Midwest Native Coalition for Justice & Peace

STATUTORY SUPPLEMENT

FOR DOMESTIC VIOLENCE AND PROTECTION ORDERS

SAC & FOX NATION OF MISSOURI IN KANSAS & NEBRASKA

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Sac and Fox Laws and Definitions

Title 30. Tribal Domestic Violence Code

Section 103. Definitions.

(a) Unless the context otherwise requires, as used in the Sac and Fox Nation of Missouri in Kansas and Nebraska Tribal Code:

(1) "Domestic violence/abuse" 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:

(i) Attempting to cause or causing physical harm to another family or household member;

(ii) Placing a family or household member in fear of physical harm; or

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

(b) "Family or household members" include:

(1) Adults or minors who are current or former spouses;

(2) Adults or minors who are dating or who have dated;

(3) Adults or minors who are engaged in or who have engaged in a sexual relationship;

(4) Adults or minors who are related or formerly related by marriage as recognized by western or Sac & Fox tradition;

(5) Persons who have a child in common; and

(6) Minor children of a person in a relationship that is described in paragraphs (a) through (e) above.

Section 201. "Crime involving domestic violence" defined.

Crimes involving domestic violence as defined in Section 103 are often times already defined under the existing Sac and Fox Nation of Missouri in Kansas and Nebraska Tribal Code. The purpose of this ordinance is to clarify that domestic violence is a separate crime punishable separate and apart from the underlying crime, and to acknowledge that when the following crimes are perpetrated against a family or household member, a finding of such shall trigger the application of this ordinance. The crime of Domestic Violence occurs when a family or household member commits one or more of the following offenses against another family or household member:

Section 202. Violation of certain orders for protection is a misdemeanor.

Violation of one of the following orders issued in accordance with the Sac and Fox Domestic Violence Code is a misdemeanor, to be designated and charged as a Violation of Order for Protection:

(a) An order enjoining the respondent from threatening to commit or committing acts of domestic violence against the petitioner or other family or household member;

(b) An order prohibiting the respondent from harassing, annoying, telephoning, contacting, or otherwise communicating verbally or in writing with the petitioner directly or indirectly through family members, relations by marriage, friends, and co-workers;

(c) An order removing and excluding the respondent from the residence of the petitioner;

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

(e) An order granting temporary custody and child support regarding children, denying visitation or outlining specific visitation conditions and restrictions, including supervised visitation;

(f) An order prohibiting the respondent from using or possessing a firearm or other weapon as specified by the court and in accordance with Title 18 U.S.C. 922;

(g) An order requiring the respondent to attend a domestic violence intervention program; and

(h) An order requiring the respondent to obey all laws of the Sac and Fox Nation of Missouri in Kansas and Nebraska.

The petitioner who is granted an order for protection cannot violate or be arrested for aiding or abetting a violation of her/his own order for protection. It shall not be a defense to a charge of violation of an order for protection under this section that the victim consented to the violation by encouraging contact or a violation of the order of protection. A violation of an order for protection shall be a criminal violation punishable under tribal, state, or federal law.

CHAPTER 3

CIVIL ORDERS FOR PROTECTION

Section 301. Eligible petitioners for order.

(a) A person who is or has been a victim of domestic violence may file a petition for an order for protection against any person who has threatened or has committed an act of domestic violence as defined in Section 201, and is a family or household member as defined in Section 103 of this code.

(b) A parent, guardian, or other representative may file a petition for an order for protection on behalf of a child or family or household member, or former household member on behalf of a child against a family or household or former household member, who commits an act of domestic violence.

(c) Issuance of an order for protection must arise from a situation of domestic violence as defined by Section 201 of this code.

Section 314. Enforcement of foreign orders for protection.

(a) A copy of an order for protection issued by another tribal, state, county, or other court jurisdiction, shall be given full faith and credit by Sac and Fox Nation of Missouri in Kansas and Nebraska tribal law enforcement authorities as having the same force and effect as one issued by the Sac and Fox

Federal Laws and Definitions

Violence Against Women Act

Protection Order Definition

18 U.S.C. § 2266

(5) Protection order.—The term "protection order" includes—

(A) any injunction, restraining order, or any other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence, or contact or communication with or physical proximity to, another person, including any temporary or final order issued by a civil or criminal court whether obtained by filing an independent action or as a pendente lite 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

(B) any support, child custody or visitation provisions, orders, remedies or relief issued as part of a protection order, restraining order, or injunction pursuant to State, tribal, territorial, or local law authorizing the issuance of protection orders, restraining orders, or injunctions for the protection of victims of domestic violence, sexual assault, dating violence, or stalking.

Relationship Guidance

18 U.S.C. § 2266

(7) Spouse or intimate partner.—The term "spouse or intimate partner" includes—

(A) for purposes of—

(i) sections other than 2261A—

(I) a spouse or former spouse of the abuser, a person who shares a child in common with the abuser, and a person who cohabits or has cohabited as a spouse with the abuser; or

(II) a person who is or has been in a social relationship of a romantic or intimate nature with the abuser, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship; and

(ii) section 2261A—

(I) a spouse or former spouse of the target of the stalking, a person who shares a child in common with the target of the stalking, and a person who cohabits or has cohabited as a spouse with the target of the stalking; or

(II) a person who is or has been in a social relationship of a romantic or intimate nature with the target of the stalking, as determined by the length of the relationship, the type of the relationship, and the frequency of interaction between the persons involved in the relationship.[1]

(B) any other person similarly situated to a spouse who is protected by the domestic or family violence laws of the State or tribal jurisdiction in which the injury occurred or where the victim resides.

Full Faith and Credit

18 U.S.C. § 2265

(a) FULL FAITH AND CREDIT.—

Any protection order issued that is consistent with subsection (b) of this section by the court of oneState, Indian tribe, or territory (the issuing State, Indian tribe, or territory) shall be accorded full faith and credit by the court of another State, Indian tribe, or territory (the enforcing State, Indian tribe, or territory) and enforced by the court and law enforcement personnel of the other State, Indian tribal government or Territory [1] as if it were the order of the enforcing State or tribe.

(b) PROTECTION ORDER.—A protection order issued by a State, tribal, or territorial court is consistent with this subsection if—

(1) such court has jurisdiction over the parties and matter under the law of such State, Indian tribe, or territory; and

(2) reasonable notice and opportunity to be heard is 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 State, tribal, or territorial law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights.

(c) CROSS OR COUNTER PETITION.—A protection order issued by a State, tribal, or territorial court 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 such an order.

(d) NOTIFICATION AND REGISTRATION.—

(1) NOTIFICATION.—

A State, Indian tribe, or territory according full faith and credit to an order by a court of another State, Indian tribe, or territory 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 that enforcing State, tribal, or territorial jurisdiction unless requested to do so by the party protected under such order.

(2) NO PRIOR REGISTRATION OR FILING AS PREREQUISITE FOR ENFORCEMENT.—

Any protection order that is otherwise consistent with this section shall be accorded full faith and credit, notwithstanding failure to comply with any requirement that the order be registered or filed in the enforcing State, tribal, or territorial jurisdiction.

(3) LIMITS ON INTERNET PUBLICATION OF REGISTRATION INFORMATION.—

A State, Indian tribe, or territory shall not make available publicly on the Internet any information regarding the registration, filing of a petition for, or issuance of a protection order, restraining order, or injunction in either the issuing or enforcing State, tribal or territorial jurisdiction, if such publication would be likely to publicly reveal the identity or location of the party protected under such order. A State, Indian tribe, or territory may share court-generated and law enforcement-generated information contained in secure, governmental registries for protection order enforcement purposes. The prohibition under this paragraph applies to all protection orders for the protection of a person residing within a State, territorial, or Tribal jurisdiction, whether or not the protection order was issued by that State, territory, or Tribe.

(e) TRIBAL COURT JURISDICTION.—

For purposes of this section, a court of an Indian tribe shall have full civil jurisdiction to issue and enforce protection orders involving any person, including the authority to enforce any orders through civil contempt proceedings, to exclude violators from Indian land, and to use other appropriate mechanisms, in matters arising anywhere in the Indian country of the Indian tribe (as defined in section 1151) or otherwise within the authority of the Indian tribe.

Kansas Laws and Definitions

Protection From Abuse Act

Kan. Stat. § 60-3102.

Definitions. As used in the protection from abuse act:

(a) "Abuse" means the occurrence of one or more of the following acts between intimate partners or household members:

(1) Intentionally attempting to cause bodily injury, or intentionally or recklessly causing bodily injury.

(2) Intentionally placing, by physical threat, another in fear of imminent bodily injury.

(3) Engaging in any sexual contact or attempted sexual contact with another person without consent or when such person is incapable of giving consent.

(4) Engaging in any of the following acts with a minor under 16 years of age who is not the spouse of the offender:

(A) The act of sexual intercourse; or

(B) any lewd fondling or touching of the person of either the minor or the offender, done or submitted to with the intent to arouse or to satisfy the sexual desires of either the minor or the offender, or both.

(b) "Intimate partners or household members" means persons who are or have been in a dating relationship, persons who reside together or who have formerly resided together or persons who have had a child in common.

(c) "Dating relationship" means a social relationship of a romantic nature. A dating relationship shall be presumed if a plaintiff verifies, pursuant to K.S.A. 53-601, and amendments thereto, that such relationship exists. In addition to any other factors the court deems relevant, the court shall consider the following factors in making a determination of whether a relationship exists or existed include:

(1) Nature of the relationship;

(2) length of time the relationship existed;

(3) frequency of interaction between the parties; and

(4) time since termination of the relationship, if applicable.

Kansas Uniform Interstate Enforcement of Domestic Violence Protection Orders Act

Kan. Stat. § 60-31b02

Definitions. In this act, these terms mean the following:

(a) "Foreign protection order" means a protection order issued by a tribunal of another state.

(b) "Issuing state" means the state whose tribunal issues a protection order.

(c) "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.

(d) "Protected individual" means an individual protected by a protection order.

(e) "Protection order" means an injunction or other temporary or final order issued, by a tribunal under the domestic violence, family violence or anti-stalking laws of the issuing state, broadly construed, to prevent an individual from engaging in violent or threatening acts against, harassment of, contact or communication with, or physical proximity to, another individual.

(f) "Respondent" means the individual against whom enforcement of a protection order is sought.

(g) "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. The term includes an Indian tribe or band that has jurisdiction to issue protection orders.

(h) "Tribunal" means a court, agency or other entity authorized by law to issue or modify a protection order.

Kan. Stat. § 60-31b03.

Judicial enforcement of order. (a) A person authorized by the law of this state to seek enforcement of a protection order may seek enforcement of a valid protection order in a court of this state. The court shall enforce the terms of the protection order, including terms that provide relief that a court of this state would lack power to provide but for this section. The court 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 complaint, petition or motion filed by or on behalf of an individual seeking protection. In a proceeding to enforce a foreign protection order, the court shall follow the procedures of this state for the enforcement of protection orders.

(b) A court of this state may not enforce a foreign protection order issued by a tribunal of a state that does not recognize the standing of a protected individual to seek enforcement of that order.

(c) A court of this state 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.

(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 state; and

(4) was issued after the respondent was given reasonable notice and had an opportunity to be heard before the tribunal issued the order or, in the case of an ex parte order, 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 court of this state 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 state; and

(2) the tribunal of the issuing state made specific findings in favor of the respondent.

Kan. Stat. § 60-31b04

Nonjudicial enforcement of order. (a) A law enforcement officer of this state, 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 court of this state. 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 state may consider other information in determining whether there is probable cause to believe that a valid foreign protection order exists.

(c) If a law enforcement officer of this state 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 state is not required for the enforcement of a valid foreign protection order pursuant to this act.

Kan. Stat § 60-31b05

Registration of order. (a) Any individual may, but is not required, to register a foreign protection order in this state. To register a foreign protection order, an individual shall present a certified copy of the order to the sheriff in the county where the protection order will be enforced. Pursuant to K.S.A. 60-3112, and amendments thereto, the sheriff shall contact the issuing jurisdiction to verify the order and request that such jurisdiction enter the order, if it has not already been entered, into the national criminal information center and other appropriate databases.

(b) A fee shall not be charged for the registration of a foreign protection order.

(c) No sheriff's department accepting or registering a foreign protection order under this section may notify or require notification of the party against whom the protection order was filed of its filing or registration unless the individual protected by the protection order requests that the sheriff's department do so and the respondent has not already been notified of such filing or registration.

Kansas Court Rules

Rule 110C. Recognition of Tribal Judgements – District Courts

(a) **Definitions**.

(1) **"Judicial officer"** means a judge, justice, magistrate, or other officer authorized under federal or tribal law to resolve disputes and enter tribal judgments in a tribal court.

(2) **"Record"** means information on a tangible medium or stored in an electronic format.

(3) **"Tribal court"** means a court or constitutionally established tribunal of a federally

recognized Indian nation, tribe, pueblo, band, or Alaska Native village established under federal law or tribal law, including a court of Indian offenses organized under Title 25, Part 11 of the Code of Federal Regulations.

(4) **"Tribal judgment"** means a final written judgment, decree, or order of a tribal court signed by a judicial officer and filed in a tribal court.

(b) **Recognition of Tribal Judgments—Full Faith and Credit**. A Kansas district court must grant full faith and credit and enforce a tribal judgment if the tribal court that issued the judgment grants full faith and credit to the judgments of the courts of the state of Kansas.

(c) **List of Tribal Courts Granting Full Faith and Credit**. The judicial administrator must maintain a list of the tribal courts that grant full faith and credit to the judgments of the courts of the state of Kansas. The list will include any tribal court that has provided the following documents to the judicial administrator:

(1) a copy of the tribal ordinance, statute, court rule, or other evidence demonstrating that the tribal court grants full faith and credit to the judgments of the courts of the state of Kansas; and

(2) a copy of the tribal ordinance, statute, court rule, or other evidence of the tribal court's requirements for authentication of copies of an official record.

(d) **Filing of Tribal Judgments**. A copy of a tribal judgment authenticated in accordance with K.S.A. 60-465, the applicable act of Congress, or the law of the tribe may be filed with the clerk of the district court of any Kansas county. The district court clerk must treat the tribal judgment in the same manner as a judgment of the district court of any Kansas county that may be enforced or satisfied in a like manner.

(e) **Filing Procedure**.

(1) A tribal judgment filed under this rule must be accompanied by the following:

(A) an affidavit, signed by the filing party or that party's attorney, stating the name and last-known address of each party in the action and the name and last-known address of each party's attorney, if any; and

(B) payment for the docket fee required under K.S.A. 60-3020.

(2) Promptly on the filing of a tribal judgment and affidavit, the filing party must mail notice of the filing of the tribal judgment to the party against whom the judgment was rendered at the address given. The notice must include the name and address of the party filing the judgment and the name and address of the party's attorney, if any. In addition, the party filing the judgment must file a certificate of mailing with the district court clerk within seven days after the date the tribal judgment was filed with the district court clerk.

(f) **Stay of Enforcement.** The party against whom the tribal judgment was rendered may seek a stay of enforcement of the judgment as provided in K.S.A. 60-3004.

(g) **Conditions for Execution or Enforcement.** No execution or other process for enforcement of a tribal judgment filed under this rule may issue until the proof of mailing of the notice has been filed with the district court clerk and 21 days have passed from the date the judgment was filed in the district court.

(h) **Communication Between Courts**.

(1) A district court may communicate with a tribal court concerning a tribal judgment filed under this rule. Except as otherwise provided in subsection (h)(2), a record must be made of the communication and the parties must be informed promptly of the communication and granted access to the record.

(2) Communication between a district court and a tribal court concerning court records and similar ministerial matters may occur without informing the parties. A record need not be made of the communication.

(i) **Other Applicable Statutes, Regulations, and Rules.**

(1) This rule does not modify, limit, or impose additional conditions on the obligation of a district court to follow applicable state and federal statutes, regulations, and rules that provide for recognition and enforcement of judgments or acts of the tribal courts of any federally recognized Indian tribe.

(2) Applicable statutes may include the following:

(A) Violence Against Women Act, 18 U.S.C. § 2265;

(B) Indian Child Welfare Act, 25 U.S.C. § 1911;

(C) National Indian Forest Resources Management Act, 25 U.S.C. § 3106;

(D) American Indian Agricultural Resources Management Act, 25 U.S.C. § 3713;

(E) Full Faith and Credit for Child Support Orders Act, 28 U.S.C. § 1738B;

(F) Uniform Interstate Family Support Act, K.S.A. § 23-3601 et seq.;

(G) Uniform Child-Custody Jurisdiction and Enforcement Act, K.S.A. § 23-37,101 et seq.; and

(H) Uniform Interstate Enforcement of Domestic Violence Protection Orders Act, K.S.A. § 60-31b01 et seq.

IN THE TRIBAL DISTRICT COURT FOR THE
SAC AND FOX NATION OF MISSOURI

_____
Petitioner/Plaintiff
SSN#

Vs. Case No._____

_____
Respondent/Defendant
SSN#

PETITION FOR PROTECTION ORDER

Plaintiff, being sworn, states:

1. (Check one or more)

   ( ) The defendant caused or attempted to cause serious physical harm to

   _____.

   ( ) The defendant threatened _____ with imminent serious physical harm.

   ( ) The defendant has stalked or harassed _____.

2. ( ) The petitioner/plaintiff is a member of the Sac and Fox Nation.
   ( ) The respondent/defendant is a member of the Sac and Fox Nation.

3. The incident causing the filing of this petition occurred on or about (date) _____. (Describe what happened)

_____
_____
_____
_____
_____
_____
_____

Respondent's vital information is:
Name: Height: Weight:
Color of Hair: Color of Eyes:
Other physical or distinguishing characteristics:
Employer:
Address:
Respondent may be located at:

4. The victim and the defendant are related as follows: (Check one)

( ) Married
( ) Divorced
( ) Parent and Child
( ) Persons related by blood
( ) Persons related by marriage
( ) Present spouse of an ex-spouse
( ) Persons living in same household
( ) Persons formerly living in same household
( ) Biological parents of the same child
( ) Not related

5. Answer this question only if the plaintiff is filing on behalf of someone else, minor or incompetent)

( ) Married
( ) Divorced
( ) Parent and Child
( ) Persons related by blood
( ) Persons related by marriage
( ) Present spouse of an ex-spouse
( ) Persons living in the same household
( ) Persons formerly living in the same household
( ) Biological parents of the same child
( ) Not related

6. (Check A or B)

(A) ( ) The victim is in immediate and present danger of abuse from the defendant 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)

( ) Order the defendant not to abuse or injure the victim.
( ) Order the defendant not to visit, assault, molest or otherwise interfere with the victim.

( ) Order the defendant to cease stalking the victim.
( ) Order the defendant to leave the residence located
At: _____ on or before
_____.
( ) Order the defendant who is a minor child to leave the residence located at:
_____ by immediately placing the defendant
in any
Type of care authorized for children taken into custody.

( ) _____describe other relief
that plaintiff requests).

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 defendant and hearing.
(Check one or more)
( ) Order the defendant not to abuse or injure the victim.
( ) Order the defendant not to visit, assault, molest or otherwise
Interfere with the victim.
( ) Order the defendant not to threaten the victim.
( ) Order the defendant to cease stalking the victim.
( ) Order the defendant to leave the residence located at:
_____on or before _____.
Order the defendant who is a minor child to leave the residence located at
_____ by immediately placing the defendant in any
type of care authorized for children taken into custody. Circle age of defendant:
Thirteen (13), Fourteen (14), Fifteen (15), Sixteen (16), Seventeen (17) years.
( ) _____ (Describe any other relief
that plaintiff requests.)
( ) Order the defendant to pay attorney fees of the plaintiff in the sum of
_____ on or before _____.
( ) Order the defendant to pay the court costs of this action in the sum of
$50.00 on or before _____.

8. ( ) Victim is a resident of the Sac and Fox Reservation in Reserve, Kansas
wherein this petition if filed.

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

_____
Plaintiff

02/06/19
TC Approval 02/27/19

Witness my hand and seal, affixed on the _____day of _____,
20 _____.

(Seal)

_____
Court Clerk