Notify the person subject to the emergency temporary protection order of the issuance and conditions of the order if known. Notification pursuant to this paragraph may be made personally by the officer upon arrest, or upon identification of the assailant notice shall be given by any law enforcement officer. A copy of the petition and the statement of the officer attesting to the order of the judge shall be made available to the person; and
  5. File a copy of the petition and the statement of the officer with the Trial Court immediately upon the opening of the Court on the next day the Court is open for business.
- B. The forms utilized by law enforcement agencies in carrying out the provisions of this section may be substantially similar to those used under Section 414 of this Act.

#### Section 404      Nationwide Validity of Orders

All orders issued pursuant to the provisions of this Act shall have nationwide validity, unless specifically modified or terminated by a judge of the district courts.

#### Section 405      Seizure of Weapon Used in Act of Abuse

- A. Each peace officer shall seize any weapon or instrument when such officer has probable cause to believe such weapon or instrument has been used to commit an act of abuse, neglect, exploitation, or other form of victimization as defined by Section 9 of this Act, provided an arrest is made, if possible, at the same time.
- B. After any such seizure, the Attorney General shall file a notice of seizure and forfeiture as provided in this section within twenty (20) days of such seizure, or any weapon or instrument seized pursuant to this section may be returned to the owner.
- C. The seizure and forfeiture provisions of tribal law shall be followed for any seizure and forfeiture of property pursuant to this section. No weapon or instrument seized pursuant to this section or monies from the sale of any such seized weapon or instrument shall be turned over to the person from whom such property was seized if a forfeiture action has been filed within the time required by subsection B of this section, unless authorized by the Court. Provided further, the owner may prove at the forfeiture hearing that the conduct giving rise to the seizure was justified, and if the owner proves justification, the seized property shall be returned to the owner. Any proceeds gained from this seizure shall be placed in the Crime Victims Compensation Revolving Fund.

#### Section 406      Enforcement by Law Enforcement Officials

- A. A law enforcement officer of this tribe, upon determining that there is probable cause to believe that a valid protection order exists and that the order has been violated, shall enforce the order. Presentation of a protection order that identifies both the protected individual and the respondent, and on its face, is currently in effect

- constitutes probable cause to believe that a valid protection order exists. For the purposes of this section, the protection order may be inscribed on a tangible medium or may have been stored in an electronic or other medium if it is retrievable in perceivable form. Presentation of a certified copy of a protection order is not required for enforcement.
- B. If a protection order is not presented, a law enforcement officer of this tribe may consider other information in determining whether there exists probable cause to believe that a valid protection order exists.
  - C. If a law enforcement officer of this tribe determines that an otherwise valid protection order cannot be enforced because the respondent has not been notified or served with the order, the officer shall inform the respondent of the order, make a reasonable effort to serve the order upon the respondent, and allow the respondent a reasonable opportunity to comply with the order before enforcing the order.
  - D. Registration or filing of an order in this tribe is not required for the enforcement of a valid protection order pursuant to this chapter.

Section 407          Warrantless Arrest

- A. A peace officer, without a warrant, may arrest and take into custody a person if the peace officer has reasonable cause to believe that:
  - 1. An emergency, ex parte, or final protective order has been issued and served upon the person, pursuant to tribal law;
  - 2. The person named in the order has received notice of the order and has had a reasonable time to comply with such order; and
  - 3. The person named in the order has violated the order or is then acting in violation of the order.
- B. A peace officer, without a warrant, shall arrest and take into custody a person if the following conditions have been met:
  - 1. The peace officer has reasonable cause to believe that a protective order has been issued, pursuant to the law of the state or tribal court where the foreign protective order was issued; or
  - 2. A certified copy of the foreign protective order has been presented to the peace officer that appears valid on its face; and
  - 3. The peace officer has reasonable cause to believe the person named in the order has violated the order or is then acting in violation of the order.
- C. A person arrested pursuant to this Act shall be held without bail and shall be brought before the Court at the next regularly scheduled court date to answer to a charge for violation of the order. Violation of a protective order is not a bailable offense which shall be subject to the Policemen's Bail Schedule. A person arrested for violation of a protective order shall only be admitted for bail and released upon conditions as ordered by the Trial Court.
- D. A copy of a protective order shall be prima facie evidence that such order is valid when such documentation is presented to a law enforcement officer by the plaintiff, respondent, or another person on behalf of a person named in the order. Any law enforcement officer may rely on such evidence to make an arrest for a violation of such order, if there is reason to believe the respondent has violated or is then acting in

violation of the order without justifiable excuse. When a law enforcement officer relies upon the evidence specified in this subsection, such officer and the employing agency shall be immune from liability for the arrest of the respondent if it is later proved that the evidence was false.

- E. Any person who knowingly and willfully presents any false or materially altered protective order to any law enforcement officer to effect an arrest of any person shall, upon conviction, punishable by a jail term not to exceed one (1) year, or by a fine not exceeding Five Thousand Dollars (\$5,000.00), or both, and shall, in addition, be liable for any civil damages to the respondent.

Section 408           Immunity

- A. The tribal agency, or law enforcement officer, Attorney General, prosecuting attorney, clerk of the court, or any tribal official acting in an official capacity, is immune from civil and criminal liability for an act or omission arising out of the execution or enforcement of a protection order or for the arrest or the detention of an alleged violator of a protection order if the act or omission was done in good faith in an effort to comply with this Act or any other applicable law.
- B. This immunity shall include and extend to those persons who effect the arrest and detention of a non-Indian for violation of a protective order.

Section 409           Protective Services or Placement; Voluntary; Involuntary

- A. Any victim of violence, abuse, harassment, intimidation, endangerment, neglect, stalking, exploitation, or any other form of victimization, by act or omission, may seek relief under the provisions of the Adult, Family, and Children Protective Services Act, voluntarily or, if incapacitated, may have such relief sought on his or her behalf.
- B. Protective services shall include those essential or protective services necessary to reduce or eliminate the threat of harm and to promote continued independent living or family environment and shall be based on the least restrictive alternative or placement.
- C. Protective services or placement may be provided on a voluntary basis by the Adult Protective Services Division or Child Protective Services Division when requested by or for any non-incapacitated person who has been a victim of violence, abuse, harassment, intimidation, endangerment, neglect, stalking, exploitation, or any other form of victimization, by act or omission, and who is found by the Division to be in need of such services or placement and the person consents to receive these services or placement.
- D. If a vulnerable person lacks capacity to consent to receive protective services or protective placement recommended by the Division, these services or placement may, upon petition by the Division or other person on behalf of the incapacitated vulnerable person, be ordered by the Court on an involuntary basis through an emergency order.
  - 1. In ordering emergency involuntary protective services for a vulnerable person, the Court shall authorize only that intervention which it finds to be least restrictive of the liberty and rights of such person, while consistent with the welfare and safety of the person. The basis for such finding shall be stated in the record by the Court.

2. Whenever it is consistent with the welfare and safety of the person, the Court shall authorize that involuntary protective services be administered to the vulnerable person in the present living accommodations of that person.
- E. When a custodian, caretaker, family member, or guardian of a vulnerable person or of a victim of domestic abuse or family violence who consents to the receipt of protective services or protective placement refuses to allow the provision of such services or placement to the person, the Division may petition the Court for a decree enjoining the custodian, caretaker, family member, or guardian from interfering with the provision of protective services or placement to the person.
3. The petition must allege specific facts sufficient to show that the person is a vulnerable person or victim of domestic abuse, family violence, or victimization, in need of protective services or placement, consents to the receipt of protective services or placement, and that the custodian, caretaker, family member, or guardian fails or refuses to allow the provision of such services or placement.
  4. If the Court finds that the person is a vulnerable person or victim of domestic abuse, family violence, or victimization in need of protective services or placement, that the person consents to the receipt of protective services or placement, and that the custodian caretaker, family member, or guardian fails or refuses to allow the provision of such services or placement, the Court may enter a decree:
    - a. Enjoining the custodian, caretaker, family member, or guardian from interfering with the provision of protective services or placement to the vulnerable person or victim, and
    - b. Freezing the assets of the vulnerable person if it has been determined by a preponderance of the evidence that the vulnerable person is being exploited and it is necessary to protect such assets.
- F. Protective services or protective placement shall only be provided until the risk of abuse, neglect, exploitation, or victimization is eliminated or reduced, or until the vulnerable person or victim of domestic abuse or family violence withdraws consent or refuses to accept such services unless the vulnerable person has been properly deemed incapacitated.
- G. Services as determined necessary by the Division may be delivered to the vulnerable person's family, custodian, or caretaker in order to protect the vulnerable person.
- H. The vulnerable person, his or her family, custodian, and caretaker shall be informed by the Division of their rights under this Act and other tribal law, including the right to refuse voluntary services and placement and the right to have the Court determine the necessity of involuntary services or placement.
- I. Voluntary protective services or placement may be continued indefinitely subject to Division regulation and available tribal resources.
- J. Protective services or placement shall be provided subject to available appropriations, resources, and staff and only as determined necessary by the Division, or as ordered by the Court.



Section 410 Voluntary Protective Services; Payment

- A. Payment for the costs of providing voluntary protective services shall be made from either:
  - 1. The assets of the vulnerable person consenting to the receipt of voluntary protective services, or
  - 2. Any available private or public assistance programs for which the vulnerable person is eligible.
- B. If no assets or other private or public funds are available to the person, payment shall be made from a fund established by the Division for the purpose of providing emergency protective services, subject to the availability of funds.

Section 411 Involuntary Protective Services; Payment

- A. Payment for the costs of involuntary protective services provided to a vulnerable person determined by the Court to be in need of involuntary protective services pursuant to this Act shall be made:
  - 1. From assets of the vulnerable person receiving emergency involuntary protective services, if the Court so orders after a showing by the Division that the person has adequate assets to make such payment, and the payment for involuntary protective services will not cause the person to go without other necessities of life. Prior to any hearing on the assets or issuance of an order pursuant to this subparagraph, the legal guardian, caretaker, and guardian ad litem of the vulnerable person, and any person so requested by the vulnerable person shall be notified of such hearing and order,
  - 2. From any private or public assistance programs for which the person is eligible, or
  - 3. As provided by Section 410, subsection 1, of this Act, if the person has inadequate assets to make such payments as ordered by the Court, and no private or public funds are available to the person, from a fund established by the Division for the purpose of providing emergency protective services, subject to availability of funds.
- B. The person has a right to be present and represented by counsel, at his or her own cost, at any hearing. If the vulnerable person is indigent or, in the determination of the Court, lacks capacity to waive the right to counsel, the Court may appoint counsel. If the person is indigent, the cost of representation by counsel shall be borne as may be determined by the Court.

Section 412 Eligible Petitioners for Order

- A. Any person who is or has been a victim of violence, abuse, harassment, intimidation, endangerment, neglect, stalking, exploitation, or any other form of victimization, by act or omission, or any law enforcement officer on behalf of the victim, may file a petition for an order for protection against another person.
- B. A parent, guardian, or other representative may file a petition for an order for protection against another person on behalf of a child who is or has been a victim of

violence, abuse, harassment, intimidation, endangerment, neglect, stalking, exploitation, or any other form of victimization, by act or omission.

- C. The relief provided through orders of protection is in addition to and not in lieu of any other available civil or criminal relief.

Section 413      Who May Petition for Protective Orders; Fees; Omission of Petitioner's Address

- A. Any person, or other person on his or her behalf, may petition the Court for a protective order against an alleged abuser, neglecter, exploiter, or victimizer of the person. Petition forms shall be provided by the clerk of the Court.
- B. The Court may allow a plaintiff or victim to be accompanied by a victim support person at court proceedings. A victim support person shall not make legal arguments, however, a victim support person who is not a licensed attorney may offer the plaintiff or victim comfort or support and may remain in close proximity to the plaintiff or victim.
- C. No filing fee, service of process fee or any other fee or costs shall be charged the plaintiff or victim at any time for filing a petition for a protective order whether a protective order is granted or not granted.
  - 1. The Court may assess court costs, service of process fees, filing fees and other fees against the respondent; provided, the Court shall have authority to waive the costs and fees if the Court finds that the party does not have the ability to pay the costs and fees.
  - 2. If the Court makes specific findings that a petition for a protective order has been filed frivolously and no victim exists, the Court may assess filing fees, service of process fees and court costs against the plaintiff.
- D. A vulnerable person may omit his or her address from all documents filed with the Court. If a vulnerable person omits his or her address, he or she must provide the Court a mailing address. If disclosure of the person's address is necessary to determine jurisdiction or consider venue, the Court may order the disclosure to be made:
  - 1. After receiving the vulnerable person's consent;
  - 2. Orally in chambers, out of the presence of the respondent and a sealed record to be made; or
  - 3. After a hearing, if the Court takes into consideration the safety of the person and finds such disclosure is in the interests of justice.
- E. The Court shall order that any party enjoined pursuant to a protective order be prohibited from taking any action to obtain the address or location of a protected party or a protected party's family members, caretakers, or guardian, unless there is good cause not to make that order.

Section 414      Uniform Form for Petitions and Orders; Required Statements

- A. The Cheyenne and Arapaho Trial Court shall:

1. Develop and adopt uniform forms for petitions and orders for protection, including but not limited to such orders issued pursuant to divorce, custody, and other domestic relations hearings; and
  2. Provide the forms to the clerk of each Court authorized to issue such orders.
- B. In addition to any other required information, the petition for an order for protection must contain a statement listing each civil or criminal action involving both parties.
- C. The following statements must be printed in bold face type or in capital letters on the order for protection:
1. “Violation of this order may be punished by confinement in jail for a term not to exceed one (1) year or by a fine not to exceed Five Thousand Dollars (\$5,000.00), or both fine and imprisonment.”
  2. “If so ordered by the Court, the Respondent is forbidden to enter or stay at the Petitioner’s residence, even if invited to do so by the Petitioner or any other person. In no event is the order for protection voided.”
- D. The Clerk of the Trial Court or other designated person shall provide to a person requesting an order for protection:
1. The forms adopted pursuant to subsection A of this section;
  2. All other forms required to petition for an order of protection, including but not limited to, forms for service and forms required by the federal Uniform Child Custody Jurisdiction Act; and
  3. Clerical assistance in filling out the forms and filing the petition.
- E. Except as otherwise provided in 403 of this Act, a petition for an order for protection must be in writing, verified, and subscribed to in the manner provided by tribal law.
- F. All orders for protection must be issued on the form adopted in accordance with subsection A of this Section.
- G. The petition for protective order forms shall be in substantially the following form:

**IN THE TRIAL COURT  
FOR THE CHEYENNE AND ARAPAHO TRIBES  
700 NORTH BLACK KETTLE BOULEVARD  
P.O. BOX 102  
CONCHO, OKLAHOMA 73022**

	)	
Plaintiff	)	
	)	Case No. _____
v.	)	
	)	
(insert address)	)	
	)	
Respondent.	)	

**PETITION FOR PROTECTIVE ORDER**

Plaintiff, being sworn, states,

1. (Check all that apply)

- G The respondent caused, attempted to cause, permitted, or threatened emotional, psychological or physical harm to \_\_\_\_\_, or placed him or her in reasonable fear of such harm.
- G The respondent caused, attempted to cause, permitted, or threatened imminent serious emotional, psychological or physical harm to \_\_\_\_\_.
- G The respondent caused, attempted to cause, or permitted, the infliction of emotional, psychological or physical pain, injury, or impairment, sexual abuse, sexual exploitation, unreasonable restraint or confinement, or mental anguish upon \_\_\_\_\_.
- G The respondent has subjected \_\_\_\_\_ to domestic or family violence or victimization.
- G The respondent is a caretaker or other person providing services to \_\_\_\_\_, and has caused, attempted to cause, or permitted the deprivation of nutrition, clothing, shelter, health care, or other care or services without which serious physical or mental injury is likely to occur to \_\_\_\_\_.
- G The respondent has harassed, intimidated, or stalked \_\_\_\_\_.
- G The respondent has neglected or endangered \_\_\_\_\_, or permitted such neglect or endangerment.
- G The respondent has exploited \_\_\_\_\_ physically, mentally, or financially.
- G The respondent has \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

2. The incident causing the filing of this petition occurred on or about \_\_\_\_\_(date).

3. The location where the incident occurred is \_\_\_\_\_

\_\_\_\_\_.

Describe what happened:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

4. The victim and respondent are related as follows:
- G Married
  - G Divorced
  - G Parent and child

- G Persons related by blood or adoption
- G Persons related or formerly related by marriage
- G Present spouse of an ex-spouse
- G Persons living in the same household
- G Persons formerly living in the same household
- G Persons who are dating or who have dated
- G Persons who are engaged in or who have engaged in a sexual relationship
- G Persons who have children in common
- G Minor children of a person in a relationship described above
- G Caretaker providing services
- G Not related.
- G Other \_\_\_\_\_.

5. (Answer this question only if the plaintiff is filing on behalf of someone else, minor or incompetent.) The plaintiff and the victim are related as follows:

- G Married
- G Divorced
- G Parent and child
- G Persons related by blood or adoption
- G Persons related or formerly related by marriage
- G Present spouse of an ex-spouse
- G Persons living in the same household
- G Persons formerly living in the same household
- G Persons who are dating or who have dated
- G Persons who are engaged in or who have engaged in a sexual relationship
- G Persons who have children in common
- G Minor children of a person in a relationship described above
- G Caretaker providing services
- G Not related.
- G Other \_\_\_\_\_.

6. (Check either A or B)

- G A. The victim is in immediate and present danger of abuse, neglect, exploitation, or other form of victimization, by act or omission, from the respondent and an emergency ex parte order is necessary to protect the victim from serious harm. The plaintiff requests the following relief in the emergency ex parte order: (check one or more)
  - G Order the respondent not to emotionally, psychologically, or physically abuse, threaten, harm, or injure the victim, place the victim in reasonable fear of such harm, or expose the victim to domestic or family violence.
  - G Order the respondent not to visit, assault, molest or otherwise contact or interfere with the victim or the victim's family.

- G Order the respondent not to threaten or otherwise intimidate the victim or the victim's family.
- G Order the respondent to cease harassing or stalking the victim.
- G Order the respondent to cease neglecting, endangering, or exploiting the victim.
- G Order the respondent to leave the residence located at \_\_\_\_\_ on or before \_\_\_\_\_.
- G Describe other relief that the plaintiff requests:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

G B. The plaintiff does not request an emergency ex parte order.

7. Plaintiff requests the following order to be made by the Court following notice to the respondent and a hearing: (check one or more)

- G Order the respondent not to emotionally, psychologically, or physically abuse, threaten, harm, or injure the victim, place the victim in reasonable fear of such harm, or expose the victim to domestic or family violence.
- G Order the respondent not to visit, assault, molest or otherwise contact or interfere with the victim or the victim's family.
- G Order the respondent not to threaten or otherwise intimidate the victim or the victim's family.
- G Order the respondent to cease harassing or stalking the victim
- G Order the respondent to cease neglecting, endangering, or exploiting the victim.
- G Order the respondent to leave the residence located at \_\_\_\_\_ on or before \_\_\_\_\_.
- G Order the respondent to (describe other relief that the plaintiff requests):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

G Order the respondent to pay attorney fees of the plaintiff in the sum of \_\_\_\_\_ on or before \_\_\_\_\_.

G Order the respondent to pay the court costs of this action in the sum of \_\_\_\_\_ on or before \_\_\_\_\_.

8. The victim \_\_\_\_\_ is, \_\_\_\_\_ is not, a citizen of the Cheyenne and Arapaho Tribes, or is eligible for membership in the Tribes, wherein this petition is filed.

9. Plaintiff has stated the truth, the whole truth and nothing but the truth in this petition.

\_\_\_\_\_  
Plaintiff

Witness my hand and seal, affixed on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Court Clerk, Deputy Court Clerk, or Notary Public

\_\_\_\_\_  
Law Enforcement Officer's Name

\_\_\_\_\_  
Badge and Title

- H. No filing fee shall be charged the plaintiff at the time the petition is filed. The Court may assess court costs and filing fees to either party at the hearing on the petition.
- I. The plaintiff shall prepare the petition as set forth above or, at the request of the plaintiff, the Court Clerk or the victim-witness coordinator shall prepare or assist the plaintiff in preparing the same.

Section 415      Jurisdiction; Venue; Residency not Required for Petition

- A. The Trial Court of the Cheyenne and Arapaho Tribes has jurisdiction to issue orders for protection.
- B. A petition for an order for protection may be filed in the Court:
  - 1. Where the petitioner currently or temporarily resides;
  - 2. Where the respondent resides; or
  - 3. Where the abuse, neglect, exploitation, or victimization occurred.
- C. There is no minimum requirement of residency to petition for an order of protection.

Section 416      Protective Order

- A. The Court is authorized to issue a protective order to any person who seeks such relief or has such relief sought on his or her behalf that the Court determines to be at risk of abuse, neglect, exploitation, or victimization, pending notice and hearing. The Court shall have broad discretion within the bounds of the law, to fashion protective orders so that the purposes of this Act may be accomplished, including but not limited to the following kinds of protective orders:
  - 1. Removing the person who has abused, neglected, exploited, or victimized the vulnerable person from the vulnerable person's home;
  - 2. Restraining the person who has abused, neglected, exploited, or victimized the vulnerable person from continuing such acts;

3. Requiring a vulnerable person's family, caretaker, or any other person with a fiduciary duty to the vulnerable person to account for the vulnerable person's funds;
  4. Requiring any person who has abused, neglected, exploited, or victimized a vulnerable person to pay restitution to the vulnerable person for damages or injuries resulting from that person's wrongdoing;
  5. Appointing a legal representative for the vulnerable person;
  6. Appointing a guardian or conservator for the vulnerable person;
  7. Ordering the Division to prepare a plan for and deliver protective services which provide the least restrictive alternative for services, care or treatment consistent with the vulnerable person's needs; or
  8. Removing the vulnerable person from the place where the abuse, neglect, exploitation, or victimization has taken or is taking place.
- B. A protective order shall contain the following information:
1. The name of the person to whom it is directed;
  2. The name, and unless omitted, the address or location, and condition of the vulnerable person;
  3. A conclusion of law and relevant finding(s) that the vulnerable person is incapacitated, if the order is not being voluntarily sought by the vulnerable person;
  4. A conclusion of law and the relevant finding(s) that the vulnerable person is at risk of abuse, neglect, exploitation, or victimization;
  5. The restrictions or requirements imposed by the Court in sufficient detail;
  6. The date the protective order is issued and the date the order expires or the time within which the protective order will be reviewed;
  7. The protective services which will reduce or eliminate the abuse, neglect, exploitation, or victimization;
  8. The consequences for failure to comply with the order; and
  9. A statement that a person bound by the order shall remain bound by it even if circumstances which prompted the order have changed, and that it is the responsibility of any person seeking to avoid the consequences of the order to request that the order be modified to reflect the changed circumstances. However, no such modification shall be made without a hearing at which the petitioner or representative of the petitioner is present.
- C. The vulnerable person, temporary guardian, or any interested person may petition the Court to have the order to provide protective services, placement, or protective order vacated or modified at any time.

#### Section 417      Emergency Ex Parte Protective Order; Petition; Hearing

- A. If a plaintiff requests an emergency ex parte order pursuant to this Act, the Court shall hold an ex parte hearing, if the Court finds sufficient grounds within the scope of this Act stated in the petition to hold such a hearing. The Court may, for good cause shown at the hearing, issue any emergency ex parte order that it finds necessary to protect the victim from immediate and present danger of abuse, neglect, exploitation or other form of victimization, including domestic abuse or family violence. The



emergency ex parte order shall be in effect until after the full hearing is conducted. Provided, if the respondent, after having been served, does not appear at the hearing, the emergency ex parte order shall remain in effect until the respondent is served with the permanent order.

- B. An emergency protective order may be issued under this section only if the Court finds both of the following:
  - 1. That reasonable grounds have been asserted to believe that an immediate and present danger of abuse, neglect, exploitation, or victimization exists, and
  - 2. That an emergency protective order is necessary to prevent the occurrence or reoccurrence of the abuse, neglect, exploitation, or victimization activity.
- C. If the Division determines that a vulnerable person is suffering from abuse, neglect, exploitation, or other victimization presenting a substantial risk of death or immediate and serious physical harm to the person or financial exploitation of the estate of the person, and the vulnerable person lacks capacity to consent to receive protective services and no consent can be obtained, the Division may petition the Court to authorize protective services on an emergency basis.
- D. The petition for an emergency protection order shall be sworn to and contain the following:
  - 1. The name and interest of the petitioner;
  - 2. The name, and unless omitted, the address or location and condition of the vulnerable person who the Division has determined is in need of emergency protective services;
  - 3. The nature of the emergency;
  - 4. The nature of the vulnerable person's incapacity, if any;
  - 5. The proposed protective services or protective placement;
  - 6. A description of the attempt(s) to obtain consent to protective services or placement; and
  - 7. Any other facts the petitioner believes will assist the Court.
- E. The vulnerable person shall receive an opportunity for a hearing upon the petition, and shall be served, personally or by certified mail, with a copy of the petition and a notice scheduling hearing.
  - 1. The hearing shall be set by the Court on an expedited basis, but no later than fifteen (15) calendar days, not including weekends or holidays when the court is closed, from the date the notice scheduling hearing is signed by the judge. The vulnerable person shall have a right to a closed hearing unless such vulnerable person requests otherwise
  - 2. The vulnerable person shall receive an opportunity for a hearing upon the petition, and shall be served personally or by certified mail with a copy of the petition and a notice scheduling hearing at least forty-eight (48) hours prior to any such hearing if the petition seeks temporary guardianship of thirty (30) days or more
  - 3. Unless the vulnerable person objects or the person requiring notification pursuant to this subparagraph is alleged to have abused, neglected, exploited, or victimized the vulnerable person, the following persons shall be notified of any hearing held pursuant to this subsection:
    - a. The family, legal guardian, guardian ad litem and caretaker of the vulnerable person,

- b. Any person so requested by the vulnerable person to be present at the hearing, and
  - c. Any person the Court deems necessary for a determination of the issues.
- F. The Court shall issue an emergency protection order authorizing protective services or protective placement on an emergency basis upon petition supported by clear and convincing evidence that:
  - 1. The vulnerable person is at risk of immediate physical harm or victimization;
  - 2. The vulnerable person is incapacitated and cannot consent to protective services;
  - 3. There is no one authorized by law or court order to give consent on an emergency basis; and
  - 4. An emergency clearly exists.
- G. The emergency protective order shall:
  - 1. Include the address of the Court issuing the protective order;
  - 2. Set forth a conclusion of law and the relevant finding(s) that the vulnerable person is in immediate danger of abuse, neglect, exploitation, or victimization;
  - 3. Set out the specific emergency services to be provided to the vulnerable person to remove the conditions creating the emergency situation;
  - 4. Provide only those services which will remove the emergency situation;
  - 5. Designate the agency required to implement the order;
  - 6. Be issued for a maximum of thirty (30) days and include the date and time the order expires; and
  - 7. Include the following statements:
    - a. “To the protected person: This order will last until the date and time noted above. If you wish to seek continuing protection, you will have to apply for an order from the Court at the address noted above. You may seek the advice of an attorney, at your own expense, as to any matter connected with your application for any future court orders.”
    - b. “To the restrained person: This order will last until the date and time noted above. The protected party may, however, obtain a more permanent restraining order from the Court. You may seek the advice of an attorney, at your own expense, as to any matter connected with the application, including your response to the application. You may not own, possess, purchase or receive, or attempt to purchase or receive a firearm or dangerous weapon while this order is in effect.”
- H. The emergency protective services order may authorize forcible entry by the tribal police department to enforce the emergency protective services order after it has been shown that good faith attempts to gain voluntary access to the vulnerable person have failed and forcible entry is necessary.
- I. The Court shall hold a hearing on a petition for a protective order within seventy-two (72) hours after an emergency protective services order is issued, weekends and holidays excluded.
- J. If the Division’s investigator or tribal law enforcement officer has good cause to believe that an emergency situation exists in which a vulnerable person who appears to be incapacitated is at risk of immediate and irreparable harm based on personal observation and that the vulnerable person may be irreparably harmed during the time it would take to secure an emergency protective order, the vulnerable person may

immediately be taken into temporary protective custody and, where necessary, transported for medical treatment or to an appropriate facility. Immediately after a vulnerable person is placed in temporary protective custody, a petition for an emergency protection order shall be filed pursuant to the procedure set forth in this Section.

- K. A law enforcement shall use every reasonable means to enforce an emergency protective order. A law enforcement officer who acts in good faith to enforce an emergency protective order is not civilly or criminally liable.
- L. Any person who acts in good faith pursuant to this Section is immune from civil or criminal suit based on that person's actions.
- M. A person subject to an emergency protective order under this section shall not own, possess, purchase, or receive a firearm or dangerous weapon while this order is in effect.

Section 418 Leaving Residence or Necessary Force not to Effect Right to Relief

- A. The Petitioner's right to relief under this Act shall not be affected by Petitioner's leaving the residence or household to avoid abuse, neglect, exploitation, or victimization.
- B. The Petitioner's right to relief under this Act shall not be affected by use of such physical force against Respondent as is reasonably believed to be necessary to defend the Petitioner or another from imminent physical injury.

Section 419 Continuing Duty to Inform Court of Other Proceedings; Effect of Other Proceedings; Delay of Relief Prohibited

- A. At any hearing in a proceeding to obtain an order for protection, each party has a continuing duty to inform the court of each proceeding for an order of protection, a civil litigation, each proceeding in family or juvenile court, and each criminal case involving the parties, including the case name, the file number, and the county and state of the proceeding, if that information is known by the party.
- B. An order for protection is in addition to and not in lieu of any other available civil or criminal proceeding. A petitioner is not barred from seeking an order because of other pending proceedings. The Court shall not delay granting relief because of the existence of a pending action between the parties.

Section 420 Term of Protective Order; Modification; Extension of Protective Services

- A. A protection order shall be issued for a period not to exceed thirty-six (36) months.
- B. The order may be extended as many times as necessary to protect the vulnerable person, but only after a petition is filed by the party seeking an extension and notice, opportunity to be heard, and a determination based upon clear and convincing proof that such an extension is necessary for the protection of the vulnerable person. Each extension shall be for a period not to exceed twelve (12) months.

Section 421 Rights of Vulnerable Persons, Their Families, and Caregiver

- A. A vulnerable person, his or her family, and caretaker shall be informed about a, abuse, neglect, exploitation, or victimization investigation before it begins unless an emergency exists, in which case, they shall be informed as soon as possible, but not later than twenty-four (24) hours after the investigation begins.
- B. A vulnerable person may refuse to accept protective services, even if there is good cause to believe that the person has been or is being abused, neglected, exploited, or victimized; provided, that the vulnerable person is able to care for himself or herself, has the capacity to understand the nature of the services offered, and duress is not present.
- C. Families, custodians, or caretakers may refuse services for themselves but cannot refuse such services for the vulnerable person.
- D. Vulnerable persons, their family, custodians or caretakers may refuse to allow an investigator into their home and the investigator shall so inform the vulnerable person, the family and the caretaker of this right before seeking entry. The investigator shall also inform them of the right of the investigator to seek a warrant to gain entry.
- E. Notice by personal service or certified mail to the vulnerable person, family, custodian, and caretaker is required when a petition is filed pursuant to this Act.
- F. The vulnerable person, family, custodian, and caretaker have the right to attend any proceeding pertaining to the determination of the capacity of the vulnerable person and the vulnerable person shall be present at all proceedings unless the Court determines the person's health or safety is at risk in attending such proceedings.
- G. The vulnerable person, family, custodian, and caretaker shall have the right to seek independent medical, psychological or psychiatric evaluations of the vulnerable person at their own expense.
- H. The vulnerable person, the family, custodian, and the caretaker have the right to be represented by counsel at all proceedings at their own expense.

Section 422 Determining Incapacity

- A. Determinations regarding the capacity of a vulnerable person for the purposes of an action under this Act must be made after petition, notice, and hearing. A finding of incapacity shall be based on clear and convincing evidence of incapacitation, including a medical doctor's evaluation and report as to degree of incapacitation.
- B. In proceedings necessitating a declaration of incapacity, such as a hearing on a petition for protective services or a petition for emergency protective services, the Court shall first address the issue of incapacity and only upon a finding that the vulnerable person is incapacitated shall the Court proceed with the issue of whether judicial intervention is necessary because the vulnerable person is at risk of abuse, neglect, exploitation, or other form of victimization.

- A. The incapacitated person or any person alleging a person to be incapacitated may petition for a limited or full guardianship or a conservatorship of an incapacitated vulnerable person who is unable to manage all or some of his or her own affairs for the purpose of promoting and protecting the well-being of the incapacitated person. The guardianship or conservatorship must be designed to encourage the development of maximum self-reliance and independence in the vulnerable person and may be ordered only to the extent that the person's actual or mental limitations require it.
- B. A petition for guardianship shall state:
1. The vulnerable person's name, birth date, residence, tribal affiliation, and enrollment number. If the vulnerable person is not living in his or her own home, then petitioner shall state the location where the vulnerable person has resided since leaving his or her own home, and the name and address of the person(s) or institution where the vulnerable person is presently located;
  2. Petitioner's name, birth date, residence, tribal affiliation, and the relationship to the vulnerable person;
  3. A description of the physical and/or mental limitations that incapacitates the vulnerable person;
  4. If a limited guardianship over the vulnerable person's person is requested, then a description of the particular powers that the limited guardian is proposed to exercise and the particular areas of protection and assistance required;
  5. If a guardianship or conservatorship of any or all property is requested, then a general description of the personal or non-trust property of the vulnerable person;
  6. If a guardianship or conservatorship over any or all of the financial affairs is requested, then a general description of the income or other financial resources or personal property of the vulnerable person;
  7. The names, addresses and relationship of the vulnerable person's children, so long as such information is reasonably available, and any brothers, sisters, grandchildren or other parties who have been significantly involved in the care of the vulnerable person during the past three (3) years;
  8. Whether a guardian has been appointed for the vulnerable person in any other tribal or state proceeding;
  9. The requested length of time for which the petitioner is requesting the guardianship or conservatorship; and
  10. List any other person(s) and relationship to the vulnerable person, if any, who may be available to share the guardianship responsibilities with the petitioner.
- C. Service of Petition and Notice of Hearing
1. Before appointing a guardian or conservator, a notice of hearing and a copy of the petition shall be given personally to the vulnerable person over whom the guardianship or conservatorship is requested. A certificate of personal service shall be filed with the Trial Court.
  2. Notice and a copy of the petition shall be personally given to the vulnerable person's spouse residing within the Tribes' jurisdiction, if any, unless such person waives, in writing, the personal service of notice and petition.

3. By first-class United States mail, notice and a copy of the petition shall be given to the following
  - a. All children of the vulnerable person;
  - b. The spouse of the vulnerable person if residing outside the jurisdiction of the Tribes;
  - c. Any other person with whom the vulnerable person is living with;
  - d. The Cheyenne and Arapaho Tribes Social Services Department; and
  - e. The Cheyenne and Arapaho Tribes Adult Protective Services Division.
4. The Trial Court, upon receipt of a petition for guardianship or conservatorship, shall appoint an advocate to represent the vulnerable person and order an examination of the vulnerable person by a physician for the purposes of determining capacity.
5. A hearing on the petition shall be held not less than twenty (20) and not more than forty (40) days from the service of the notice and petition on the vulnerable person over whom the guardianship is requested. Following the hearing, the Court may appoint a full or limited guardian if it is satisfied that the person for whom the guardianship is sought is incapacitated and that judicial intervention in his or her personal freedom of action and decision is necessary to meet the essential requirements for health and safety.
6. In the event of an emergency, where serious harm to the allegedly incapacitated vulnerable person's health or property is likely to occur before a hearing can be held, the Court may appoint with or without notice a temporary guardian for the allegedly incapacitated vulnerable person for a specified period not to exceed six (6) months. The Court may not vest a temporary guardian with more powers than are required by the circumstances necessitating the appointment.
7. Any guardian shall advise the Court by written report at least once a year or upon request of the Court on the parties involved or the actions of the guardian on behalf of the vulnerable person's person or estate.
8. No guardian may dispose of any of the vulnerable person's property without advance approval from the Court.

#### Section 424 Determination of Abuse, Neglect, Exploitation, or Victimization

The Court shall determine, when necessary, whether abuse, neglect, exploitation, or victimization as defined by this Act, of a vulnerable person has occurred. The determination shall be made only after petition, notice, hearing, and proof that shows clear and convincing evidence of abuse, neglect, exploitation, or victimization.

#### Section 425 Statements on Protective Order

In addition to any other provisions required by this Act, or otherwise required by law, each protective order issued pursuant to this Act shall have a statement printed in bold-faced type or in capital letters containing the following information:

1. The filing or nonfiling of criminal charges and the prosecution of the case shall not be determined by a person who is protected by the protective order, but shall be determined by the Attorney General;
2. No person, including a person who is protected by the order, may give permission to anyone to ignore or violate any provision of the order. During the time in which the order is valid, every provision of the order shall be in full force and effect unless a court changes the order;
3. The order will be in effect for three (3) years unless extended, modified, vacated or rescinded by the court;
4. A violation of the order is punishable by a fine of up to Five Thousand Dollars (\$5,000.00) or imprisonment for up to one (1) year in the tribal jail, or by both such fine and imprisonment; and
5. Possession of a firearm, ammunition, or dangerous weapon by a respondent while an order is in effect may subject the respondent to prosecution for a violation of law even if the order does not specifically prohibit the respondent from possession of a firearm or ammunition.

Section 426          Violation of Protective Order; Bail; Additional Conditions of Release on Bail

- A. Violation of court ordered protection by a respondent may be civilly penalized by confinement in jail for as long as one hundred eighty (180) days or may be fined not more than Two Thousand Five Hundred Dollars (\$2,500.00), or any combination of both.
- B. Any request to grant or lower bail shall be heard in open court. In addition, the Attorney General shall make all reasonable efforts to notify the victim or victims of the bail hearing. The victim may be present at the hearing and shall be permitted to address the Court on the issue of bail.
- C. Unless good cause is shown not to impose the following conditions, the judge shall impose as additional conditions of release on bail that:
  1. The respondent shall not initiate contact in person, by a third party, by telephone, or any other means with the alleged victim;
  2. The respondent shall not knowingly go within one hundred (100) yards of the alleged victim, the victim's residence or place of employment;
  3. The respondent shall not possess any firearms or other deadly or dangerous weapons;
  4. The respondent shall obey all laws; and
  5. The respondent, upon request at the time of his or her appearance in court, shall provide the Court with an address where he or she is residing or will reside, a business address and telephone number if employed, and a residence telephone number if the respondent's residence has a telephone. A showing by declaration that any of these conditions are violated shall, unless good cause is shown, result in the issuance of a no-bail warrant for the arrest and detention of the respondent.
- D. At no time, under any proceeding, may a person protected by a protective order be held to be in violation of that protective order. Only a respondent against whom a protective order has been issued may be held to have violated the order.

#### Section 427 Protection Order Not to Affect Title to Real Property

No order of protection made pursuant to this Act shall in any manner affect title to any real property, purport to grant to the parties a divorce or otherwise purport to determine the issues between the parties as to child custody, visitation, or visitation schedules, child support or division of property or any other relief obtainable by law, except child visitation orders may be temporarily suspended or modified to protect from threats of abuse or physical violence by the respondent or a threat to violate a custody order. When granting any protective order for the protection of a minor child from violence or threats of abuse, the Court shall allow visitation only under conditions that provide adequate supervision and protection to the child while maintaining the integrity of a separate order.

#### Section 428 Copies of Protection Order to be Issued

An order for protection granted pursuant to this Act shall be forwarded by the clerk of Court within twenty-four (24) hours to the Petitioner, the Respondent, and all tribal law enforcement agencies with jurisdiction over the residence of the applicant. The Court and the tribal police department shall make available to all law enforcement agencies information as to the existence and status of any order for protection issued under this Act.

#### Section 429 Protection Plan

If the Court determines that a vulnerable person needs protective services, the Division shall write a plan for provision of those services necessary to provide for the person's basic needs in the least restrictive manner available. A Division representative shall serve the plan on all interested parties and file the plan with the Court for adoption. The plan shall remain in effect for a fixed time.

#### Section 430 Services for Family or Caregiver

The protection plan shall include services for the person's family and caregiver as necessary to protect the vulnerable person. Necessity shall be determined by the Division in cases of voluntary service or by the Court in cases of a protection order.

#### Section 431 Payment for Protective Services

The Court may order a perpetrator of abuse, neglect, exploitation, or victimization to pay the cost of services provided to the vulnerable person, or a vulnerable person's family may seek restitution from a perpetrator through a civil suit.

#### Section 432 Confidentiality of Records and Reports

- A. The reports, records, and working papers used or developed in an investigation of the circumstances of a vulnerable person pursuant to the provisions of the Adult, Family and Children Protective Services Act are confidential and may be disclosed only



pursuant to rules promulgated by the Department of Social Services or by order of the Court.

- B. The Adult Protective Services Division's and Child Protective Services Division's records pertaining to a vulnerable person may be inspected and their contents disclosed without a court order to the following persons upon showing of proper credentials and pursuant to their lawful duties:
1. The Tribes' Attorney General and the employees of the Attorney General's office in the course of their official duties pursuant to this Act or the prosecution of crimes against vulnerable persons;
  2. The attorney representing a vulnerable person who is the subject of a proceeding pursuant to the provisions of the Adult, Family and Children Protective Services Act;
  3. Employees of the law enforcement agency of this or another tribe, state, or federal agency and employees of protective services or victims' services for vulnerable persons of another tribe, state, or federal agency;
  4. A physician who has before him or her a vulnerable person whom the physician reasonably suspects may have been abused, neglected, exploited, or victimized or any health care or mental health professional involved in the evaluation or treatment of the vulnerable person;
  5. A caretaker, legal guardian, custodian or other family member of the vulnerable person; provided the Division may limit such disclosures to summaries or to information directly necessary for the purpose of such disclosure;
  6. Any public or private agency or person authorized by the Division to diagnose or provide care and treatment to a vulnerable person who is the subject of a report or record of abuse, neglect, exploitation or victimization; and
  7. Any public or private agency or person authorized by the Division to supervise or provide other services to a vulnerable person who is the subject of a report or record of abuse, neglect, exploitation, or victimization; provided the Division may limit such disclosure to summaries or to information directly necessary for the purpose of such disclosure.
- C. Nothing in this section shall be construed as prohibiting the Division from disclosing such confidential information as may be necessary to secure appropriate care, treatment or protection of a vulnerable person alleged to be abused, neglected, exploited, or victimized.
- D. Records and their contents disclosed pursuant to this section shall remain confidential. The use of such information shall be limited to the purposes for which disclosure is authorized. It shall be unlawful for any person to furnish any record or disclose any information contained therein for any unauthorized purpose.
- E. Any person who violates the confidentiality requirements of this Act shall be subject to a civil penalty of up to One Thousand Dollars (\$1,000.00) per occurrence. The Court will assess the penalty only after petition, notice, opportunity to be heard, and a determination that a violation occurred.

Section 433          Jurisdiction of Court to Restrict Visitation and Contact

- A.     The Cheyenne and Arapaho Trial Court is vested with jurisdiction to issue orders and enforce orders restricting visitation or contact, by the custodian or by any other person specified by the court, of a vulnerable person who is receiving or has been determined to need protective services pursuant to the Adult, Family and Children Protective Services Act.
  - 1.   Whenever it is consistent with the welfare and safety of a vulnerable person, the Court shall restrict the visitation or contact of a custodian or other person specified by the Court who is alleged or has been determined to have abused, neglected, exploited or victimized the vulnerable person.
  - 2.   Notice as ordered by the Court shall be given to the custodian or other person alleged or determined to have abused, neglected, exploited, or victimized a vulnerable person.
- B.     If the Division determines, as a result of its investigation, that a vulnerable person needs voluntary or involuntary protective services as a result of abuse, neglect, exploitation, or victimization by the caretaker or by any other person, the Division may petition the Court to restrict the visitation or contact of such custodian or other person with the vulnerable person.
- C.     Consistent with the welfare and safety of the vulnerable person, the Court may require supervised visitation or contact, prohibit visitation or contact or otherwise limit the visitation or contact by the custodian or such other person with the vulnerable person. The basis for restricting visitation or contact shall be stated in the record by the Court.
- D.     The owner, operator or any facility personnel of a nursing home, residential home, assisted living facility or other long-term care facility having reason to believe that visitation or contact of a vulnerable person should be restricted may notify the Department of Social Services, Adult Protective Services Division. Any other person having reason to believe that visitation of a vulnerable person should be restricted may notify the Division pursuant to the Adult, Family and Children Protective Services Act.

Section 434          Expungement

- A.     Persons authorized to file a motion for expungement of victim protective orders (VPOs) issued pursuant to this Act must be within one of the following categories:
  - 1.   An ex parte order was issued to the plaintiff but later terminated due to dismissal of the petition before the full hearing, or denial of the petition upon full hearing, or failure of the plaintiff to appear for full hearing, and at least ninety (90) days have passed since the date set for full hearing;
  - 2.   The plaintiff filed an application for a victim protective order and failed to appear for the full hearing and at least ninety (90) days have passed since the date last set by the Court for the full hearing, including the last date set for any continuance, postponement or rescheduling of the hearing;
  - 3.   The plaintiff or respondent has had the order vacated and three (3) years have passed since the order to vacate was entered; or

4. The plaintiff or respondent is deceased.
- B. For purposes of this section:
1. "Expungement" means the sealing of victim protective order (VPO) court records from public inspection, but not from law enforcement agencies, the Court or the Attorney General;
  2. "Plaintiff" means the person or persons who sought the original victim protective order (VPO) for cause; and
  3. "Respondent" means the person or persons to whom the victim protective order (VPO) was directed.
- C. Any person qualified under subsection A of this section may petition the Trial Court in which the protective order pertaining to the person is located for the expungement and sealing of the court records from public inspection.
1. The face of the petition shall state whether the respondent in the protective order has been convicted of any violation of the protective order and whether any prosecution or complaint is pending for a violation or alleged violation of the protective order that is sought to be expunged. The petition shall further state the authority pursuant to subsection A of this section for eligibility for requesting the expungement. The other party to the protective order shall be mailed a copy of the petition by certified mail within ten (10) days of filing the petition. A written answer or objection may be filed within thirty (30) days of receiving the notice and petition.
  2. Upon the filing of a petition, the Court shall set a date for a hearing and shall provide at least a thirty-day notice of the hearing to all parties to the protective order, the Attorney General, and any other person or agency whom the Court has reason to believe may have relevant information related to the sealing of the victim protective order (VPO) court record.
  3. Without objection from the other party to the victim protective order (VPO) or upon a finding that the harm to the privacy of the person in interest or dangers of unwarranted adverse consequences outweigh the public and safety interests of the parties to the protective order in retaining the records, the Court may order the court record, or any part thereof, to be sealed from public inspection. Any order entered pursuant to this section shall not limit or restrict any law enforcement agency, the Attorney General or the Court from accessing said records without the necessity of a court order. Any order entered pursuant to this subsection may be appealed by any party to the protective order or by the Attorney General to the Supreme Court in accordance with the rules of the Supreme Court.
  4. Upon the entry of an order to expunge and seal from public inspection a victim protective order (VPO) court record, or any part thereof, the subject official actions shall be deemed never to have occurred, and the persons in interest and the public may properly reply, upon any inquiry in the matter, that no such action ever occurred and that no such record exists with respect to the persons.
  5. Inspection of the protective order court records included in the expungement order issued pursuant to this section may thereafter be permitted only upon petition by the persons in interest who are the subjects of the records, or without petition by the Attorney General or a law enforcement agency in the due course of investigation of a crime.

6. Employers, educational institutions, tribal government agencies, officials, and employees shall not require, in any application or interview or otherwise, an applicant to disclose any information contained in sealed protective order court records. An applicant need not, in answer to any question concerning the records, provide information that has been sealed, including any reference to or information concerning the sealed information and may state that no such action has ever occurred. The application may not be denied solely because of the refusal of the applicant to disclose protective order court records information that has been sealed.
7. The provisions of this section shall apply to all protective order court records existing in the Court on, before and after the effective date of this section.
8. Nothing in this section shall be construed to authorize the physical destruction of any court records, except as otherwise provided by law for records no longer required to be maintained by the Court.
9. For the purposes of this section, sealed materials which are recorded in the same document as unsealed material may be recorded in a separate document, and sealed, then obliterated in the original document.
10. For the purposes of this Act, tribal court index reference of sealed material shall be destroyed, removed or obliterated.
11. Any record ordered to be sealed pursuant to this section may be obliterated or destroyed at the end of the ten-year period.
12. Nothing herein shall prohibit the introduction of evidence regarding actions sealed pursuant to the provisions of this section at any hearing or trial for purposes of impeaching the credibility of a witness or as evidence of character testimony pursuant to tribal law.

## CHAPTER FIVE: UNIFORM INTER-TRIBAL OR INTERSTATE ENFORCEMENT OF PROTECTION ORDERS

### Section 501 Definitions

As used in this chapter,

1. “Foreign protection order” means a protection order issued by a tribunal of another tribe or state;
2. “Issuing state” or “issuing tribe” means the state or tribe whose tribunal issues a protection order;
3. “Mutual foreign protection order” means a foreign protection order that includes provisions in favor of both the protected individual seeking enforcement of the order and the respondent;
4. “Protected individual” means an individual protected by a protection order;
5. “Protection Order” means an injunction or other order, issued by a tribunal under the domestic violence, family violence, protective services or other such laws of the issuing state or tribe, to prevent an individual from engaging in violent or threatening acts against, harassment of, contact or communication with, or physical proximity to, directly or indirectly, another individual;
6. “Respondent” means the individual against whom enforcement of a protection order is sought;
7. “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States;
8. “Tribe” includes any Indian tribe or band, or Indian tribe or band that has jurisdiction to issue protection orders; and
9. “Tribunal” means a court, agency, or other entity authorized by law to issue or modify a protection order.

### Section 502 Judicial Enforcement of Order

- A. A person authorized by the law of this tribe to seek enforcement of a protection order may seek enforcement of a valid foreign protection order in a tribunal of this tribe. The tribunal shall enforce the terms of the order, including terms that provide relief that a tribunal of this tribe would lack power to provide but for this section. The tribunal shall enforce the order, whether the order was obtained by independent action or in another proceeding, if it is an order issued in response to a compliant, petition, or motion filed by or on behalf of an individual seeking protection. In a proceeding to enforce a foreign protection order, the tribunal shall follow the procedures of this tribe for the enforcement of protection orders.
- B. A tribunal of this tribe may not enforce a foreign protection order issued by a tribunal of another tribe or state that does not recognize the standing of a protected individual to seek enforcement of the order.
- C. A tribunal of this tribe shall enforce the provisions of a valid foreign protection order which govern custody and visitation, if the order was issued in accordance with the

- jurisdictional requirements governing the issuance of custody and visitation orders in the issuing state or tribe.
- D. A foreign protection order is valid if it:
    - 1. Identifies the protected individual and the respondent;
    - 2. Is currently in effect;
    - 3. Was issued by a tribunal that had jurisdiction over the parties and subject matter under the law of the issuing tribe or state; and
    - 4. Was issued after the respondent was given reasonable notice and had opportunity to be heard before the tribunal issued the order or, in the case of an order ex parte, the respondent was given notice and has had or will have an opportunity to be heard within a reasonable time after the order was issued, in a manner consistent with the rights of the respondent to due process.
  - E. A foreign protection order valid on its face is prima facie evidence of its validity.
  - F. Absence of any of the criteria for validity of a foreign protection order is an affirmative defense in an action seeking enforcement of the order.
  - G. A tribunal of the Tribes may enforce provisions of a mutual foreign protection order which favor a respondent only if:
    - 1. The respondent filed a written pleading seeking a protection order from the tribunal of the issuing tribe or state; and
    - 2. The tribunal of the issuing tribe or state made specific findings of fact in favor of the respondent.

#### Section 503      Enforcement by Law Enforcement Officials

- A. A law enforcement officer of this tribe, upon determining that there is probable cause to believe that a valid foreign protection order exists and that the order has been violated, shall enforce the order as if it were the order of a tribunal of this tribe. Presentation of a protection order that identifies both the protected individual and the respondent, and on its face, is currently in effect constitutes probable cause to believe that a valid foreign protection order exists. For the purposes of this section, the protection order may be inscribed on a tangible medium or may have been stored in an electronic or other medium if it is retrievable in perceivable form. Presentation of a certified copy of a protection order is not required for enforcement.
- B. If a foreign protection order is not presented, a law enforcement officer of this tribe may consider other information in determining whether there exists probable cause to believe that a valid foreign protection order exists.
- C. If a law enforcement officer of this tribe determines that an otherwise valid foreign protection order cannot be enforced because the respondent has not been notified or served with the order, the officer shall inform the respondent of the order, make a reasonable effort to serve the order upon the respondent, and allow the respondent a reasonable opportunity to comply with the order before enforcing the order.
- D. Registration or filing of an order in this tribe is not required for the enforcement of a valid foreign protection order pursuant to this chapter.

#### Section 504 Registration of Order

- A. Any individual may register a foreign protection order in this tribe. To register a foreign protection order, an individual shall:
  - 1. Present a certified copy of the order to the Clerk of the Court; or
  - 2. Present a certified copy of the order to a law enforcement officer and request that the order be registered with the Clerk of the Trial Court.
- B. Upon receipt of a foreign protection order, the Clerk of the Court shall register the order in accordance with this section. After the order is registered, the Clerk shall furnish to the individual registering the order a certified copy of the registered order.
- C. The Clerk of the Court shall register an order upon presentation of a copy of a protection order which has been certified by the issuing tribe or state. A registered foreign protection order that is inaccurate or is not currently in effect must be corrected or removed from the registry in accordance with the law of this tribe.
- D. An individual registering a foreign protection order shall file an affidavit by the protected individual stating that, to the best of the protected individual's knowledge, the order is currently in effect.
- E. A fee may not be charged for the registration of a foreign protection order.

#### Section 505 Immunity

The tribal law enforcement agency, or law enforcement officer, Attorney General, prosecuting attorney, clerk of the Court, or any tribal official acting in an official capacity, are immune from civil and criminal liability for an act or omission arising out of the registration of a foreign protection order or the detention or arrest of an alleged violator of a foreign protection order if the act or omission was done in good faith in an effort to comply with this chapter.

#### Section 506 Other Remedies

A protected individual who pursue remedies under this Act is not precluded from pursuing other legal or equitable remedies against the respondent.

#### Section 507 Uniformity of Application and Construction

In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among tribes or states that enact it.

#### Section 508 Severability

If any provision of this Chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.