

CHAPTER 8D  
DOMESTIC AND FAMILY VIOLENCE PROTECTION AND PREVENTION ACT

8D-1 TITLE AND PURPOSE

The purpose of this Act is to provide victims of domestic or family violence the maximum protection from further violence, which the law, and those who enforce the law, can provide. It is the intent of the Kootenai Tribe of Idaho that the laws against domestic and family violence be enforced without requiring that the persons be married, cohabitating or presently involved in a relationship. It is the further intent of the Kootenai Tribe of Idaho that the laws against domestic and family violence be enforced to the furthest extent allowed by law.

8D-2 DEFINITIONS

8D-2.01 Unless the context requires otherwise, terms in this Act are defined as follows:

(1) "Domestic or family violence" shall mean the occurrence of one or more of the following acts by a family or household member, but does not include acts of self-defense by the victim:

- (a) Attempting to cause or causing physical harm, bodily injury or assault to another family or household member;
- (b) Placing a family or household member in fear of the infliction of physical harm, bodily injury or assault;
- (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 emotional distress.

(2) "Family or household members" shall mean

- (a) Current or former spouses;

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

(c) Persons who are engaged in or have engaged in a relationship;

(d) Persons who have a child in common or who are expecting a child together;

(e) Persons related by blood, adoption or marriage; and

(f) Minor children, foster children or adopted children of persons described in (a) through (e) above.

(3) "Bodily injury" shall mean any act, except one done in self-defense, that results in physical injury, pain, illness or an impairment of a physical condition or sexual abuse.

(4) "Causing apprehension of bodily injury" shall mean any physical act, including the utterance of verbal threats, which causes another person reasonably to fear serious bodily injury or death.

(5) "Causing emotional distress" shall mean engaging in conduct that would cause a reasonable person emotional distress and does in fact cause emotional distress to the person. Unless the presumption is rebutted by a preponderance of the evidence, the following types of conduct will be presumed to cause emotional distress:

(a) Creating a disturbance at a person's place of employment or school;

(b) Repeatedly telephoning a person's place of employment or residence;

(c) Repeatedly following a person in a public place or places;

- (d) Repeatedly contacting by means of electronic communications, including but not limited to, telephones, cellular telephones, and computers, whether or not a conversation ensues;
- (e) Repeatedly keeping a person under surveillance by remaining present outside his or her home, school, place of employment, vehicle or other place occupied by the person or by peering in the person's windows;
- (f) Improperly concealing a minor child from a person with sole or joint custody of the minor, repeatedly threatening to improperly remove the person's minor child from the jurisdiction or from his or her physical care, repeatedly threatening to conceal the person's minor child or making a single such threat following an actual or attempted improper removal or concealment, unless the removal or attempted removal was made while fleeing from an incident or pattern of domestic violence; or
- (g) Threatening physical force, confinement or restraint.
- (6) "Program of intervention for perpetrators" or "Batterers Intervention Program" shall mean a specialized program that:
- (a) Accepts perpetrators of domestic or family violence into treatment or educational classes to satisfy court orders;
- (b) Offers treatment to perpetrators of domestic or family violence; or
- (c) Offers classes or instruction to perpetrators of domestic or family violence.
- (7) "Advocate" shall mean an employee of, or volunteer for, a program for victims of domestic or family violence who has a primary function of rendering advice, counseling or assistance to victims of domestic or family violence, supervising the employees or volunteers of the program or administering the program.
- (8) "Ex Parte Protection Order" shall mean a temporary order issued by a court of competent jurisdiction which restrains any person, Indian or non-Indian, from harassing, annoying, stalking, contacting or coming within a certain proximity to another person.
- (9) "Final Order of Protection" shall mean an order issued by a court of competent jurisdiction which restrains any person, Indian or non-Indian, either permanently or for a specified period of time, from harassing, annoying, stalking, contacting or coming within a certain proximity to another person.
- (10) "Mutual Protection Order" shall mean an order issued by a court of competent jurisdiction that restrains both parties to a proceeding from harassing, annoying, stalking, contacting or coming within a certain proximity to another person.
- (11) "Issuing Court" shall mean a court that issues an ex parte or final order of protection against a person.
- (12) "Enforcing Court" shall mean a court that recognizes and enforces an ex parte or final order of protection, against a person, issued by another court.
- (13) "Full Faith and Credit" shall mean the act of enforcing an ex parte or final order of protection from another court as if it were the order of the Kootenai Tribal Court.
- (14) "Registration" shall mean the act of filing a protection order issued by another court with the Kootenai Tribal Court or with the Kootenai Tribal Police Department.

8D-3 REGISTRATION AS DOMESTIC VIOLENCE OFFENDER OR PERSON SUBJECT TO PROTECTIVE ORDER

All individuals on the Reservation must inform the Kootenai Tribal Police Department of any convictions for domestic violence offenses or if they are subject to a protective order.

8D-4 DUTIES OF LAW ENFORCEMENT OFFICER TO VICTIM OF DOMESTIC OR FAMILY VIOLENCE; REQUIRED NOTICE TO VICTIM

8D-4.01 A Police Officer who responds to an allegation of domestic or family violence should use all reasonable means to protect the victim and prevent further violence, which may include:

- (1) Taking any action necessary to provide for the safety of the victim and any other family or household member;
- (2) Confiscating weapons pursuant to 8D-5;
- (3) Facilitating transportation for the victim and any minor child to a shelter or other place of safety;
- (4) Assisting the victim in removing essential personal effects from the place where the alleged offense occurred;
- (5) Assisting the victim and any minor child in seeking medical treatment, including obtaining transportation to a medical facility; or
- (6) Giving the victim immediate and adequate notice of the rights of victims and the remedies and services available to victims of domestic or family violence.

8D-4.02 As part of the notice required by 8D-4.01(6), the Police Officer must give a written notice to the victim, which must include at a minimum the following:

"If you are the victim of domestic or family violence and you believe that law enforcement protection is needed for your physical safety, you have the right to request that the Police Officer assist in providing for your safety. You may request an emergency order for protection. You may also request that the Police Officer assist you in obtaining your essential personal effects and locating a safe place, such as a shelter, a family member's or a friend's residence, or a similar place of safety. If you are in need of medical treatment, you have the right to request that the Police Officer assist you in seeking medical treatment. You may request a copy of the Police Officer's report at no cost to you.

"You have the right to request a meeting with the Tribal Prosecutor to discuss potential criminal charges. You also have the right to file a petition with the Kootenai Tribal Court requesting an order for protection from domestic or family violence, which could include any of the following orders:

- (1) An order enjoining the perpetrator from threatening to commit or committing further acts of domestic or family violence;
- (2) An order prohibiting the perpetrator from intimidating, harassing, menacing, annoying, telephoning, contacting or otherwise interfering or communicating with you, directly or indirectly;
- (3) An order removing the perpetrator from your residence and a reasonable area surrounding the residence;
- (4) An order directing the perpetrator to stay away from your

residence, school, place of employment or any other specified place frequented by you or another family or household member;

(5) An order informing the perpetrator that federal law prohibits persons subject to a protective order from using or possessing any firearm or other weapon specified by the Court;

(6) An order granting you possession and use of the automobile and other essential personal effects;

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

(8) An order denying the perpetrator visitation;

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

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

"The forms you need to obtain an order for protection are available from the Court Clerk or Kootenai Tribal Police Department. A list of the resources available relating to domestic and family violence, treatment of injuries and places of safety and shelters is attached.

"You also have the right to seek reimbursement for losses suffered as a result of the domestic or family violence, including medical and moving expenses, loss of earnings or support and other expenses for injuries sustained and damage to your property. This can be done without an

attorney or advocate in the Kootenai Tribal Court."

8D-4.03 The written notice described in this section must not include the addresses of shelters, unless the location is public knowledge.

8D-5 AUTHORITY OF LAW ENFORCEMENT OFFICER TO SEIZE WEAPONS

8D-5.01 If a Police Officer investigating a crime involving domestic violence determines that it is necessary to protect the victim or the victim's family from domestic violence or to protect the officer or the public during the investigation, the officer may:

(1) Seize a deadly weapon in plain view of the officer; and

(2) If a firearm was actually possessed during or used in the domestic violence, seize all deadly weapons owned, used, possessed or within the control of the alleged perpetrator.

8D-5.02 When an officer seizes a weapon pursuant to this section, the weapon shall not be returned to the alleged perpetrator of domestic or family violence until the case has been resolved through dismissal of charges or acquittal. In the event of conviction, the weapon shall not be returned to the perpetrator of domestic or family violence and shall be disposed of in accordance with applicable procedures.

8D-6 MANDATORY ARREST FOR CRIMES INVOLVING DOMESTIC VIOLENCE, VIOLATION OF PROTECTIVE ORDERS AND VIOLATION OF CONDITIONS OF RELEASE

8D-6.01 Except as provided in 8D-6.02 and 8D-6.03, a Police Officer, with or without a warrant, shall arrest a person if the officer has probable cause to believe the person has, either in or outside the presence of the officer, within the previous twelve (12) hours:

(1) Committed domestic violence, whether the crime is a felony or a misdemeanor;

(2) Committed the crime of violating a protective order;

(3) Violated a condition of release.

8D-6.02 If a Police Officer receives complaints of domestic violence from more than one person arising from the same incident, the officer shall evaluate the conduct of each person to determine who was the principal physical aggressor. If the officer determines that one person was the principal physical aggressor, the other person or persons need not be arrested. In determining whether a person is a principal physical aggressor, the officer shall consider:

(1) Prior complaints of domestic violence;

(2) The relative severity of the injuries inflicted on each person;

(3) The likelihood of future injury from domestic violence to each person; and

(4) Whether one of the persons acted in defense of self or others.

8D-6.03 A Police Officer is not required to make an arrest under this section if there exists extraordinary circumstances corroborated by testimony of third parties showing an arrest is inappropriate.

8D-6.04 When investigating a crime involving domestic violence, a Police Officer may not threaten or suggest the possible arrest of all persons involved in the same incident in a manner that would have a tendency to discourage requests for intervention by law enforcement in incidents involving domestic violence.

8D-6.05 In addition to the contents of any other report, a Police Officer who does not make an arrest after investigating a complaint of

domestic violence, or who arrests two or more persons based on the same incident, shall describe in writing the reasons for not making an arrest or for arresting more than one person.

8D-6.06 A person may not bring a civil action for damages for a failure to comply with the provisions of this section.

8D-7 JURISDICTION

The Kootenai Tribal Court has jurisdiction to hear a cause of action for an order for protection and issue such an order if either the petitioner or the respondent is a citizen of the Kootenai Tribe or resides or is employed within the Kootenai Indian Reservation or Kootenai Indian Country.

8D-8 CRIMINAL CASE MAY NOT BE DISMISSED BECAUSE CIVIL COMPROMISE IS REACHED

The Kootenai Tribal Court may not dismiss a criminal complaint charging domestic or family violence for the sole reason that a civil compromise or settlement is reached.

8D-9 ELIGIBLE PETITIONERS FOR ORDER

8D-9.01 A person who is or has been a victim of domestic or family violence may file a petition for an order for protection against a family or household member who has committed an act of domestic or family violence.

8D-9.02 A parent, guardian or other representative may file a petition for an order for protection on behalf of a child or dependent person against a family or household member who commits an act of domestic or family violence. Children who are legally married or emancipated may seek relief for themselves.

8D-10 CONTINUING DUTY TO INFORM COURT OF OTHER PROCEEDINGS; EFFECT OF OTHER PROCEEDINGS; DELAY OF RELIEF PROHIBITED; OMISSION OF PETITIONER'S ADDRESS

8D-10.01 At any hearing in a proceeding to obtain an order for protection, each party has a continuing duty to inform the Court of any civil or criminal action involving both parties filed within the previous five years that was not listed in the petition for any reason.

8D-10.02 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 must not delay granting relief because of the existence of a pending action between the parties.

8D-10.03 A petitioner may omit her or his address from all documents filed with the Court. If a petitioner omits her or his address, the petitioner must provide the Court a mailing address. If disclosure of petitioner's address is necessary to determine jurisdiction, the Court may order the disclosure to be made:

- (1) After receiving the petitioner's consent;
- (2) Orally and in chambers, out of the presence of the respondent, with a sealed record to be made; or
- (3) After a hearing if the Court takes into consideration the safety of petitioner and finds such disclosure is in the interest of justice.

8D-11 EMERGENCY ORDER FOR PROTECTION; AVAILABLE RELIEF; AVAILABILITY OF JUDGE OR COURT OFFICER; EXPIRATION OF ORDER

8D-11.01 The Kootenai Tribal Court may issue a written or oral emergency order for protection ex parte when a Police Officer states to

the Court in person or by telephone, and the Court finds reasonable grounds to believe, that:

(1) The petitioner is in immediate danger of domestic or family violence. Immediate danger under this section includes but is not limited to situations in which there is an allegation of a recent incident of domestic or family violence by the respondent or the respondent has recently threatened petitioner with additional bodily harm.

(2) The restrained person represents a credible threat to the physical safety of the petitioner or other person in need of protection.

The order for protection shall expressly prohibit the use, attempted use, or threatened use of physical force against the petitioner or other protected person that would reasonably be expected to cause bodily injury.

8D-11.02 A Police Officer who receives an oral order for protection from the Court must:

- (1) Fill out the form of the order based on the Court's directive and sign the form in the space provided for law enforcement;
- (2) Serve a copy on the respondent;
- (3) Immediately provide the petitioner with a copy of the order; and
- (4) Provide the order to the Court by the end of the next court working day. The Court shall sign the order, after reviewing its contents and making any necessary modifications.

8D-11.03 The Court may grant the following relief in an emergency order for protection:

- (1) An order enjoining the respondent from threatening to commit or committing acts of domestic or family violence against the petitioner and any designated family or household member;
- (2) An order prohibiting the respondent from intimidating, harassing, menacing, annoying, telephoning, contacting or otherwise interfering or

communicating with the petitioner, directly or indirectly;

(3) An order removing and excluding the respondent from the residence of the petitioner and a reasonable area surrounding the residence, regardless of ownership of the residence;

(4) An order requiring the respondent to stay away from the residence, school, place of employment of the petitioner or any specified place frequented by the petitioner and any designated family or household member;

(5) An order prohibiting the respondent from using or possessing a firearm or other weapon specified by the Court and informing the respondent that federal law prohibits the respondent from using or possessing a firearm or other weapon specified by the Court;

(6) An order granting possession and use of an automobile and other essential personal effects to the petitioner, and directing the appropriate law enforcement officer to accompany the petitioner to the residence of the parties to ensure that the petitioner is safely restored to possession of the residence, automobile and other essential personal effects, or to supervise the petitioner's or respondent's removal of personal belongings;

(7) An order granting temporary custody of a child to the petitioner;

(8) An order prohibiting the respondent from removing a child from the jurisdiction of the Court; and

(9) An order granting such other relief as the Court deems necessary to protect and provide for the safety of the petitioner and any designated family or household member.

8D-11.04 A judge or other court officer with authority to issue an order for protection shall be available twenty-four (24) hours a day to hear petitions for emergency orders for protection.

8D-11.05 An emergency order for protection expires thirty (30) days after issuance.

8D-12 ORDER FOR PROTECTION; MODIFICATION OF ORDERS; RELIEF AVAILABLE EX PARTE; RELIEF AVAILABLE AFTER HEARING; DUTIES OF THE COURT; DURATION OF ORDER

8D-12.01 If it appears from a petition for an order for protection or a petition to modify an order for protection that domestic or family violence has occurred or a modification of an order for protection is required, the Court may:

(1) Without notice or hearing, immediately issue an order for protection ex parte or modify an order for protection ex parte as it deems necessary to protect the petitioner; or

(2) Upon notice, issue an order for protection or modify an order after a hearing, whether or not the respondent appears.

8D-12.02 The Court may issue an order for protection if it finds reasonable grounds to believe, that:

(1) The petitioner is in immediate danger of domestic or family violence. Immediate danger under this section includes but is not limited to situations in which there is an allegation of a recent incident of domestic or family violence by the respondent or the respondent has recently threatened petitioner with additional bodily harm.

(2) The restrained person represents a credible threat to the physical safety of the petitioner or other person in need of protection.

The order for protection shall expressly prohibit the use, attempted use, or threatened use of physical force against the petitioner or other protected person that would reasonably be expected to cause bodily injury.

8D-12.03 The Court may grant the relief available in 8D-11, Emergency Orders for Protection, and any of the following relief:

(1) An order specifying arrangements for visitation with any child by the respondent and requiring supervision of that visitation by a third party or denying visitation if necessary to protect the safety of the petitioner or the child. Visitation arrangements must not compromise any other remedy provided by the Court by requiring or encouraging contact between the petitioner and respondent;

(2) An order prohibiting the respondent from transferring, encumbering or otherwise disposing of specified property mutually owned or leased by the parties;

(3) An order requiring the respondent to pay attorney's fees;

(4) An order requiring the respondent to:

(a) Pay rent or make payment on a mortgage on the petitioner's residence and pay for the support of the petitioner and child if the respondent is found to have a duty to support the petitioner or child;

(b) Reimburse the petitioner or other person for any expenses associated with the domestic or family violence, including but not limited to loss of earnings or other support, out-of-pocket losses for injuries sustained, cost of counseling, shelter expenses, moving or other travel expenses and cost of repair or replacement of property damaged or taken;

(c) Pay the costs and fees incurred by the petitioner in bringing the action;

(d) Pay an award for emergency monetary relief to the petitioner and other dependents, if any; and

(e) Pay compensation for pain and suffering and punitive damages where appropriate.

8D-12.04 The Court shall:

(1) Cause the order to be delivered to the Kootenai Tribal Police Department for service;

(2) Take reasonable steps to ensure that the respondent and the petitioner, if present, understand the order for protection;

(3) Transmit, by the end of the next court working day after the order is issued, a copy of the order for protection to any non-tribal law enforcement agencies designated by the petitioner; and

(4) Transmit a copy of the order to the Boundary County Sheriff's Office and the State District Court.

8D-12.05 An order for protection will be binding upon the parties to the action, their officers, agents, servants or employees, and any other person in active concert or participation with them.

8D-12.06 An order for protection or a modification of an order for protection issued ex parte or upon notice and hearing is effective until further order of the Court, notwithstanding the acts of the parties. Temporary reconciliation will not revoke an order.

#### 8D-13 REQUIRED HEARINGS; DUTY OF COURT WHEN ORDER FOR PROTECTION DENIED

8D-13.01 If the Court issues an order for protection or a modification of an order for protection ex parte, the Court shall set a date for a hearing on the petition within thirty (30) days after service of the order or modification. The Court may continue the hearing for good cause shown. The Court shall notify both parties by first class mail or personal service by the Kootenai Tribal Police Department of the date and time of the hearing.



8D-13.02 The Court shall hold a hearing on the petition within fifteen (15) days after the filing of the petition if the Court issues an order for protection or a modification of an order ex parte and such order awards temporary custody of a minor child to the petitioner, excludes the respondent from the residence of the petitioner or awards possession and use of an automobile to the petitioner. Such a hearing must be given precedence over all matters except older matters of the same character.

8D-13.03 In a hearing held pursuant to this section the Court may afford relief available in Emergency Protection Order proceedings or modifications of orders for protection. If the respondent seeks relief concerning an issue not raised by the petitioner, the Court may continue the hearing at the petitioner's request.

8D-13.04 If the Court denies a petition for an order ex parte or a petition to modify an order for protection that is requested without notice to the respondent, the Court must inform the petitioner of his or her right to request a hearing upon notice to the respondent.

#### 8D-14 EXTENSION OF FINAL ORDER FOR PROTECTION

8D-14.01 Prior to the expiration of a final order for protection, the petitioner may apply for a modification of the order that will extend its effective time period.

8D-14.02 The final order for protection may be modified by extending the time period up to five (5) years. The Court may, in its discretion, issue an order for protection of permanent duration, particularly if the petitioner has been subjected to domestic or family violence which required hospitalization or which resulted in life threatening injuries, significant disfigurement, impairment or disability.

8D-14.03 If there has been no violation of the existing order prior to the application for extension, the Court will take this fact as evidence of the effectiveness of the order for protection in

assuring the safety of the petitioner. The Court may not use the fact that there has been no violation of the order for protection to determine that no further need for the order for protection exists.

#### 8D-15 EFFECT OF ACTION BY PETITIONER OR RESPONDENT ON ORDER

If a respondent is excluded from the residence of a petitioner or ordered to stay away from the petitioner, an invitation by the petitioner to do an act prohibited by the order does not waive or nullify the order for protection.

#### 8D-16 DENIAL OF RELIEF PROHIBITED

The Court may not deny a petitioner relief under a petition for an order for protection solely because of a lapse of time between an act of domestic or family violence and the filing of the petition. Previous reconciliation prior to filing the current action must not be grounds for denying or terminating an order for protection.

#### 8D-17 MUTUAL ORDERS FOR PROTECTION PROHIBITED

The Court must not issue a mutual order for protection to opposing parties. Where opposing parties seek orders of protection against each other, or a party that is the respondent in an order for protection seeks an order against the petitioner, the Court must determine which party is the principal physical aggressor in accordance with 8D-6.02. Following such determination, the Court must dismiss the petition filed by the party who is determined to be the principal physical aggressor.

#### 8D-18 COURT-ORDERED AND COURT-REFERRED MEDIATION, MARRIAGE COUNSELING OR RECONCILIATION OF CASES INVOLVING DOMESTIC OR FAMILY VIOLENCE PROHIBITED

The Court must not order or refer parties into mediation, marriage counseling or reconciliation for resolution of the issues in a petition for an

order for protection. The prohibition contained in this section does not apply to Batterer Intervention Programs.

#### 8D-19 COURT COSTS AND FEES

Fees for filing and service of process will not be charged for any proceeding seeking only the relief provided in this Chapter.

8D-20 - 8D-29 [RESERVED]

#### 8D-30 FOREIGN ORDERS FOR PROTECTION; POLICY

It shall be the policy of the Kootenai Tribe of Idaho to ensure that domestic violence protection orders issued by other jurisdictions, including tribal, First Nation, state, federal, territorial and Canadian federal, provincial and territorial courts, are honored and enforced by the Kootenai Tribal Court and the Kootenai Tribal Police Department.

#### 8D-31 REGISTRATION OF FOREIGN PROTECTION ORDER WITH THE KOOTENAI TRIBAL COURT

Any person who has received a protection order, either ex parte or permanent, from another court, may file the protection order in the Kootenai Tribal Court and request that the Kootenai Tribal Court grant full faith and credit to that protection order. Immediately upon the filing of a protection order with the Court, a Judge shall review such filing and if it appears from the face of the protection order it meets the requirements of 8D-32, shall enter an order recognizing the protection order. The order shall immediately be forwarded to the Kootenai Tribal Police Department. A person shall be not charged a filing or registration fee for the filing of a foreign protection order. A person protected by a protection order issued by another court may receive law enforcement protection pending the Kootenai Tribal Court's determination.

#### 8D-32 ENFORCEMENT OF FOREIGN PROTECTION ORDERS

8D-32.01 The Kootenai Tribal Court shall enforce a protection order, either ex parte or permanent, and all provisions of that protection order, including child custody and property awards, if all the following are satisfied:

(1) The court issuing the order had jurisdiction over the parties and matter under the law of the jurisdiction; and

(2) Reasonable notice and opportunity to be heard was given to the person against whom the order is sought sufficient to protect that person's right to due process. In the case of ex parte orders, notice and opportunity to be heard must be provided within the time required by the laws of the issuing jurisdiction, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights.

8D-32.02 A protection order issued by another jurisdiction against one who has petitioned, filed a complaint, or otherwise filed a written pleading for protection against abuse by a spouse or intimate partner is not entitled to full faith and credit if:

(1) No cross or counter petition, complaint, or other written pleading was filed seeking such a protection order; or

(2) A cross or counter petition has been filed and the court did not make specific findings that each party was entitled to an order.

8D-32.03 Upon granting full faith and credit to an order by another jurisdiction, the Kootenai Tribal Court shall not notify or require notification of the party against whom a protection order has been issued that the protection order has been registered or filed in the Kootenai Tribal Court, unless requested to do so by the party protected under such order.

8D-33 LAW ENFORCEMENT PROTECTION UNDER FOREIGN PROTECTION ORDERS

Whenever any law enforcement officer of the Tribe is presented with an order, either ex parte or permanent, issued by another court, or verifies the existence of such an order with the court or law enforcement agency of the issuing jurisdiction, which restrains any person from harassing, annoying, stalking, contacting or coming within a certain proximity to another person, that officer shall enforce such order and all provisions of such order, including the award of custody and property in such protection order, as if it were issued by the Kootenai Tribal Court until such time as the Kootenai Tribal Court has had an opportunity to review the order under 8D-32.

8D-34 IMMUNITY FOR GOOD FAITH ENFORCEMENT OF FOREIGN PROTECTION ORDER.

An officer or any other law enforcement official of the Tribe who acts in good faith in enforcing a foreign protection order and its terms shall be immune from suit for wrongful arrest or any other civil or criminal action. This immunity shall extend to a Tribal police officer who arrests a non-Indian for violation of a protection order.

8D-35 LIMITS ON PUBLICATION OF INFORMATION

8D-35.01 Information regarding the registration, filing of a petition for, or issuance of a protection order, restraining order or injunction shall not be made publicly available if such publication would be likely to publicly reveal the identity or location of the party protected under such order. The Tribe may share court-generated and law enforcement-generated information contained in secure, governmental registries for protection order enforcement purposes.

[8D-36 - 8D-39 [RESERVED]]

8D-40 FACTORS IN DETERMINING CUSTODY AND VISITATION

8D-40.01 In every proceeding where there is at issue a dispute as to the custody of a child, a determination by the Court that domestic or family violence has occurred raises a rebuttable presumption that it is detrimental to the child and not in the best interest of the child to be placed in sole custody, joint legal custody or joint physical custody with the perpetrator of domestic or family violence and that it is in the best interest of the child to reside with the parent who is not a perpetrator of domestic or family violence in the location of that parent's choice.

8D-40.02 In addition to the presumptions raised by 8D-40.01 and any other factors relevant to the Court's decision, the Court must consider in a proceeding in which the custody of a child or visitation by a parent is at issue and in which the Court has made a finding of domestic or family violence the following:

(1) The safety and well-being of the child and of the parent who is the victim of domestic or family violence; and

(2) The perpetrator's history of causing physical harm, bodily injury or assault, or causing reasonable fear of physical harm, bodily injury or assault, to another person.

8D-40.03 If a parent is absent or relocated because of an act of domestic or family violence by the other parent, the absence or relocation is not a factor that weighs against the parent in determining custody or visitation.

8D-42 CONDITIONS OF VISITATION IN CASES INVOLVING DOMESTIC AND FAMILY VIOLENCE

8D-42.01 The Court may award visitation by a parent who committed domestic or family violence only if the Court finds that adequate provision for the safety of the child and the parent who is a victim of domestic or family violence can be made.

8D-42.02 In a visitation order, the Court may:

(1) Order an exchange of a child to occur in a protected setting;

(2) Order another person or agency to supervise the visitation;

(3) Order the perpetrator of domestic or family violence to attend and complete, to the satisfaction of the Court, a Batterers Intervention Program or other designated counseling as a condition of the visitation;

(4) Order the perpetrator of domestic or family violence to abstain from possession or consumption of alcohol or controlled substances during the visitation and for twenty-four (24) hours preceding the visitation;

(5) Order the perpetrator of domestic or family violence to pay a fee to defray the costs of supervised visitation;

(6) Prohibit overnight visitation;

(7) Require a bond from the perpetrator of domestic or family violence for the return and safety of the child; and

(8) Impose any other condition that is deemed necessary to provide for the safety of the

child, the victim of domestic or family violence or other family or household member.

8D-42.03 Whether or not visitation is allowed, the Court may order the address of the child and the victim to be kept confidential.

8D-42.04 The Court may refer but must not order an adult who is a victim of domestic or family violence to attend counseling relating to the victim's status or behavior as a victim, individually or with the perpetrator of domestic or family violence, as a condition of receiving custody of a child or as a condition of visitation.

8D-42.05 If the Court allows a family or household member to supervise visitation, the Court must establish conditions to be followed during visitation.

8D-44 DOMESTIC VIOLENCE LEAVE

Victims of domestic violence are oftentimes forced to flee from a perpetrator in order to avoid future danger and violence. In so fleeing, victims who are employed frequently miss days of employment. Employers on the Kootenai Indian Reservation, including the Tribe, shall grant leave with pay or leave without pay due to domestic violence related absences not to exceed twelve (12) weeks.