

**CHAPTER 8**  
**DOMESTIC VIOLENCE, ORDERS OF PROTECTION, AND**  
**HARASSMENT ORDERS**

**Article I. Domestic Violence**

**Sec. 8-1. Domestic violence; definition; classification; sentencing option; arrest and procedure for violation; weapon seizure; notice; report; diversion; notice.**

A. **Domestic violence** means any act that is an offense defined in sections 6-16, 6-23, 6-35, 6-36, 6-37, 6-38, 6-40, 6-41, 6-42, 6-56, 6-57, 6-58, 6-60, 6-61, 6-70, 6-71, 6-75, 6-90, 6-92, 6-122, if any of the following applies:

1. The relationship between the victim and the defendant is one of marriage or former marriage or of persons residing in the same household.
2. The victim and the defendant have a child in common.
3. The victim or the defendant is pregnant by the other party.
4. The victim is related to the defendant or 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, grandparent-in-law, stepparent, step-grandparent, stepchild, step-grandchild, brother-in-law or sister-in-law.
5. The victim is a child who 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 resides in the same household as the defendant.
6. The victim and the defendant are in a dating relationship.

B. A peace officer may, with or without a warrant, arrest a person if the officer has probable cause to believe that domestic violence has been committed and the officer has probable cause to believe that the person to be arrested has committed the offense whether the offense was committed within or without the presence of the peace officer. In cases of domestic violence involving the infliction of physical injury or involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument, the peace officer shall arrest a person, with or without a warrant, if the officer has probable cause to believe that the offense has been committed and the officer has

probable cause to believe that the person to be arrested has committed the offense, whether the offense was committed within or without the presence of the peace officer, unless the officer has reasonable grounds to believe that the circumstances at the time are such that the victim will be protected from further injury. Failure to make an arrest does not give rise to civil liability. In order to arrest both parties, the peace officer shall have probable cause to believe that both parties independently have committed an act of domestic violence. An act of self-defense that is justified is not deemed to be an act of domestic violence. The release procedures available under section 5-33.c do not apply to arrests made pursuant to this subsection.

C. A peace officer may question the persons who are present to determine if a firearm is present on the premises. On learning or observing that a firearm is present on the premises, the peace officer may temporarily seize the firearm if the firearm is in plain view or was or was found pursuant to a consent to 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 owned or possessed by the victim shall not be seized unless there is probable cause to believe that both parties independently have committed an act of domestic violence.

D. If a firearms' seized pursuant to subsection C of this section, the peace officer shall give the owner or possessor of firearm a receipt for each seized firearm. The receipt shall indicate the identification or serial number or other identifying characteristic of each seized firearm. Each seized firearm shall be held for at least seventy-two hours by the law enforcement agency that seized the firearm.

E. If a firearm is seized pursuant to subsection C of this section, the victim shall be notified by a peace officer before the firearm is released from temporary custody.

F. If there is reasonable cause to believe that returning a firearm to the owner or possessor may endanger the victim, the person who reported the assault or threat or another person in the household, the prosecutor shall file a notice in tribal court of intent to retain the firearm. The prosecutor shall serve notice on the owner or possessor of the firearm by certified mail. The notice shall state that the firearm will be retained for not more than six months following the date of seizure. On receipt of the notice, the owner or possessor may request a hearing for the return of the firearm, to dispute the grounds for seizure or to request an earlier return date. The court shall hold the hearing within ten days after receiving the owner or possessor's request for a hearing. At the hearing, unless the court determines that the return of the firearm may endanger the victim, the person who reported the assault or threat or another person in the household, the court shall order the return of the firearm to the owner or possessor.

G. A peace officer is not liable for any act or omission in the good faith exercise of the officer's duties under subsections B, C, D, E and F of this section.

H. Each complaint, summons or warrant that is issued and that involves domestic violence shall state that the offense involved domestic violence and shall be designated

by the letters DV. A domestic violence charge shall not be dismissed or a domestic violence conviction shall not be set aside for failure to comply with this subsection.

I. A person who is arrested pursuant to subsection B of this section may be released from custody in accordance with the rules of criminal procedure. 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 that the court deems appropriate.

J. When a peace officer responds to a call alleging that domestic violence has been or may be committed, the officer shall inform in writing any alleged or potential victim of the procedures and resources available for the protection of the victim including:

1. An order of protection pursuant to section (Order of Protection Law) and an injunction against harassment pursuant to section (Harassment Injunction Law).
2. The emergency telephone number for the local police agency.
3. Telephone numbers for emergency services in the community.

K. A peace officer is not civilly liable for noncompliance with subsection J of this section.

L. If the defendant is found guilty of an offense included in this domestic violence article and if probation is otherwise available for that offense, the court shall place the defendant on probation or supervised probation, as provided. The terms and conditions of probation or supervised probation shall include those necessary to provide for the protection of the alleged victim and other specifically designated persons and additional conditions and requirements that the court deems appropriate, including imposition of a fine, incarceration of the defendant in a county jail, payment of restitution, completion of a domestic violence offender treatment program that is provided by the Tribe or the probation department or any other counseling that does not involve domestic violence and that are available to the defendant. On violation of a term or condition of probation, the court shall proceed as otherwise provided for revocation of probation. On fulfillment of the terms and conditions of probation, the court shall discharge the defendant. This subsection does not apply in any case in which the defendant has previously been found guilty under this section, or in which charges under this section have previously been dismissed in accordance with this subsection.

(1) First Offense. Upon guilty plea or conviction, the defendant shall be ordered to participate in an appropriate domestic violence program involving the following requirements:

- a. The defendant shall contact Wassaja Family Services (W.F.S.) within ten (10) workdays to schedule an initial evaluation.

b. The treatment plan shall be completed by W.F.S. and returned to the court no later than 10 calendar days after the initial evaluation session unless the Court extends that time period.

c. In the discretion of the Court, the defendant's participation in treatment sessions based on the domestic violence program's treatment plan may be in lieu of confinement and/or fine, or the execution of any such penalty may be suspended pending a completion of the treatment ordered by the Court.

d. The domestic violence program or other service provided shall submit progress reports to the Court at least every six (6) calendar weeks.

e. Willful failure or refusal to comply with a Court order requiring a defendant to attend and cooperate in evaluation and/or to undergo treatment as described in a treatment plan shall constitute contempt of court punishable as provided in 6-22 of the criminal code.

## **ARTICLE II. ORDERS OF PROTECTION**

### **Sec. 8-2. Order of protection; procedure; contents; arrest for violation; penalty; protection order from another jurisdiction.**

A. A person may file a verified petition, as in civil actions, with a judge for an order of protection for the purpose of restraining a person from committing an act included in domestic violence. If the person is a minor, the parent, legal guardian or person who has legal custody of the minor shall file the petition unless the court determines otherwise. The petition shall name the parent, guardian or custodian as the plaintiff and minor is a specifically designated person for the purposes of subsection G of this section. If a person is either temporarily or permanently unable to request an order, a third party may request an order of protection on behalf of the plaintiff. After the request, the judicial officer shall determine if the third party is an appropriate requesting party for the plaintiff. For the purposes of this section, notwithstanding the location of the plaintiff or defendant, any court may enforce an order of protection.

B. An order of protection shall not be granted:

1) Unless the party who requests the order files a written verified petition for an order.

2) Against more than one defendant.

(i). The petition shall state the:

1. Name of the plaintiff. The plaintiff's address shall be disclosed to the court

for purposes of service. If the address of the plaintiff is unknown to the defendant, the plaintiff may request that the address be protected. On the plaintiff's request, the address shall not be listed on the petition. Whether the court issues an order of protection, the protected address shall be maintained in a separate document or automated data base and is not subject to release or disclosure by the court or any form of public access except as ordered by the court.

2. Name and address, if known, of the defendant.
3. Specific statement, including dates, of the domestic violence alleged.
4. Relationship between the parties pursuant to Section 8-1, subsection A and whether there is pending between the parties an action for annulment, legal separation or dissolution of marriage.
5. Name of 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.

(ii). Filing fees under this section will be waived. The court shall make reasonable efforts to provide to both parties an appropriate information sheet on emergency and counseling services that are available in the local area.

(iii) The court shall review the petition, any other pleadings on file and any evidence offered by the plaintiff to determine whether the order requested should be issued without further hearing. The court shall issue an order of protection under subsection G of this section if the court determines that there is reasonable cause to believe any of the following:

1. The defendant may commit an act of domestic violence.
2. The defendant has committed an act of domestic violence within the past year or within a longer period of time if the court finds that good cause exists to consider a longer period.

(iv) For purposes of determining the period of time under subsection E, paragraph 2 of this section, any time that the defendant has been incarcerated or out of this state shall not be counted. If the court denies the requested relief, it may schedule a further hearing within ten days, with reasonable notice to the defendant.

(v) If the court issues an order of protection, the court may do any of the following:

1. Enjoin the defendant from committing a violation of one or more of the offenses included in domestic violence.

2. Grant one party 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. If a law enforcement officer accompanies the other party, the other party may return to the residence on one occasion to retrieve belongings. A law enforcement officer is not liable for any act or omission in the good faith exercise of the officer's duties under this paragraph.

3. Restrain the defendant from contacting the plaintiff or other specifically designated person and from coming near the residence, place of employment or school of the plaintiff or other specifically designated locations or persons on a showing that there is reasonable cause to believe that physical harm may otherwise result.

4. If the court finds that the defendant is a credible threat to the physical safety of the plaintiff or other specifically designated persons, prohibit the defendant from possessing or purchasing a firearm for the duration of the order. If the court prohibits the defendant from possessing a firearm, the court shall also order the defendant to transfer any firearm owned or possessed by the defendant immediately after service of the order to the appropriate law enforcement agency for the duration of the order. If the defendant does not immediately transfer the firearm, the defendant shall transfer the firearm within twenty-four hours after service of the order.

5. If the order was issued after notice and a hearing at which the defendant had an opportunity to participate and that notice to the defendant informed him that he/she may be ordered to complete a domestic violence offender treatment program, require the defendant to complete a domestic violence offender treatment program that is provided by Family Community Services or a probation department or any other program deemed appropriate by the court.

6. Grant relief that is necessary for the protection of the alleged victim and other specifically designated persons and that is proper under the circumstances.

(vi) Orders may only restrain the defendant's action. If opposing parties separately file verified petitions for an order of protection, the courts after consultation between the judges involved may consolidate the petitions of the opposing parties for hearing. This does not prohibit a court from issuing cross orders of protection

(vii) At any time during the period during which the order is in effect, a party under an order of protection or restrained from contacting the other party is entitled to one 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. If exclusive use of the home is awarded, the hearing shall be held within five days from the date requested. 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, quash or continue the order.

(viii) The order shall include the following statement:

Warning This is an official court order. If you disobey this order, you may be arrested and prosecuted, fined, and/or permanently removed from the reservation for the crime of Disobedience to Lawful Orders of Court and any other crime you may have committed in disobeying this order.

(ix) A copy of the petition and the order shall be served on the defendant within one year from the date the order is signed. An order of protection that is not served on the defendant within one year expires. An order is effective on the defendant on service of a copy of the order and petition. An order expires one year after service on the defendant. A modified order is effective upon service and expires one year after service of the initial order and petition.

(x) Each affidavit, acceptance or return of service shall be promptly filed with the clerk of the court. This filing shall be completed in person, shall be made by fax or shall be postmarked. If sent by mail, no later than the end of the seventh court business day after the date of service. If the filing is made by fax, the original affidavit, acceptance or return of service shall be promptly filed with the court. Within twenty four hours after the affidavit, acceptance or return of service has been filed, excluding weekends and holidays, the court shall register a copy of the order of protection and a copy of the affidavit of service of process or acceptance of service with the police department. Registration of an order means that the police department has received a copy of the order of protection and a copy of the affidavit or acceptance of service. 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. 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 twenty-four hours of the entry of the order, excluding weekends and holidays.

(xi) A peace officer may, with or without a warrant, arrest a person if the peace officer has probable cause to believe that the person has violated section 6-23 by disobeying or resisting an order issued in any jurisdiction in this state pursuant to this section, whether or not such violation occurred in the presence of the officer. Criminal violations of an order issued pursuant to this section shall be referred to the police department. The police department shall request that the prosecutor file the appropriate charges. A violation of an order of protection shall not be adjudicated by the court unless a complaint has been filed or other legal process has been requested by the prosecutor's office. The provisions for release under section 5-33.c do not apply to an arrest made pursuant to this section.

(xii) A person arrested pursuant to subsection M of this section may be released from custody in accordance with the rules of criminal procedure. An 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

(xiii) 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.

(xiv) A peace officer making an arrest pursuant to this section or Section 8-1 (A) is not civilly or criminally liable for such arrest if the officer acts upon probable cause and without malice.

(xv) In addition to persons authorized to serve process pursuant to rules of Tribal civil procedure, a peace officer or a correctional officer who is acting in the officer's official capacity may serve an order of protection issued pursuant to this section. Service of the order of protection has priority over other service of process that does not involve an immediate threat to the safety of a person.

(xvi) A valid protection order that is related to domestic or family violence and that is issued by a tribal court, a court of a United States territory or a state court shall be accorded full faith and credit and shall be enforced as if it were issued in this Nation for as long as the order is effective in the issuing jurisdiction. For the purposes of this subsection:

1. A protection order includes any injunction or other order that is issued for the purpose of preventing violent or threatening acts or harassment against, contact or communication with or physical proximity to another person. A protection order includes temporary and final orders other than support or child custody order that are issued by civil and criminal courts if the order is obtained by the filing of an independent action or is a pendente lite order in another proceeding. The civil order shall be issued in response to a complaint, petition or motion that was filed by or on behalf of a person seeking protection.

2. A protection order is valid if the issuing court had jurisdiction over the parties and the matter under the laws of the issuing tribal court, a United States territory or a state court and the person against whom the order was issued had reasonable notice and an opportunity to be heard. If the order is issued ex parte, the notice and opportunity to be heard shall be provided within the time required by the laws of the issuing state, a United States territory or an Indian tribe and within a reasonable time after the order was issued.

3. A mutual protection order that is issued against both the party who filed a petition or a complaint or otherwise filed a written pleading for protection against abuse and the person against whom the filing was made is not entitled to full faith and credit if either:



- a. The person against whom an initial order was sought has not filed a cross or counter petition or other written pleading seeking a protection order.
  - b. The issuing court failed to make specific findings supporting the entitlement of both parties to be granted a protection order.
4. A peace officer may presume the validity of and rely on a copy of a protection order that is issued by another tribe, a United States territory or a state court if the order was given to the officer by any source. A peace officer may also rely on the statement of any person who is protected by the order that the order remains in effect. A peace officer who acts in good faith reliance on a protection order is not civilly or criminally liable for enforcing the protection order pursuant to this section.

### **ARTICLE III. HARASSMENT ORDERS**

#### **Sec. 8-3. Injunction against harassment; petition; venue; fees; notices; enforcement; definition.**

- A. A person may file a verified petition with the Fort McDowell Yavapai Nation Tribal Court for an injunction prohibiting harassment as outlined in Section 6-40(A)(a). If the person is a minor, the parent, legal guardian or person who has legal custody of the minor shall file the petition unless the court determines otherwise. The petition shall name the parent, guardian or custodian as the plaintiff, and the minor is a specifically designated person for the purposes of subsection F of this section. If a person is either temporarily or permanently unable to request an injunction, a third party may request an injunction on behalf of the plaintiff. After the request, the judicial officer shall determine if the third party is an appropriate requesting party for the plaintiff.
- B. An injunction against harassment shall not be granted:
1. Unless the party who requests the injunction files a written verified petition for injunction.
  2. Against a person who is less than twelve years of age.
  3. Against more than one defendant.
- C. The petition shall state all of the following:
1. The name of the plaintiff. The plaintiff's address shall be disclosed to the court for purposes of service. If the address of the plaintiff is unknown to the defendant, the plaintiff may request that the address be protected. On the plaintiff's request, the address shall not be listed on the petition. Whether the court issues an injunction against harassment, the protected address shall be maintained in a separate document or automated database and is not subject

to release or disclosure by the court or any form of public access except as ordered by the court.

2. The name and address, if known, of the defendant.
3. A specific statement showing events and dates of the acts constituting the alleged harassment.
4. The name of the court in which there was or is any prior or pending proceeding or order concerning the conduct which is sought to be restrained.
5. The relief requested.

D. A fee shall not be charged for filing a petition under this section.

E. The court shall review the petition, any other pleadings file and any evidence offered by the plaintiff to determine whether the injunction requested should be issued without a further hearing. If the court finds reasonable evidence of harassment of the plaintiff by the defendant during the year preceding the filing of the petition or that good cause exists to believe that great or irreparable harm would result to the plaintiff if the injunction is not granted before the defendant or the defendant's attorney can be heard in opposition and the court finds specific facts attesting to the plaintiff's efforts to give notice to the defendant or reasons supporting the plaintiff's claim that notice should not be given, the court shall issue an injunction as provided for in subsection F 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. For purposes of determining the one year period, any time that the defendant has been incarcerated or out of this state shall not be counted.

F. If the court issues injunction, the court may do any of the following:

1. Enjoin the defendant from committing a violation of one or more acts of harassment.
2. Restrain the defendant from contacting the plaintiff or other specifically designated persons and from coming near the residence, place of employment or school of the plaintiff or other specifically designated locations or persons.
3. Grant relief necessary for the protection of the alleged victim and other specifically designated persons proper under the circumstances.

G. The court shall not grant a mutual injunction against harassment. If opposing parties separately file verified petitions for an injunction against harassment, the courts after consultation between the judicial officers involved may consolidate the petitions of the opposing parties for hearing. This does not prohibit a court from issuing cross injunctions against harassment.

H. At any time during the period during which the injunction is in effect, the defendant is entitled to one hearing on written request. No fee may be charged for requesting a hearing. A hearing requested by a defendant shall be held within ten days from the date requested unless the court finds compelling reasons to continue the hearing. The hearing shall be held at the earliest possible time. An ex parte injunction 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, quash or continue the injunction.

I. The injunction shall include the following statement:  
Warning This is an official court order. If you disobey this order, you may be arrested and prosecuted fined, and/or permanently removed from the reservation for the crime of Disobedience to Lawful Orders of the Court, section 6-23, and any other crime you may have committed in disobeying this order.

J. A copy of the petition and the injunction shall be served on the defendant within one year from the date the injunction is signed. An injunction that is not served on the defendant within one year expires. The injunction is effective on the defendant on service of a copy of the injunction and petition and expires one year after service on the defendant. A modified injunction is effective upon service and expires one year after service of the initial injunction and petition.

K. Each affidavit, acceptance or return of service shall be promptly filed with the clerk of the issuing court. This filing shall be completed in person, shall be made by fax or shall be postmarked, if sent by mail, no later than the end of the seventh court business day after the date of service. If the filing is made by fax, the original affidavit, acceptance or return of service shall be promptly filed with the court. Within twenty-four hours after the affidavit, acceptance or return of service has been filed, excluding weekends and holidays, the court shall forward to the police department a copy of the injunction and a copy of the affidavit or certificate of service of process or acceptance of service. On receiving these copies, the police department shall register the injunction. Registration of an injunction means that a copy of the injunction and a copy of the affidavit or certificate of service of process or acceptance of service have been received by the police department. The police shall maintain a central repository for injunctions so that the existence and validity of the injunctions can be easily verified. The effectiveness of an injunction does not depend on its registration, and for enforcement purposes pursuant to section 6-23, a copy of an injunction, whether or not registered, is presumed to be a valid existing order of the court for a period of one year from the date of service of the injunction on the defendant. Any changes or modifications of the injunction are effective on entry by the court and shall be registered with the police within twenty-four hours of the entry, excluding weekends and holidays.

L. A peace officer may, with or without warrant, arrest a person if the peace officer has probable cause to believe that the person has violated section 6-23 by disobeying or resisting an injunction issued pursuant to this section, whether or not the violation occurred in the presence of the officer. The provisions for release under section 5-33.C do not apply to an arrest made pursuant to this subsection. A person arrested pursuant

to this subsection may be released from custody in accordance with the court rules of criminal procedure. An 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.

M. If a peace officer responds to a call alleging that harassment has been or may be committed, the officer shall inform in writing any alleged or potential victim of the procedures and resources available for the protection of the victim including:

1. An injunction pursuant to this section.
2. The emergency telephone number for the local police agency.
3. Telephone number for emergency services in the community.

N. 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 court may hear and decide all matters arising pursuant to this section. After a hearing with notice to the affected party, the court may enter an order requiring any party to pay the costs of the action, including reasonable attorney fees, if any.

O. A peace officer making an arrest pursuant to this section is not civilly or criminally liable for the arrest if the officer acts on probable cause and without malice. A peace officer is not civilly liable for noncompliance with subsection M of this section.

P. This section does not apply to preliminary injunctions issued pursuant to an action for dissolution of marriage or legal separation or for protective orders against domestic violence

Q. A peace officer or a correctional officer who is acting in the officer's capacity may serve an injunction against harassment that is issued pursuant to this section.

R. In this section, "harassment" means a series of acts over any period of time that is directed at a specific person and that would cause a reasonable person to be seriously alarmed, annoyed or harassed and the conduct in fact seriously alarms, annoys or harasses the person and serves no legitimate purpose.

[HISTORICAL NOTE: Sections 8-1 through 8-9 repealed by Resolution No. Ft.McD 2005-72, effective July 1, 2005. New sections 8-1 through 8-3 added by Resolution No. Ft. McD 2005-72, effective July 1, 2005.]

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