

TITLE 4 – CRIMINAL CODE
CHAPTER 3 – DOMESTIC AND FAMILY VIOLENCE

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CHAPTER 3 – DOMESTIC AND FAMILY VIOLENCE

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Amended on February 26, 2014 by Resolution No. C02-28-14 and Ordinance No. 02-14.

Section 1 Purpose (4 PYTC § 3-1)

The purpose of this chapter is to recognize that domestic violence and family violence are serious crimes against society, the Pascua Yaqui Tribe, and the family. The purpose of this chapter is also to provide the victim of domestic violence or family violence the maximum protection from further violence that the law can provide. Furthermore, the purpose of this chapter is to recognize that the strength of the Pascua Yaqui Tribe is family, and that the safety of victims of domestic and family violence, especially children, must be ensured by immediate intervention of law enforcement, prosecution, education, treatment, and other appropriate services. Responses to domestic and family violence shall stress the enforcement of laws to protect the victim and to hold the perpetrator accountable, which will in turn communicate the Tribe's policy that violent behavior against intimate partners or family members is criminal behavior and will not be excused or tolerated. This chapter shall be interpreted and applied to give it the broadest possible scope to carry out these purposes.

Section 10 Definitions (4 PYTC § 3-10)

- (A) "Domestic Violence" means any act or attempted to commit is an offense defined in Title 4, Chapters 1 and 2, if any of the following applies:
- (1) The relationship between the victim and the defendant is one of marriage or former marriage or of person residing or having resided in the same household as intimate or dating partners;
 - (2) The victim and the defendant have a child in common;
 - (3) The victim or the defendant is pregnant by the other;

- (4) The victim and the defendant are or have been in a social relationship of a romantic or intimate nature as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship;
- (B) “Family violence” means the same or similar acts committed in domestic violence, and which are offenses defined in Title 4, Chapter 1 and 2 and dangerous crimes against children as defined at 4 PYTC § 1-111 or child prostitution as defined in section (C) of this chapter when such act is directed towards a family or household member instead of an intimate partner. The dynamics of power and control may not be present. Family violence occurs when the offense is directed at:
- (1) A victim who is related to the defendant or to the defendant’s spouse by blood or court order as a parent, grandparent, child, grandchild, brother or sister or by marriage as a parent-in-law stepparent, stepchild, step-grandchild, brother-in-law or sister-in-law.
 - (2) A victim who is a child that resides or has resided in the same household as the defendant and is related by blood to a former spouse of the defendant or to a person who resided or who has resided in the same household as the defendant.
- (C) “Dating partners” means persons who are or have been in a social relationship or a romantic or intimate nature as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
- (D) “Intimate partners” means spouses, former spouses, persons who are or have been in a martial-like relationship, including same-sex relationships, persons who have a child in common, regardless of whether they have been married or have lived together at any time in a romantic relationship.
- (E) “Child Prostitution” means:
- (1) Causing a minor to engage in prostitution.
 - (2) Using any minor for purposes of prostitution.
 - (3) Permitting a minor under such person’s custody or control to engage in prostitution.
 - (4) Receiving any benefit pursuant to an agreement to participate in the proceeds of prostitution of a minor.
 - (5) Receiving any benefit for or an account of procuring or placing a minor in any place or in the charge or custody of any person for the purpose of prostitution.
 - (6) Financing, managing, supervision, controlling or owing, either alone or in association with others, prostitution activity involving a minor.
 - (7) Transporting or financing the transportation of any minor with the intent that such minor engage in prostitution.

Section 20 Arrest; Mandatory Arrest; Release; Prevention of Future Violence (4 PYTC § 3-20)

- (A) A peace officer may, with or without a warrant, arrest a person if he has probable cause to believe that domestic or family violence has been committed and he has probable cause to believe that the person to be arrested has committed the offense, whether such offense is a felony or a misdemeanor or whether such offense was committed within or without the presence of the peace officer.

- (B) In cases of domestic or family violence involving the infliction of physical injury or involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument, a peace officer shall arrest and take into custody a person, with or without a warrant, if the peace officer has probable cause to believe that domestic or family violence has been committed and he has probable cause to believe that the person to be arrested has committed the offense, whether such offense was committed within or without the presence of the peace officer unless the officer has reasonable grounds to believe the victim will be protected from further injury or the suspect is not available at the time. Failure to make an arrest does not give rise to civil liability.
- (C) A person arrested pursuant to Subsection (A) or (B) of this section may be released from custody in accordance with the rules of criminal procedure or other applicable statute. Any order for release, with or without an appearance bond, shall include pretrial release conditions necessary to provide for the protection of the alleged victim and other specifically designated persons and may provide for additional conditions which the Court deems appropriate, including participation in any counseling programs available to the defendant.
- (D) **Prevention of Future Violence.** When a law enforcement officer has reason to believe that a person has been subject to domestic or family violence, the officer shall use all reasonable means to prevent further violence, including but not limited to:
 - (1) Questioning of the persons present to determine if a firearm is present on the premises and confiscating any weapon involved in the alleged domestic or family violence or taking temporary possession of any weapons found in the household that are in plain view or found pursuant to a consent search, and if the officer reasonably believes that the firearm would expose the victim or another person in the household to a risk of serious bodily injury or death. A firearm seized pursuant to this section shall be held for a minimum of 72 hours, after which time the weapon shall be released by the police department or the prosecutor shall file notice of intent to retain the firearm for up to six months and the owner shall be served with notice and shall have the right to request a hearing to dispute the seizure and for the return of the firearm;
 - (2) Assisting in obtaining transportation of the victim to a shelter if so desired;
 - (3) Assisting the victim in removing essential personal effects;
 - (4) Assisting the victim and children in obtaining necessary medical treatment;

Section 30 Notice (4 PYTC § 3-30)

- (A) When a peace officer responds to a call alleging that domestic or family violence has been or may be committed, the officer shall inform any alleged or potential victim of the procedures and resources available for the protection of such victim including:
 - (1) An order for protection pursuant to Section 60 and an injunction.
 - (2) The emergency telephone number for the local police agency.
 - (3) Telephone numbers for emergency services in the local community.
- (B) A peace officer is not civilly liable for noncompliance with Section 30(A) of this section.

Section 40 Classification (4 PYTC § 3-40)

An offense included in domestic violence carries the classification prescribed in the criminal code in which the offense is classified.

Section 50 Diversion Prohibited; Deferred Sentencing Permitted (4 PYTC § 3-50)

- (A) The Court shall not approve diversion for a perpetrator of domestic or family violence. If the defendant is found guilty of an offense included in domestic violence or family violence the Court may defer sentencing if:
 - (1) The perpetrator meets eligibility criteria established pursuant to subsection (B);
 - (2) Consent of the prosecutor is obtained after consultation with the victim, when the victim is available;
 - (3) A hearing is held in which the perpetrator enters a plea or judicial admission to the crime; and
 - (4) The court orders conditions of the deferred sentence that are necessary to protect the victim, prevent future violence, and rehabilitate the perpetrator.
- (B) The Court shall establish criteria for determination of:
 - (1) A perpetrator's eligibility for deferred sentencing
 - (2) A perpetrator's successful completion of the conditions imposed by the Court; and
 - (3) Penalties for violation of the conditions imposed by the Court.
- (C) The case against a perpetrator of domestic or family violence may be dismissed if the perpetrator successfully completes all conditions imposed by the court pursuant to subsection (A).

Section 60 Order of Protection; Ex Parte Orders of Protection; Procedure; Contents; Arrest for Violation; Penalty (4 PYTC § 3-60)

- (A) A person may file a verified petition, as in civil actions, with the Tribal Court Judge for an order of protection for the purpose of restraining a person from committing an act included in domestic or family violence.
- (B) The petition shall state the:
 - (1) Name and address of plaintiff for purposes of service, except that if a person is a resident of a domestic violence shelter, the person is not required to reveal the address of the shelters but a means of communicating with the resident, such as a post office box or address of his or her attorney, must be disclosed.
 - (2) Name and address, if known, of the defendant.
 - (3) Specific statement, including dates, of the domestic violence attempt.
 - (4) Relationship between the parties pursuant to Section 10(F) and whether there is pending between the parties an action for annulment, legal separation or dissolution of marriage.
 - (5) Name of the Court in which any prior or pending proceeding or order was sought or issued concerning the conduct which is sought to be restrained.
 - (6) Desired relief.

- (C) The Court shall review the petition, any other pleadings on file and any evidence offered by the plaintiff to determine whether the orders requested should issue without further hearing. If the Court determines that there is reasonable cause to believe that the defendant may commit an act of domestic violence or that the defendant has committed an act of domestic violence, the Court shall issue an order as provided in Subsection (D) of this section. If the Court denies the requested relief, it may schedule a further hearing within ten days, with reasonable notice to the defendant.
- (D) An order of protection issued by a Court may include any of the following:
- (1) Either or both parties may be enjoined from committing a violation of one or more of the offenses included in domestic violence.
 - (2) One party may be granted the use and exclusive possession of the parties' residence on a showing that there is reasonable cause to believe that physical harm may otherwise result.
 - (3) Either or both parties may be restricted from coming near the residence, place of employment or school of the other party or other specifically designated locations or person on a showing that there is reasonable cause to believe that physical harm may otherwise result.
 - (4) Relief necessary for the protection of the alleged victim and other specifically designated persons proper under the circumstances.
- (E) In addition to any other relief authorized in this section, the Court may order that neither party contact the other except through a third party or until further order of the Court. No presumption of misconduct shall arise out of issuance of an order pursuant to this subsection and an order issued under this subsection may not be used for any purpose by either party in any subsequent proceedings involving child custody or visitation rights.
- (F) The Court shall not grant a mutual order of protection to opposing parties. The Court may issue a separate order of protection restraining each opposing party where each party has served petitions for protection orders, and each party has committed domestic or family violence as defined by the code, each poses a continuing risk of violence to the order, and each has otherwise satisfied all prerequisites for the type of order and remedies sought..
- (G) At any time during which the order is in effect, a party under an order of protection or restrained from contacting the other party is entitled to a hearing on written request. A hearing requested by a party under an order of protection or restrained from contacting the other party shall be held within ten days from the date requested unless the Court finds good cause to continue the hearing. The hearing shall be held at the earliest possible time. An *ex parte* order issued under this section shall state on its face that the defendant is entitled to a hearing on written request and shall include the name and address of the judicial office where the request may be filed. After the hearing, the Court may modify, revoke or continue the order.
- (H) The order shall include the following statement:

CERIFICATE OF COMPLIANCE WITH THE VIOLENCE AGAINST WOMEN ACT:

This protective order meets all full faith and credit requirements of the Violence Women's Act 18 U.S.C. 2265. This court has jurisdiction over the parties and the subject matter. The respondent was afforded notice or this order has been issues *ex parte* due to immediate danger and the respondent has been given an opportunity to be heard in a timely manner as provided by the law of this jurisdiction. **THIS ORDER IS VALID AND ENTITLED TO ENFORCEMENT IN THIS AND ALL OTHER JURISDICTION'S UNDER FEDERAL FULL FAITH AND CREDIT LAWS.** If you disobey this order the court may find you in contempt of court. You may also be arrested and prosecuted for the crime of interfering with judicial proceedings and any other crime you may have committed in disobeying this order.

WARNING: POSSESSION OF A FIREARM OR AMMUNITION BY RESPONDENT WHILE THIS ORDER IS IN EFFECT MAY BE PROHIBITED UNDER FEDERAL OR STATE LAW.

WARNING: ONLY THE COURT HAS THE POWER TO CHANGE THESE CONDITIONS REGARDLESS OF THE CONSENT OF THE PROTECTED PARTY.

- (I) An order shall be served on the defendant. An order is effective immediately on the plaintiff. An order is effective on the defendant on service of a copy of the order. An order expires, unless renewed, one year after service on the defendant.
- (J) Within 24 hours after the affidavit or acceptance of service has been returned, excluding weekends and holidays, the Court shall register a certified copy of the order of protection and a copy of the affidavit of service of process or acceptance of service with the Tribal Police Department. Registration of an order means that a certified copy of the order of protection and a copy of the affidavit or acceptance of service have been received by police department. The police department shall maintain a central repository for orders of protection so that the existence and validity of the orders can be easily verified. The effectiveness of an order does not depend on its registration and for enforcement purposes, a certified copy of an order of the Court, whether or not registered, is presumed to be a valid existing order of the Court for a period of six months from the date of service of the order on the defendant. Any changes or modifications of the order are effective upon entry of an order of the Court and shall be registered with the police department within 24 hours of the entry of the order, excluding weekends and holidays.
- (K) A peace officer may, with or without a warrant, arrest a person if the peace officer has probable cause to believe that the person is in violation of disobeying or resisting an order issued pursuant to this section, whether or not such violation occurred in the presence of the officer.
- (L) A person arrested pursuant to Subsection (K) of this section may be released from custody in accordance with the rules of criminal procedure or other applicable ordinance. An order for release, with or without an appearance bond, shall include pretrial release conditions, which the court deems appropriate, including participation in any counseling programs available to the defendant.
- (M) The remedies provided in this section for enforcement of the orders of the Court are in addition to any other civil and criminal remedies available. The Tribal Court may hear and decide all matters arising pursuant to this section.
- (N) A peace officer making an arrest pursuant to this section is not civil or criminal liable for such arrest if the officer acts upon probable cause and without malice.
- (O) In addition to person authorized to serve process, a peace officer may serve an order of protection issued pursuant to this section.

Section 70 Orders of Protection; Other Jurisdictions; Penalties (4 PYTC § 3-70)

- (A) A police officer who is entitled to enforce tribal laws may enforce the terms and provisions of a qualifying order of protection within the Pascua Yaqui Indian Reservation.
- (B) A peace officer may arrest and take into custody any person who the peace officer has probable cause to believe has willfully violated an order of protection issued by the Pascua Yaqui Tribal Court under Section 60 of this chapter or a qualifying order of protection from another jurisdiction.

- (C) A qualifying order of protection means:
 - (1) The order of protection prohibits or provides protection against violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person.
 - (2) The order was issued against the defendant.
 - (3) The order is enforceable by the Pascua Yaqui Tribe.
 - (4) The order was issued by a court of competent jurisdiction including federal, state or tribal courts.
- (D) Any person who willfully violates the terms of a qualifying protection order is guilty of the crime of Violation of a Protection Order.

Section 80 Domestic or Family Violence Designation (4 PYTC § 3-80)

- (A) Any crime in against the person, and other crimes where appropriate, in which the defendant and victim have a relationship identified in Section 10(A) of this Title may be designated as a domestic violence crime, which serves as notice that the Tribe may seek additional conditions at sentencing upon conviction
- (B) Any crime in against the person, and other crimes where appropriate, in which the defendant and victim have a relationship identified in Section 10(B) of this Title may be designated as a family violence crime, which serves as notice that the Tribe may seek additional conditions at sentencing upon conviction

Section 90 Endangering Welfare of Minor (4 PYTC § 3-90)

- (A) A person commits the crime of endangering the welfare of a minor if he knowingly commits a crime of domestic or family violence in the presence of an unmarried person under eighteen years of age.
- (B) Any crime of domestic or family violence which is committed in the presence of a minor child of the offender or of the victim is deemed abuse as defined at 5 PYTC §7-20(B). If an officer reasonably believes that domestic or family violence has been committed in front of a child of the defendant or the victim, the officer shall report such abuse pursuant to 5 PYTC §7-230.

Section 100 Habitual Domestic Violence Offender; Penalties; Domestic or Family Violence Penalties; Considerations (4 PYTC § 3-100)

- (A) Any person with three (3) or more convictions for domestic violence received on different dates within a period of seven (7) years shall be deemed a habitual domestic violence offender. Any third or subsequent conviction for domestic violence shall presumptively carry a sentence of not less than six (6) months for each offense.
- (B) Commensurate with the Tribe's goal of eliminating or reducing incidences of domestic violence, the Court shall take the following factors into consideration when considering whether to impose the presumptive sentence of six (6) months, or whether to deviate upwards or downwards:
 - (1) Aggravating factors including, but not limited to, nature and degree of injury to the victim, use of a weapon, prior history of violence against current or former victim, use of alcohol or drugs, whether children were present at the time of the incident, prior

convictions for crimes against the person, violation of release agreements, violation of an order of protection.

- (2) Mitigating factors including, but not limited to, appropriate progress in court ordered programs such as domestic violence counseling or substance abuse programs, adherence to release conditions, lack of serious criminal history, voluntary relinquishment of weapons.
- (C) To be considered as part of a habitual offender determination all predicate prior offenses committed before February 26, 2014 must have been committed against a victim where any of the relationships described at Section 10 (A) (1-4) apply or against a victim where any of the relationships described at Section 10(B)(1)-(2) apply if the offenses were of a violent or assaultive nature.
- (D) For any first second or greater conviction for domestic or family violence regardless of status the Court may choose to use the aggravating or mitigating factors found in (B)(1) and (2) of this section in determining an appropriate sentence.
- (E) Regardless of a defendant's status as a habitual domestic violence offender or a first or second time offender, if a defendant is convicted of an offense involving domestic violence and the victim was pregnant at the time of the commission of the offense, at the time of sentencing the Court shall take into consideration the fact that the victim was pregnant and may increase the sentence.

DISPOSITION TABLE

Former Section	New Section
Title 1, Ch. 11, Sec. 11-1101	Section 10
Title 1, Ch. 11, Sec. 11-1102	Section 20
NEW	Section 30
NEW	Section 40
NEW	Section 50
Title 1, Ch. 11, Sec. 11-1103	Section 60
NEW	Section 70
NEW	Section 80
NEW	Section 90
NEW	Section 100