

Pyramid Lake Paiute Tribe

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RESOLUTION NO. PL 59-07

RESOLUTION OF THE PYRAMID LAKE PAIUTE TRIBAL COUNCIL OF THE PYRAMID LAKE RESERVATION NIXON, NEVADA

WHEREAS, the Pyramid Lake Paiute Tribe ("Tribe") is organized pursuant to the provisions of Section 16 of the Indian Reorganization Act (25 USC §467), and is Federally recognized by the United States Government through the Secretary of the Interior and the Bureau of Indian Affairs; and,

WHEREAS, pursuant to the Constitution and Bylaws of the Pyramid Lake Paiute Tribe, the Pyramid Lake Paiute Tribal Council ("Tribal Council"), governing body of the Tribe, is responsible for and empowered to, among other things, promulgate ordinances for the purpose of safeguarding the peace and safety of residents of the reservation, and establishing courts for the trial of any person charged with the commission of offenses on the Pyramid Lake Paiute Reservation; and,

WHEREAS, the Tribal Council adopted Resolution No. PL 90-05 adopting the Domestic Violence Code to govern and to provide an orderly, efficient and fair method for addressing domestic violence situations; and,


WHEREAS, the Tribal Council has determined that a number of provisions in the Domestic Violence Code need to be amended to assist in the efficient administration of the Code;

NOW, THEREFORE, BE IT RESOLVED THAT the Pyramid Lake Paiute Tribal Council hereby amends the Domestic Violence Code as outlined in Attachment "A", attached hereto and hereby incorporated herein.

NOW, THEREFORE, BE IT FINALLY RESOLVED, that this amendment shall be effective upon adoption by the Pyramid Lake Tribal Council.

CERTIFICATION

It is hereby certified that the foregoing resolution of the Pyramid Lake Paiute Tribal Council, governing body of the Pyramid Lake Paiute Tribe, composed of ten members, of whom 10 constituting a quorum were present at a meeting duly held on the 17th day of August, 2007 was adopted by the affirmative vote of 7 for and 1 against, with 1 abstentions pursuant to the authority contained in the Constitution and By-laws of the Pyramid Lake Paiute Tribe.



Gina Wadsworth, Tribal Secretary
Pyramid Lake Tribal Council

AMENDMENTS TO DOMESTIC VIOLENCE CODE**A. Deleting subsection 3.09.102.7 and replacing it with the following:**

7. "Family or household member" includes:
 - (a) Adults or minors who are current or former spouses;
 - (b) Adults or minors who are in or have been in a dating relationship;
 - (c) Adults or minors who are engaged in or who have engaged in a sexual relationship;
 - (d) Persons who have a child in common;
 - (e) Relatives or step-relatives residing in the same household; and
 - (f) Minor child(ren) of a person in a relationship that is described in paragraph (a) through (e) above.

B. Deleting subsection 3.09.300.1 and replacing it with the following:

1. Any Indian who commits an act of domestic violence and found guilty thereof, shall be sentenced, in addition to the sentence for conviction of any underlining offenses, as follows:
 - (a) For a first offense: A mandatory minimum 30 days in jail, not to exceed one year; a mandatory minimum \$100.00 fine, not to exceed \$5,000.00; and counseling as the court deems appropriate.
 - (b) For a second conviction within a five-year period: A mandatory minimum 90 days in jail, not to exceed one year; with no release of parole; a mandatory minimum \$300.00 fine, not to exceed \$5,000.00; and counseling as the court deems appropriate.
 - (c) For a third or subsequent conviction within a five-year period: A mandatory minimum of 180 days in jail, not to exceed 1 year, with no release on parole; a mandatory minimum \$500.00 fine, not to exceed \$5,000.00; and counseling as the court deems appropriate.
 - (d) Notwithstanding any other provision regarding bail in the Pyramid Lake Law and Order Code, the bail amount for (1) a first offense of domestic violence shall be \$250; (2) if the person has one prior conviction for domestic violence and/or stalking the bail for domestic violence shall be

- (b) Prohibit the respondent from harassing, annoying, telephoning, contacting, or otherwise communicating with the petitioner directly or indirectly through friends, relatives, or co-workers;
- (c) Order the respondent to stay away from the residence, school, or place of employment of the petitioner;
- (d) Seize and prohibit the respondent from using or possessing a firearm or other weapon specified by the court;
- (e) Order possession of the party's essential personal effects, and direct the appropriate law enforcement officer to accompany the petitioner to the residence of the parties to ensure the petitioner is safely restored to possession of the residence, vehicle, and other personal effects, or to supervise the petitioner's or respondent's removal of personal belongings.

F. Add the following as subsection 3.09.902.5:

5. Notwithstanding any other provision regarding bail in the Pyramid Lake Law and Order Code, the bail amount for the alleged crime of stalking shall be set as follows: (1) a first offense shall be \$250; (2) if the person has one prior conviction for domestic violence and/or stalking the bail shall be \$500; and (3) if the person has two or more prior convictions for domestic violence and/or stalking the bail shall be \$1000.

\$500; and (3) if the person has two or more prior convictions for domestic violence and/or stalking the bail for domestic violence shall be \$1000.

C. Deleting subsection 3.09.402.3 and replacing it with the following:

3. If a law enforcement officer receives conflicting complaints of domestic violence from two or more persons, the officer shall evaluate each complaint separately to determine who was the predominate aggressor. If the officer determines that one person was the predominate aggressor, the officer need not arrest the other person alleged to have committed a domestic violence crime. In determining whether a person is the predominate aggressor, the officer shall consider:

- (a) The history of domestic violence, both documented prior complaints and convictions and the law enforcement officer's own prior knowledge of the family;
- (b) The relative severity of the injuries inflicted on each person;
- (c) Who in this relationship poses the most danger to the other;
- (d) The likelihood of future injury to each person, i.e., who is at the most risk of future harm;
- (e) Whether one of the persons acted in self-defense and/or in the defense of others; and
- (f) The degree to which one of the persons has acted with more deliberate intent to control, isolate, intimidate, emotionally demean, cause injury or pain or fear of harm to the other person or a third party.

D. Deleting subsection 3.09.406.1 and replacing it with the following:

1. No person arrested for the crime of domestic violence or violation of an order for protection under this chapter shall not be released from jail until after the expiration of 48 hours from arrest.

E. Deleting subsection 3.09.702.3 and replacing it with the following:

3. A court may grant the following relief without notice and hearing in an order for protection or a modification issued *ex parte*, and the court may grant the following relief in a permanent order for protection or modification of permanent order for protection:

- (a) Enjoin the respondent from threatening to commit or committing acts of domestic violence against the petitioner and any designated family or household member;

PYRAMID LAKE TRIBAL CODE
LAW AND ORDER CODE
DOMESTIC VIOLENCE CODE

NOVEMBER 2005

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CHAPTER 3.09 – DOMESTIC VIOLENCE CODE

Section 3.09.00 Title, Purpose and Definitions

3.09.100 PURPOSE

It is the intent and purpose of the Pyramid Lake Paiute Tribal Council in enacting this Chapter:

1. To promote the health, safety, welfare and peace of the people of the Pyramid Lake Paiute Reservation by providing an orderly, efficient and peaceful method of handling domestic violence situations;
2. To provide maximum protection to victims of abuse;
3. To show that all members of the Tribe and the entire community residing on the Pyramid Lake Paiute Reservation are to be cherished and treated with respect and that violence is not keeping with traditional tribal values;
4. To show that the voluntary use of any mind altering chemical/drug, including alcohol, will not be an excuse for violent behavior.

3.09.101 JURISDICTION

The Pyramid Lake Paiute Tribe enacts this Chapter to apply to all members of federally recognized tribes committing acts within the exterior boundaries of the Pyramid Lake Paiute Reservation. Any Non-Indian committing these acts within the exterior boundaries of the Pyramid Lake Paiute Reservation shall be subject to arrest and prosecution under the provisions of the NRS §§ 200.485 and 171.1255.

3.09.102 DEFINITIONS

For the purpose of this Chapter, the following words and phrases shall, unless otherwise indicated, have the following meaning:

1. "Court" is defined as the Pyramid Lake Tribal Court or any court of competent jurisdiction.
2. "Dating Relationship" is defined as frequent intimate associations primarily characterized by the expectation of affectional or sexual involvement. The term does not include a casual relationship or an ordinary association between persons in a business or social context.
3. "Dating Violence" is defined as violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship is determined by the following factors: 1) length of relationship; 2) type of relationship; and 3) frequency of interaction between the persons involved.
4. "Domestic Violence/Abuse" is defined as the occurrence of one or more of the following acts by a family or household member, but does not include acts of self-defense:
 - (a) Attempting to cause or causing physical harm to a family or household member;

- (b) Placing a family or household member in fear of physical harm;
 - (c) Causing a family or household member to engage involuntarily in sexual activity by force, threat of force, or duress;
 - (d) Interference with freedom of movement or false imprisonment of a family or household member;
 - (e) Property crime directed at ~~h~~ family or household member; and/or
 - (f) Economic coercion of a family or household member.
5. “Domestic Violence Advocate” is defined as an employee of, or volunteers for, a program for victims of domestic violence who:
- (a) Has a primary function of rendering advocacy, counseling, or assistance to victims of domestic violence and their children;
 - (b) Supervises the employees or volunteers of the program;
 - (c) Administers the program;
 - (d) Works under the direction of a supervisor of the program, supervises employees or volunteers, or administers the program; and/or
 - (e) Provides legal advocacy, assistance, and representation to victims of domestic violence, sexual assault and stalking on the Pyramid Lake Paiute Reservation, provides technical assistance in legal matters and is entitled to invoke the victim-advocate privilege act similar to that of an “attorney-client privilege” information.
6. “Domestic Violence Program” is defined as a specialized program for victims of domestic violence and their children that includes but is not limited to advocacy, shelter, crises intervention, support services, and referral.
7. “Family or household member” includes:
- (a) Adults or minors who are current or former spouses;
 - (b) Adults or minors who are in or have been in a dating relationship;
 - (c) Adults or minors who are engaged in or who have engaged in a sexual relationship;
 - (d) Persons who have a child in common; and
 - (e) Minor child of a person in a relationship that is described in paragraph (a) through (d) above.
8. “Law Enforcement Officer” is defined as a member of the Pyramid Lake Tribal Police Department, Law Enforcement Department of Bureau of Indian Affairs, or any other Federal Agency (i.e., FBI or US Marshal), or a member of any other law enforcement agency.

9. "Mandatory Arrest" is defined as a situation where a police officer must arrest a person within 24 hours, if there is probable cause to believe the person to be arrested has committed an offense as defined by this Chapter, even if the arrest may be against the express wishes of the victim. The victim need not sign a complaint for an arrest to occur.
10. "No Contact Order" is defined as a court order issued by the court in a criminal proceeding directing the defendant to have no contact with the victim.
11. "Order of Protection" is defined as a court order granted for the protection of victims of domestic violence.
12. "Perpetrator" is defined as the person who has allegedly committed the act of domestic violence.
13. "Public Servant" is defined as any law enforcement officer, dispatcher, law enforcement supervisor or administrator, judge, court clerk, court administrator, prosecutor or court advocate.
14. "Weapon" is defined as:
 - (a) Any instrument which, if used in the ordinary manner contemplated by its design and construction, will or is likely to cause substantial bodily harm or death; or
 - (b) Any device, instrument, material or substance which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing substantial bodily harm or death.

3.09.103 SEVERABILITY CLAUSE

If any Court of competent jurisdiction declares any clause or part of this Chapter invalid, such declaration shall not render invalid any other clauses or parts of this Chapter.

3.09.104 SPECIFIC APPLICABILITY

The provisions of this Chapter apply specifically to this domestic violence code and take precedence over any general laws of applicability.

3.09.200 ACTS WHICH CONSTITUTE A DOMESTIC VIOLENCE CRIME

1. Crimes involving domestic violence as defined in section 3.09.102 are oftentimes already defined under the existing Pyramid Lake Paiute Tribal Law and Order Code (PLTLOC) and prosecution for the criminal offense of domestic violence shall not preclude prosecution for any other criminal or civil offense under Tribal law that arise from the same circumstances. The purpose of this Chapter 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 Chapter. The crime of domestic violence occurs when a family or household member commits one or more of the following offenses against family or household member:

- (a) ABDUCTION (PLTLOC 3.04.202).
- (b) ASSAULT (PLTLOC 3.04.204).

- (c) BATTERY (PLTLOC 3.04.206).
- (d) CRIMINAL MISCHIEF: A person commits criminal mischief if he or she: 1) damages tangible property of another purposely or recklessly or by negligence; or 2) purposely or recklessly tampers with tangible property of another so as to endanger persons or property; or 3) purposely or recklessly causes another to suffer pecuniary losses by deception or threat. Any Indian who is convicted of this crime will be sentenced as defined in chapter 3.09.300 of this code.
- (e) DOMESTIC VIOLENCE/ABUSE (as defined in § 3.09.102).
- (f) HARASSMENT: A person commits harassment if he or she: 1) makes repeated telephone calls without purpose or legitimate communication; or 2) insults, taunts or challenges another in a manner likely to provoke violent or disorderly response; or 3) makes repeated communications anonymously or at the inconvenient hours, or in offensively coarse language; or 4) engages in any other course of alarming conduct serving no legitimate purpose. Any person convicted of this crime will be sentenced as defined in chapter 3.09.300 of this code.
- (g) STALKING (as defined in § 3.09.902).
- (h) TRESPASS: A person commits trespass if he or she goes into somebody else's land or enters somebody else's property without permission; causes injury to a person, property, or rights of another; or intrudes into somebody's privacy or time.
- (i) UNLAWFUL ENTRY: A person commits unlawful entry if he or she shall enter or remain in a dwelling, store or other building not his or her own with the intent to commit a crime against a person or property.
- (j) VIOLATION OF A NO CONTACT ORDER OR RESTRAINING ORDER issued under this Chapter.
- (k) WEAPON VIOLATION. A person commits a weapon violation when he/she possesses a firearm while subject to a no contact or order for protection for harassing or stalking or threatening an intimate partner or the child of an intimate partner. It shall be illegal to possess a firearm after conviction of a misdemeanor crime of domestic violence.

2. Committing any of the above stated acts should not diminish the seriousness of domestic violence or take precedence over the crime of domestic violence since the intent of this Chapter is to prevent further acts of domestic violence. The commission of one of the above referenced crimes against a family or household member shall trigger the application of this Chapter. The purpose of this code is to differentiate between those crimes committed against non-family and non-household members and those against family and household members as defined in section 3.09.102.

3. The use of alcohol or any other drug in the committing of domestic violence or any crime related to domestic violence shall not diminish the seriousness of domestic violence or take precedence over the crime of domestic violence.

3.09.300 PENALTY/PUNISHMENT

1. Any Indian who commits an act of domestic violence and found guilty thereof, shall be sentenced, in addition to the sentence for conviction of any underlining offenses, as follows:
 - (a) For a first offense: A mandatory minimum 30 days in jail, not to exceed one year; a mandatory minimum \$100.00 fine, not to exceed \$5,000.00; and 26 weeks of domestic violence treatment.
 - (b) For a second conviction within a five-year period: A mandatory minimum 90 days in jail, not to exceed one year; with no release of parole; a mandatory minimum \$300.00 fine, not to exceed \$5,000.00; and 52 weeks of domestic violence treatment.
 - (c) For a third or subsequent conviction within a five-year period: A mandatory minimum of 180 days in jail, not to exceed 1 year, with no release on parole; a mandatory minimum \$500.00 fine, not to exceed \$5,000.00; and 52 weeks of domestic violence treatment.
2. For any conviction of a domestic violence crime involving alcohol or drugs, the Judge will order a drug and alcohol evaluation and the offender must follow and complete the recommendations of said evaluation.
3. For any conviction of a domestic violence crime the Judge will order the offender to enroll in an anger management class and/or domestic violence treatment program, and the offender will be required to successfully complete said program.
4. Juveniles: Any juvenile committing an act of domestic violence shall be subject to prosecution in accordance with Chapter 3.03.430 Juvenile Court Procedures for Quasi-Criminal Matters of the Pyramid Lake Law and Order Code. In accordance with Chapter 3.03.430(c) for cases of quasi-criminal proceedings, the Tribal police shall initiate the complaint procedure by making a report with the prosecutor. The prosecutor in his discretion, shall either file a complaint or shall refer the matter to the Department of Social Services.
5. Whether or not any perpetrator is charged under this Ordinance, each perpetrator shall be subject to federal prosecution for any act involving serious bodily injury or any major crimes as defined in Federal law (18 U.S.C. § 1153), or for any other applicable basis providing federal jurisdiction.

3.09.301 ENHANCEMENT

1. This section shall apply to any offense committed after the enactment of this Chapter, but any conviction for a crime of domestic violence committed before enactment of this Chapter may be considered in determining whether any sentence should be enhanced. The court may enhance the sentencing level for any domestic violence offense but shall not reduce the sentencing level below the minimum prescribed by this section. The court shall consider all aggravating factors such as, but not limited to;
 - (a) Use of weapons, and/or level of injury;
 - (b) Criminal history;
 - (c) Children present and in immediate proximity of the crime and/or witnesses to the crime;

- (d) The victim was pregnant at the time of commission of the offense;
- (e) Telephone cord has been disconnected, cut or tampered with to prohibit communication with the authorities;
- (f) The victim's vehicle (or vehicle normally used by the victim) has been rendered unworkable by any means including, but not limiting to, by taking/hiding the car keys, taking out of the car the battery or any other necessary automotive part needed to drive the vehicle, flattening tires, and/or taking and withholding of the victim's personal documents.

2. For each of the aggravating factors mentioned above that the Court finds in a domestic violence case, the Court may add ten (10) days of jail and not suspend the court sentence.

3.09.302 WILLFUL VIOLATION OF "NO CONTACT" PROTECTION ORDER

Willful violation of a court order issued in a domestic violence case is a crime and upon conviction, the defendant shall be sentenced to a period of incarceration not to exceed one year and ordered to pay a fine not to exceed five thousand dollars (\$5,000.00).

3.09.303 WILLFULL VIOLATION OF THE PROHIBITION OF POSSESSING A FIREARM

Willful violation of a court order issued in a domestic violence case prohibiting the defendant from possessing a firearm is a crime and upon conviction, the defendant shall be sentenced to a period of incarceration not less than thirty (30) days and not to exceed one year and/or ordered to pay a fine not less then two hundred and fifty dollars (\$250.00), and not more than five thousand dollars (\$5,000.00), or both jail sentence and fine.

3.09.400 DUTIES OF POLICE OFFICERS

3.09.401 PRIMARY DUTIES

1. A law enforcement officer who responds to an allegation of domestic violence shall use all reasonable means to protect the victim and others present from further violence and shall have the duty to arrest upon finding probable cause to believe that domestic violence has occurred. A law enforcement officer need not obtain a warrant to enter a residence where he/she has probable cause to believe a crime of domestic violence is occurring or has just occurred, nor to seize property under this subsection. Such reasonable means include but are not limited to:

- (a) Taking any lawful action necessary to provide for the safety of the victim and any family or household member.
- (b) Confiscating any weapon involved in the alleged domestic violence incident.
- (c) Transporting or obtaining transportation for the victim and any child(ren) to a shelter or other safe place.
- (d) Assisting the victim in removing any essential personal effects.
- (e) Assisting the victim and any child(ren) in obtaining medical treatment, including obtaining transportation to a medical facility.

- (f) Giving the victim immediate and adequate notice of rights of victims and/or the remedies and services available to victims of domestic violence.
- (g) Enforcing an order of protection.

2. As part of the notice required by paragraph (f) of subsection 1, the law enforcement officer shall give, in addition to verbal notification, written notice to the adult victim substantially as follows:

“If you are the victim of domestic violence and you believe that law enforcement protection is needed for your physical safety, you have the right to request that the officer assist in providing for your safety, including asking for an emergency order for protection that will provide for your immediate protection. You may also request that the officer assist you in obtaining your essential personal effects and locating and taking you to a safe place, including but not limited to taking you to a shelter, a family or 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 officer assist you in obtaining medical treatment. You may request a copy of the police report from the Tribal Prosecutor at no cost to you. Please be advised that the prosecutor may choose to file a criminal complaint against your assailant. You also have the right to file a petition requesting a permanent or temporary order for protection from domestic violence which could include any of the following orders:

- (a) An order enjoining your abuser from threatening to commit or committing further acts of domestic violence
- (b) An order prohibiting your abuser from harassing, annoying, telephoning, contacting or otherwise communicating with you, directly or indirectly through family members, relations by marriage, friends, and co-workers;
- (c) An order removing your abuser from the residence regardless of ownership or lessee of record;
- (d) An order directing your abuser to stay away from your or any other designated household/family members place of residence, school, place of employment, or any other specified place frequented by you;
- (e) An order prohibiting your abuser from using or possessing any fire arms or other weapon specified by the court;
- (f) An order granting you custody of your child or children;
- (g) An order denying your abuser visitation;
- (h) An order specifying arrangements for visitation, including requiring supervised visitation; and
- (i) An order requiring your abuser to pay certain costs, such as rent or mortgage payments, child support payments, medical expenses, and expenses for shelter.

3. The forms you need to obtain an order for protections are available from the Pyramid Lake Domestic Violence Advocate or the Pyramid Lake Tribal Court Clerk. The services of the Pyramid Lake Domestic Violence Advocate are available to assist you in obtaining information

relating to domestic violence, treatment of injuries, community services, and places of safety and shelter.

3.09.402 MANDATORY ARRESTS

1. A law enforcement officer shall arrest any person, with or without a warrant, when the law enforcement officer has probable cause to believe any crime involving domestic violence has been committed as defined in section 3.09.200, either in the presence of the officer or within 24 hours of an incident after receiving a report or statement providing probable cause to law enforcement of the commission of such offense. The officer shall promptly file a report and charge the arrestee with a Domestic Violence Crime.
2. Regardless of the elements of any other crime committed in conjunction with crimes of domestic violence, the crime of Domestic Violence shall be considered a separate and distinct offense and shall be charged in addition to any other crime.
3. If a law enforcement officer receives complaints of domestic violence from two or more opposing persons, the officer shall evaluate each complaint separately to determine who was the predominate aggressor. If the officer determines that one person was the predominate aggressor, the officer need not arrest the other person alleged to have committed a domestic violence crime. In determining whether a person is the predominate aggressor, the officer shall consider:
 - (a) The history of domestic violence, both documented prior complaints and convictions and the law enforcement officer's own prior knowledge of the family;
 - (b) The relative severity of the injuries inflicted on each person;
 - (c) Who in this relationship poses the most danger to the other;
 - (d) The likelihood of future injury to each person, i.e., who is at the most risk of future harm;
 - (e) Whether one of the persons acted in self-defense and/or in the defense of others; and
 - (f) The degree to which one of the persons has acted with more deliberate intent to control, isolate, intimidate, emotionally demean, cause injury or pain or fear of harm to the other person or a third party.
4. A law enforcement officer shall not threaten, suggest, or otherwise indicate the possible arrest of all parties to discourage requests for intervention by any party.
5. The employment, economic, educational, social, physical and/or mental health and political status of the alleged perpetrator and/or victim shall not be considered in making an arrest.
6. The law enforcement officer is not required to make an arrest based on who-hit-who first, but shall consider the dynamics of domestic violence and the definition of predominate aggressor in determining which party to arrest.
7. In addition to any other report required, a law enforcement officer who does not make an arrest after investigating a complaint of domestic violence must submit a written report setting

forth the grounds for not arresting. In instances where both parties are arrested, a separate report for each party must be submitted that describe how the determination was made that both parties acted as predominant aggressors and that neither party acted primarily in self-defense.

8. The Tribal Prosecutor shall be notified within 72 hours of all domestic violence crimes, regardless of whether or not an arrest was made, arrests were made of two or more persons, or a predominate aggressor was identified and arrested.

3.09.403 ARRESTS FOR VIOLATION OF COURT ORDERS

When a law enforcement officer has probable cause to believe that a respondent has violated one of the following orders of the court and verifies the existence of the order, the officer shall, without a warrant, arrest the apparent violator, whether the violation was committed in or out of the presence of the officer. An officer making an arrest under this subsection shall be immune from suit, provided he/she acted in good faith. Such orders may include, but are not limited to:

1. An order enjoining the respondent from threatening to commit or committing acts of domestic violence against the petitioner or other family or household member;
2. An order prohibiting the respondent from harassing, annoying, telephoning, contacting or otherwise communicating with the petitioner, either directly or indirectly, by a third party contact;
3. An order removing or excluding the respondent from the residence of the petitioner;
4. 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; and/or
5. An order prohibiting the respondent from using or possessing a firearm or other weapon specified by the court.

3.09.404 AUTHORITY TO SEIZE WEAPONS

Incident to an arrest, or in the course of securing a crime scene involving domestic violence, a law enforcement officer will:

1. Seize all weapons that are alleged to have been involved or threatened to be used in the commission of a crime or any weapon in the immediate vicinity of the alleged commission of the offense; and
2. Seize a weapon that is in plain view or which is located during a search authorized by a person entitled to consent to the search. The seizure of weapons is without regard to ownership of the weapons; weapons owned by a third party are subject to confiscation when officers conclude that the weapons were used in the commission of a crime or must be confiscated to protect law enforcement, victims of domestic violence, or others.
3. Any weapon seized pursuant to this section shall be subject to an action for forfeiture if any person involved in the incident is convicted of domestic violence. Any weapon not belonging to the person convicted may be returned to the owner pursuant to a court order at the Tribal Judge's absolute discretion.

3.09.405 IMMUNITY

1. Any law enforcement officer shall have immunity from any liability, civil or criminal, in making arrests or exercising any other authority granted under this section when domestic violence or any crimes involving domestic violence have been committed, if the law enforcement officer acts in good faith, so as to provide protection for the victims of domestic violence.
2. Law enforcement officers shall have the same immunity with respect to participation in any court proceedings resulting from arrests made for domestic violence or any other crimes involving domestic violence.

3.09.406 CONDITION OF PRETRIAL RELEASE

1. No person arrested for the crime of domestic violence or violation of an order for protection under this chapter shall be released from jail until after the expiration of 72 hours from arrest.
2. No person arrested for a violation of an order for protection under this chapter shall be allowed a temporary release before arraignment except for extreme medical emergency or death of an immediate family member, and provided such release does not represent an imminent danger to victim, immediate family, or others.
3. In making a decision concerning pretrial release of a person who is arrested for, or charged with, a crime involving domestic violence or a violation of an order of protection, the court shall review the facts of arrest of the person and determine whether the person:
 - (a) Is a threat to the alleged victim or other family or household members;
 - (b) Is a threat to public safety;
 - (c) Is reasonably likely to appear in court; and/or
 - (d) Past behavior while on previous pre-trial release(s).
4. The use or abuse of alcohol and/or drugs by the alleged perpetrator shall be considered, not only in relationship to the alleged crime, but as alcohol or other related chemicals to the alleged perpetrators overall lifestyle, in the view that alcohol and/or drugs greatly increases the likeliness or unlikeliness of a person to appear in court, potential for lethality, or enhances the possibility of further threats or injury to the victim or others.
5. The employment, economics, educational, social and political status of the alleged perpetrator shall not be considered in making a determination regarding release or process for release inconsistent with the provisions of this section.
6. Before releasing a person arrested for or charged with a crime involving domestic violence, or a violation of an order for protection, the court shall make findings on the record, if possible, concerning the determination made in accordance with subsections 1-3 above, and the court may impose conditions of release or bail on the person to protect the alleged victim of domestic violence and to ensure the appearance of the person at a subsequent court proceeding. The conditions may include:

- (a) An order enjoining the person from threatening to commit or committing acts of domestic violence against the alleged victim or other family or household members;
 - (b) An order prohibiting the person from harassing, annoying, telephoning, contacting, or otherwise communicating with the alleged victim, either directly or indirectly through family, relations by marriage, friends, or co-workers;
 - (c) An order directing the person to vacate or stay away from the home of the alleged victim and/or child/ren and to stay away from any locations where the victim is likely to be;
 - (d) An order prohibiting the person from using or possessing a firearm or other weapons specified by the court; and/or,
 - (e) Inform the person to be released that his/her releases shall be monitored by the court for compliance with the conditions of release, and that a violation of those conditions may result in his/her arrest for non-compliance with release conditions.
7. If conditions of release are imposed, the court shall:
- (a) Issue a written order for conditional release;
 - (b) Immediately distribute a copy of the order to the prosecutors, police department, and domestic violence services;
 - (c) Provide the police department with any available information concerning the location of the perpetrator in a manner that protects the safety of the victim; and
 - (d) Inform the person to be released that his/her release shall be monitored by the court for compliance with the conditions of release, and that violation of those conditions may result in his/her arrest for non-compliance with release conditions.
8. The court clerk or a law enforcement officer shall provide a copy of the conditions to the arrested or charged person upon his or her release. Failure to provide the person with a copy of the conditions of release does not invalidate the conditions if the arrested or charged person has been provided other notice of conditions.
9. If conditions of release are imposed without a hearing, the arrested or charged person may request a prompt hearing before the court to review the conditions. Upon such a request, the court shall hold a prompt hearing to review the conditions.
10. When a person is arrested or charged with a crime involving domestic violence or a violation of an order for protection is released from custody, the tribal prosecutor shall:
- (a) Use all reasonable means to notify the victim of the alleged crime of the release;
 - (b) Furnish the victim of the alleged crime, at no cost, an official copy of any condition of release; and
 - (c) Furnish the victim services program an official copy of any conditions of release.

11. The court shall determine the court trial date and time prior to the defendants release, informing the court and the defendant of such for the record and denoting the trial date and time on the defendants release documents. The defendant shall not be released until he/she has been advised of the trial date and time.

12. The address of the victim is confidential and law enforcement and the court are prohibited from divulging it.

3.09.407 MANDATORY ARREST FOR VIOLATIONS OF CONDITIONS OF RELEASE

If a law enforcement officer has probable cause to believe that a person on domestic violence related release or probation, or supervised release has violated a condition of release imposed in accordance with section 3.09.406 herein, the officer shall without a warrant, arrest the alleged violator whether the violation was committed in or out of the presence of the officer.

3.09.408 DUTY OF PROSECUTOR TO NOTIFY THE VICTIM

The prosecutor shall make reasonable efforts to notify a victim of an alleged crime involving domestic violence when the prosecutor has decided to decline prosecution of the crime, to dismiss the criminal charges filed against the defendant, or to enter into a plea agreement. The victim shall be advised within five (5) days of the decision by the prosecutor.

3.09.409 RECORD OF DISMISSAL

When the court dismisses criminal charges or the prosecutor moves to dismiss charges against a defendant accused of a crime involving domestic violence, the specific reason for the dismissal must be recorded in the court file. The prosecutor must indicate the specific reason why the case cannot be prosecuted. Any dismissal by the court, for any reason other than insufficient evidence, may be appealed by the Tribe.

3.09.410 ETHICS: FAMILY RELATIONS OF LAW ENFORCEMENT, PROSECUTION, AND JUDGES TO DEFENDANT/PERPETRATOR

All public servants shall be expected to perform their duties and proceed in accordance with this Chapter no matter the employment, education, social and political status of the alleged perpetrator and/or victim. Public servants shall be held to the highest professional standards in responding to the crime of domestic violence.

In instances where law enforcement officers respond to a call involving a relative by blood or marriage, the officer shall notify their shift supervisor immediately and the shift supervisor shall take the report.

The supervising officer shall review all reports for accuracy and ensure that the appropriate actions have been taken.

3.09.411 TRANSPORTATION

Upon request of the victim, the police officer or emergency medical response team shall provide or arrange for transportation of the victim to a medical facility or a place of shelter.

3.09.500 SPECIAL COURT RULES

In addition to the rules of the court generally applicable to criminal proceedings, the court has the duty to take the actions addressed in the following sections 3.09.501 to 3.09.511 for any proceeding involving alleged domestic violence offenses.

3.09.501 COURT APPEARANCE BY DEFENDANT

At the first court appearance of the perpetrator charged with the offense of domestic violence, the court may impose a **No Contact Order** or other conditions of pretrial release according to the procedures established by court rule for a preliminary appearance or an arraignment. The **No Contact Order**, if issued, shall be provided to law enforcement immediately.

3.09.502 DEFENDANT GUILTY

1. If a person is found to have committed an act of domestic violence and a condition of the sentence restricts the defendant's ability to have contact with the victim, such order shall be provided to the victim.
2. Willful violation of the court order issued under this section is a crime and shall be punished in conformity with P.L. Law and Order Code § 3.04.224 Disobedience of a Lawful Court Order.

3.09.503 PROOF OF DISSOLUTION OF MARRIAGE NOT REQUIRED

The court shall not require proof that either party is seeking dissolution of marriage prior to proceeding with a criminal action.

3.09.504 LOCATION OF VICTIM

The court shall waive any requirement that the victim's location be disclosed to any person, other than the attorney/advocate of any criminal defendant, upon showing that there is a possibility of further violence: PROVIDED, that in this situation the court shall order a criminal defense attorney/advocate not to disclose to his client the victim's location.

3.09.505 ISSUANCE OF NO CONTACT ORDER

If there is no outstanding restraining order or protective order prohibiting a person charged with domestic violence from having contact with the victim, the court authorizing release may issue, by telephone, a **No Contact Order** prohibiting the person charged or arrested from having contact with the victim. The **No Contact Order** shall also be issued in writing immediately.

3.09.506 SURRENDER OF DEADLY WEAPON AND PROHIBITION OF POSSESSION

If the court has probable cause to believe that a person charged or arrested for domestic violence is likely to use or display or threaten to use a deadly weapon in any further acts of domestic violence, the court may require that person to surrender any deadly weapon in that person's immediate possession or control, or subject to that person's immediate possession or control, and prohibit that person from possessing a deadly weapon.

3.09.507 PRE-SENTENCE REPORT

If the alleged perpetrator of domestic violence pleads guilty, a pre-sentence report may be ordered at the discretion of the court prior to sentencing.

3.09.508 ALCOHOL AND DRUG EVALUATION

If it appears to the court that alcohol or drugs played a part in the abuse or domestic violence incident, the court will order a chemical dependency evaluation and order that the individual follow the recommendations and satisfactorily complete the recommendations.

3.09.509 GUILTY PLEA OR CONVICTION

Upon a guilty plea or conviction for domestic violence, the defendant will be ordered to participate in an appropriate domestic violence program consisting of at least the following:

1. The defendant will attend and participate in an intake session for evaluation;
2. The evaluation shall be completed by a Court approved evaluator for domestic violence treatment as stated in 3.09.300 of this code, no later than fourteen (14) calendar days after entry of the order requiring evaluation, unless the court extends that time period;
3. The defendant will sign the necessary waiver of confidentiality form for the treatment provider to provide a copy of their evaluation and recommended treatment plan to the court;
4. The domestic violence treatment provider and/or other service providers shall submit progress reports to the court at least once every two (2) calendar weeks.

3.09.510 DISOBEDIENCE OR REFUSAL TO COMPLY WITH A COURT ORDER

Disobedience or refusal to comply with a court order requiring a perpetrator to attend and cooperate with an evaluation and/or to undergo treatment as described in a treatment plan shall constitute **Contempt of Court** as described in sections PLTLOC 3.03.322 Contempt of Court (b)-(g) or P.L. 3.04.224 Disobedience of Lawful Orders.

3.09.511 COMMUNICATION TO POLICE

All orders prohibiting contact will be immediately communicated to the police, who shall keep such orders in their active records for immediate reference for at least one year from the date of issuances.

3.09.600 VICTIM'S RIGHTS; SECURITY AND CONFIDENTIALITY OF DOMESTIC VIOLENCE SHELTER PROGRAM:

3.09.601 FINAL ORDER

When a defendant is found guilty of domestic violence and a condition of the sentence restricts the defendant's ability to have contact with the victim, the order will be provided to the victim.

3.09.602 RESTRICTIONS OF DOMESTIC VIOLENCE SHELTER/PROGRAM

1. The security and confidentiality of any domestic violence shelter/program within the exterior boundaries of the Pyramid Lake Paiute Reservation shall be recognized by the court, law enforcement, and other service agencies as existing for the safety of victims of domestic violence. Advocates and shelter staff will not substantiate, verify, or deny placement information or the whereabouts of any domestic violence victim, or his/her children, as afforded under the **Victim-Advocate Privilege Act**.
2. Law enforcement officers or criminal investigators will contact the domestic violence advocate/director with any message for individual victims concerning investigations or victim information. Law enforcement officers will not attempt to coerce or intimidate shelter staff advocates to gain access to the shelter or information on the whereabouts of any victim. Any such attempt will be considered a violation of the **Victim-Advocate Privilege Act**, and any information gained from such an attempt will not be admissible in any tribal court proceeding.
3. No judge or officer of the Pyramid Lake Paiute Tribe will issue or initiate any search warrant, pick-up order, summons, bench warrant or any notice of the court proceedings specifying the domestic violence shelter/program as the individual's residence and/or location. Nor shall the shelter or domestic violence program be named as a party in any court action involving individual victims that may or may not be receiving advocacy services from the domestic violence shelter/program, in accordance with the **Victim-Advocate Privilege Act**.
4. While the domestic violence shelter/program may not be named as a party to any individual's court proceedings, an individual may give permission for a domestic violence shelter/program advocate to obtain court paperwork on his/her behalf. Such action shall not be construed by the court or law enforcement to mean that the domestic violence shelter/program is a party to any court proceedings, civil and/or criminal, between the two parties.

3.09.603 VICTIM ADVOCATE PRIVILEGE APPLICABLE IN CASES INVOLVING DOMESTIC VIOLENCE

A victim of domestic violence may refuse to disclose, and may prevent an advocate, elder or medicine person who provided counseling or medical care to the victim from disclosing, confidential oral communication between the victim and the advocate, elder or medicine person and written records and reports concerning the victim unless the privilege is waived by: the victim; or the death of the victim.

3.09.604 VICTIM-DECLARANT UNAVAILABLE-ADMISSIBILITY OF STATEMENTS

If it is found that an alleged victim is unavailable to testify because of the following:

- (1) threat of harm to the victim or victim's family; or
- (2) intimidation; or
- (3) coercion or bribery of the victim or a member of the victim's family; or
- (4) other acts of domestic violence as defined herein,

committed by the alleged perpetrator or his agents in an effort to influence, alter, or prevent the victim's testimony, then the prior sworn statement(s) of the victim is/are to be deemed admissible as long as it is/they are relevant. The fact that such threat, intimidation, coercion, bribery or domestic violence occurred before the defendant was charged with a crime shall not prohibit the statement (s) from being admitted.

3.09.700 ORDERS FOR PROTECTION AGAINST DOMESTIC VIOLENCE

3.09.701 DEFINITIONS

For the purposes of this chapter, the following definitions will apply:

1. "Extended order" means an extended order for protection against domestic violence.
2. "Temporary order" means a temporary order for protection against domestic violence.

3.09.702 REQUIREMENT OF ISSUANCE OF TEMPORARY AND EXTENDED ORDERS

1. If it appears from an application for a temporary and/or extended protection order against domestic violence that an act of domestic violence has occurred or there exists a threat of domestic violence, the court may grant a temporary or extended order for protection against domestic violence. A **temporary** or **extended** order for protection against domestic violence must not be granted to the applicant or the adverse party unless he/she has requested the order and has filed a verified application that an act of domestic violence has occurred or there exists threat of domestic violence.
2. A temporary order may be granted with or without notice to the adverse party if the court finds there is an emergency. An extended order may only be granted after notice to the adverse party and a hearing for the application.
3. A court may grant the following relief without notice and hearing in an order for protection or a modification issued **ex parte**, and the court may grant the following relief in a permanent order for protection or modification of permanent order for protection:
 - (a) Enjoin the respondent from threatening to commit or committing acts of domestic violence against the petitioner and any designated family or household member;
 - (b) Prohibit the respondent from harassing, annoying, telephoning, contacting, or otherwise communicating with the petitioner directly or indirectly through friends, relatives, or co-workers;
 - (c) Remove and exclude the respondent from the residence of the petitioner, regardless of ownership of the residence or lessee of record;

- (d) Order the respondent to stay away from the residence, school, or place of employment of the petitioner, regardless of ownership of the residence or lessee of record;
- (e) Seize and prohibit the respondent from using or possessing a firearm or other weapon specified by the court;
- (f) Order possession of the parties' residence and use of any vehicle and other essential personal effect, regardless of ownership, and direct the appropriate law enforcement officer to accompany the petitioner to the residence of the parties to ensure the petitioner is safely restored to possession of the residence, vehicle, and other personal effects, or to supervise the petitioner's or respondent's removal of personal belongings.

4. The court shall rule upon an application for an emergency temporary order within 72 hours after it is filed.

5. If it appears to the satisfaction of the court from specific facts communicated by telephone to the court by an alleged victim that an act of domestic violence has occurred and the alleged perpetrator of the domestic violence has been arrested and is presently in custody, the court may grant a temporary order for protection against domestic violence

Before approving an order under such circumstances, the court shall confirm with the appropriate law enforcement agency that the applicant is an alleged victim and that the alleged perpetrator is in custody. Upon approval by the court, the signed order may be transmitted to the facility where the alleged perpetrator is in custody by facsimile machine. If such an order is received by the facility holding the alleged perpetrator while he is still in custody, the order must be personally served by an authorized employee of the facility before the alleged perpetrator is released. The court shall mail additionally, a copy of each order issued to the alleged victim and named in the order and the original order shall be filed with the court clerk.

3.09.703 ISSUANCE OF PERMANENT ORDER FOR PROTECTION; DURATION OF ORDER; EXPIRATION DATE REQUIRED.

Any permanent order for protection issued under this chapter upon notice and opportunity to appear shall be issued for a period not less than three (3) years. In the discretion of the court, a permanent order for protection may be issued for a longer period of time, up to the projected life span of the petitioner. For the purposes of Full Faith & Credit compliance and enforcement of such extended orders must include an expiration date, whether figured by actual length of the order or from projected lifespan of the petitioner.

3.09.704 REQUIRED HEARINGS; SERVICE; DUTY OF COURT WHEN ORDER FOR PROTECTION IS DENIED.

1. If a court issues an order for protection *ex parte* or modification of an order for protection *ex parte*, the court shall set a date for a hearing on a permanent order for protection regarding the *ex parte* order for protection within 14 days. If personal service cannot be completed, the court shall notify the respondent by mail, at the last best known address of the

respondent and/or petitioner, of the date and time of hearing for a permanent order for protection.

2. Upon approval of an **ex parte** order, the court clerk shall set a hearing date scheduled within 14 days and immediately serve the petitioner regardless of the involvement or lack of involvement of an advocate.
3. If applicable, the respondent shall be served upon arraignment on any related charge(s). The civil clerk of courts shall be responsible for forwarding a copy of the **ex parte** order to the jail for service before the respondent's release for any related charge(s).
4. In the event that service is not successful, the judge shall ask the petitioner, under oath at the hearing for the permanent order for protection, if she/he believes the respondent is avoiding service by concealment or otherwise, and if he/she knows the respondent's whereabouts or current residence. If the petitioner so states, the judge shall direct the court clerk to set another hearing date within 14 days to initiate service by mail to the last and best known address of the respondent. The **ex parte** order shall remain in effect.
5. At the second hearing for a permanent order for protection and in the event the respondent again does not appear, irregardless of service, the judge shall issue a permanent order for protection, if warranted, and grant relief as the court deems appropriate.
6. Any person against whom a permanent order for protection is granted may petition the court for reconsideration of the order for protection showing, by clear and convincing evidence, that the respondent did not willingly and knowingly evade service and that there is meritorious defense to the action. Upon such a showing, the court may grant another **ex parte** order to protect the petitioner and immediately schedule a hearing within 14 days. The respondent shall be served with a copy of the **ex parte** order at the same time the respondent's petition is granted.
7. If the court denies a petition for an order for protection or a petition to modify an order for protection that is requested without notice to the respondent, the court shall inform the petitioner, in person or by mail, of his or her continuing right to request a hearing upon notice of the respondent. The court must state in the court record why the request was denied.

3.09.705 PETITIONER CANNOT VIOLATE ORDER FOR PROTECTION

If a respondent is excluded from the residence of or ordered to stay away from the petitioner, an invitation by the petitioner to the respondent, and any acceptance of that invitation, does not waive or nullify an order for protection. Further, the petitioner cannot be considered by such invitation as having violated, or be subject to arrest for a violation of, his/her own **ex parte** or permanent order for protection.

3.09.706 DENIAL OF RELIEF PROHIBITED.

The continuing safety of the petitioner shall be the primary factor of consideration for petitions for relief under this chapter. The court is prohibited from:

1. Denying petitioner relief requested because of lapse of time between an act of domestic violence and filing of the petition; or
2. Denying a petitioner relief requested solely because of ex parte contentions, gossip, or allegations made by the respondent or his family or disparaging of the character or lifestyle of the plaintiff.

3.09.707 MUTUAL ORDERS OF PROTECTION PROHIBITED.

A court shall not grant a mutual order for protection, ex parte or permanent order to opposing parties.

3.09.800 COURT ORDERS AND PROCESSES

3.09.801 COURT REFERRED MEDIATION OF CASES INVOLVING DOMESTIC VIOLENCE

A court shall not order parties into mediation or any type of counseling, alternative justice, restorative justice, peace-making, circle sentencing, traditional or Tribal ceremonies, or any other mediation type of situation that would put the petitioner in the position of dealing directly with the respondent.

3.09.802 COURT COSTS AND FEES

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

3.09.803 FULL FAITH CREDIT TO ORDER OF PROTECTION

Federal law (18 U.S.C. § 2265) provides that a civil or criminal domestic protection order issued by a court in one state or Indian tribe shall be accorded full faith and credit by the court of another state or tribe, and is to be enforced as if it were the order of the second state or tribe. This law applies to permanent, temporary and ex parte protection orders that comply with the statute's requirements. To comply, the protection must have provided the defendant with reasonable notice and an opportunity to be heard, in a manner consistent with due process. This law does not apply to mutual protection orders if (a) the original respondent did not file a cross or counter petition seeking a protective order, or (b) if such a cross or counter petition was filed, but the court did not make specific finds that each party was entitled to such an order.

3.09.850 INTERSTATE TRAVEL TO COMMIT DOMESTIC VIOLENCE

1. It is a federal crime for a person to travel interstate (or leave or enter Indian country) with the intent to injure, harass or intimidate that person's intimate partner when in the course of or as a result of such travel the defendant intentionally commits a violent crime and thereby causes bodily injury. The law requires specific intent to commit domestic violence at the time of interstate travel.

2. It is a federal crime to cause an intimate partner to cross state lines (or leave or enter Indian country) by force, coercion, duress, or fraud during which or as a result of which, there is bodily harm to the victim. This crime does not require showing of specific intent to cause the spouse or intimate partner to travel interstate. It does, however, require proof that the interstate travel resulted from force, coercion, duress or fraud. The defendant must intentionally commit a crime of violence during the course of or as a result of travel and there must be bodily injury to the spouse or intimate partner.

3.09.900 STALKING

3.09. 901 DEFINITIONS:

1. “Credible Threat” means a verbal or written threat, or a threat implied by a pattern of conduct, or combination of such verbal/written statements and conduct, either directly or through a third party, made with the intent to place the person who is the target of the threat in reasonable fear of his/her safety. The main standard for establishing a credible threat is the victim’s perception of a threat to his/her safety. The second criteria will be the apparent ability of the defendant to carry out the threat, whether verbal, written, or implied through a willful pattern of conduct. The third standard is the ability to identify and establish a pattern of corroborated stalking behavior.

2. “Harass” means a knowing and willful pattern of conduct directed at a specific person, either indirectly or through a third party, which seriously alarms, annoys, torments, or terrorizes the person, and which serves no legitimate purpose. Harassing behavior can include but not limited to:

- (a) Vandalism;
- (b) Annoying or threatening telephone calls;
- (c) Following or other violations of an order for a protection;
- (d) Actual Assaults;
- (e) Sending unwanted letters;
- (f) Sending unwanted messages or threats through third parties;
- (g) Showing up at victim’s home or workplace;
- (h) Attempting to obtain private information about the victim through others;
- (i) Leaving gifts for the victim;
- (j) Disabling or otherwise tampering with the victim’s vehicle;
- (k) Taking mail from the victim’s mailbox;
- (l) Entering the victim’s home or place of residence whether the victim is there or not;
- (m) Parking near or driving by the victim’s residence or workplace for no legitimate reason; and/or
- (n) Using agencies or institutions in a manner that constitutes a pattern of conduct consistent with retaliation or harassment, by initiating investigations, restrictions or sanctions against the victim.

3. “**Pattern of conduct**” means conduct which has caused the victim to suffer substantial emotional distress or fear. This course of conduct should contain a series of acts carried out by the defendant over a period of time, however short, which demonstrates a continuity of purpose

(i.e., to annoy, harass, follow, etc.) which would cause a reasonable person to suffer like emotional distress or fear.

4. **“Corroborating stalking conduct”** means any evidence of harassing behavior, physical evidence at the scene, records, documents, letters, unsubstantiated alibis, recorded messages, police reports, prior stalking convictions, witness information, or any other information, which would indicate a willful pattern of conduct or threat.

3.09.902 STALKING: OFFENSE DEFINED AND PENALTIES.

1. Any person who, directly or through a third party, willfully, maliciously and repeatedly follows or harasses another person, and who is perceived to constitute a credible threat and, by such perception places a person in reasonable fear of his/her safety, or the immediate safety of his/her family, shall be deemed guilty of stalking. A person who makes a judicial admission of, pleads guilty to, or is found guilty of stalking shall be subject to a penalty of not less than thirty (30) days and not more than one year in jail, a fine not to exceed \$5,000.00, or both.

2. Whoever makes a judicial admission of, pleads guilty to, or is found guilty of a second or subsequent offense, within five (5) years of the first offense, shall be subject to a penalty of not less than ninety (90) days and not more than one year in jail, a fine not to exceed \$5,000.00, or both.

3. A judicial admission, guilty plea, or conviction of second or subsequent stalking offense, involving a credible threat to the same person within one year, or in violation of a valid order for protection, shall be sentenced to a term of not less than six (6) months and not more than one year in jail, a fine not to exceed \$5,000.00 or both.

4. In addition to the penalties stated above, any person making a judicial admission, pleads guilty or being found guilty of a violation of this section, will be required to successfully complete an offenders program.

3.09.903 LOCATION OF STALKING PERPETRATOR NOT TO BAR PROSECUTION;

1. Any harassing or threatening behavior by the perpetrator, which meets the criteria of a credible threat, accomplished either directly or indirectly or through a third party, and a corroborated through admission, witness testimony, telephone records, postmarks, or order/delivery records as being initiated outside the boundaries of the Pyramid Lake Indian Reservation, will not bar prosecution under this section. The behavior or conduct shall be considered to be a credible threat when full transmittal of the threat has been completed to the victim, when said victim is within the boundaries of the Pyramid Lake Indian Reservation.

2. Corroborated initial or intervening acts used to establish a pattern of conduct for the purposes of probable cause under this section, but which occurred outside the boundaries of the Pyramid Lake Indian Reservation, may be used to establish and corroborate said stalking conduct for prosecution of a violation under this section.

3. The present incarceration of the person making the threat shall not bar prosecution under this section unless the stalking threat is carried out by a third party.



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
WESTERN NEVADA AGENCY
311 EAST WASHINGTON STREET
CARSON CITY, NV 89701

RECEIVED

SEP 27 2007

MEMORANDUM

August 27, 2007

PYRAMID LAKE TRIBE

To: Western Regional Director
Attn: Tribal Government Services

From: ^{Acting} Superintendent, Western Nevada Agency

Subject: Pyramid Lake Paiute Tribe, Amendment to Title III, Law and Order Code

The Pyramid Lake Paiute Tribe submits Tribal Resolution No. PL 59-07 which approves an amendment to Title III, Law and Order Code. Tribal Resolution No. PL 59-07 was enacted on August 17, 2007 and received at the Western Nevada Agency on August 21, 2007.

The Tribe cites the Constitution and Bylaws as the authority, but, does not specify what provision. We find Article VI, Section 1 (j) to be the proper authority, this provision is subject to Secretarial review.

The Tribal Council approves amendments to the Domestic Violence Code approved pursuant to Tribal Resolution No. 90-05. Tribal Resolution No. PL 59-07 also states that the amendments shall become effective upon adoption of this resolution. The amendments become effective upon approval of the Superintendent. In our review, the amendments are to Sub-sections 3.09.102.7, 3.09.300.1, 3.09.402.3, 3.09.406.1, 3.09.702.3 and 3.09.902.5. We find all these amendments to be consistent with the Tribal Constitution and Bylaws, therefore, Tribal Resolution No. PL 59-07 approving amendments to Title III, Domestic Violence Code is approved this date. The amendment is being sent to the Western Regional Office for legal review and concurrence.

If we can be of further assistance, your contact will be the Branch of Tribal Operations at (775) 887-3590.

Attachments

Cc: Pyramid Lake Tribe
Title III, Law and Order Code file

Pyramid Lake Paiute Tribe

Post Office Box 256

Nixon, Nevada 89424

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FAX (775) 574-1008

RESOLUTION NO. PL 59-07

RESOLUTION OF THE PYRAMID LAKE PAIUTE TRIBAL COUNCIL OF THE PYRAMID LAKE RESERVATION NIXON, NEVADA

WHEREAS, the Pyramid Lake Paiute Tribe ("Tribe") is organized pursuant to the provisions of Section 16 of the Indian Reorganization Act (25 USC §467), and is Federally recognized by the United States Government through the Secretary of the Interior and the Bureau of Indian Affairs; and,

WHEREAS, pursuant to the Constitution and Bylaws of the Pyramid Lake Paiute Tribe, the Pyramid Lake Paiute Tribal Council ("Tribal Council"), governing body of the Tribe, is responsible for and empowered to, among other things, promulgate ordinances for the purpose of safeguarding the peace and safety of residents of the reservation, and establishing courts for the trial of any person charged with the commission of offenses on the Pyramid Lake Paiute Reservation; and,

WHEREAS, the Tribal Council adopted Resolution No. PL 90-05 adopting the Domestic Violence Code to govern and to provide an orderly, efficient and fair method for addressing domestic violence situations; and,


WHEREAS, the Tribal Council has determined that a number of provisions in the Domestic Violence Code need to be amended to assist in the efficient administration of the Code;

NOW, THEREFORE, BE IT RESOLVED THAT the Pyramid Lake Paiute Tribal Council hereby amends the Domestic Violence Code as outlined in Attachment "A", attached hereto and hereby incorporated herein.

NOW, THEREFORE, BE IT FINALLY RESOLVED, that this amendment shall be effective upon adoption by the Pyramid Lake Tribal Council.

CERTIFICATION

It is hereby certified that the foregoing resolution of the Pyramid Lake Paiute Tribal Council, governing body of the Pyramid Lake Paiute Tribe, composed of ten members, of whom 10 constituting a quorum were present at a meeting duly held on the 17th day of August, 2007 was adopted by the affirmative vote of 7 for and 1 against, with 1 abstentions pursuant to the authority contained in the Constitution and By-laws of the Pyramid Lake Paiute Tribe.



Gina Wadsworth, Tribal Secretary
Pyramid Lake Tribal Council

AMENDMENTS TO DOMESTIC VIOLENCE CODE**A. Deleting subsection 3.09.102.7 and replacing it with the following:**

7. "Family or household member" includes:
 - (a) Adults or minors who are current or former spouses;
 - (b) Adults or minors who are in or have been in a dating relationship;
 - (c) Adults or minors who are engaged in or who have engaged in a sexual relationship;
 - (d) Persons who have a child in common;
 - (e) Relatives or step-relatives residing in the same household; and
 - (f) Minor child(ren) of a person in a relationship that is described in paragraph (a) through (e) above.

B. Deleting subsection 3.09.300.1 and replacing it with the following:

1. Any Indian who commits an act of domestic violence and found guilty thereof, shall be sentenced, in addition to the sentence for conviction of any underlying offenses, as follows:
 - (a) For a first offense: A mandatory minimum 30 days in jail, not to exceed one year; a mandatory minimum \$100.00 fine, not to exceed \$5,000.00; and counseling as the court deems appropriate.
 - (b) For a second conviction within a five-year period: A mandatory minimum 90 days in jail, not to exceed one year; with no release of parole; a mandatory minimum \$300.00 fine, not to exceed \$5,000.00; and counseling as the court deems appropriate.
 - (c) For a third or subsequent conviction within a five-year period: A mandatory minimum of 180 days in jail, not to exceed 1 year, with no release on parole; a mandatory minimum \$500.00 fine, not to exceed \$5,000.00; and counseling as the court deems appropriate.
 - (d) Notwithstanding any other provision regarding bail in the Pyramid Lake Law and Order Code, the bail amount for (1) a first offense of domestic violence shall be \$250; (2) if the person has one prior conviction for domestic violence and/or stalking the bail for domestic violence shall be

\$500; and (3) if the person has two or more prior convictions for domestic violence and/or stalking the bail for domestic violence shall be \$1000.

C. Deleting subsection 3.09.402.3 and replacing it with the following:

3. If a law enforcement officer receives conflicting complaints of domestic violence from two or more persons, the officer shall evaluate each complaint separately to determine who was the predominate aggressor. If the officer determines that one person was the predominate aggressor, the officer need not arrest the other person alleged to have committed a domestic violence crime. In determining whether a person is the predominate aggressor, the officer shall consider:

- (a) The history of domestic violence, both documented prior complaints and convictions and the law enforcement officer's own prior knowledge of the family;
- (b) The relative severity of the injuries inflicted on each person;
- (c) Who in this relationship poses the most danger to the other;
- (d) The likelihood of future injury to each person, i.e., who is at the most risk of future harm;
- (e) Whether one of the persons acted in self-defense and/or in the defense of others; and
- (f) The degree to which one of the persons has acted with more deliberate intent to control, isolate, intimidate, emotionally demean, cause injury or pain or fear of harm to the other person or a third party.

D. Deleting subsection 3.09.406.1 and replacing it with the following:

1. No person arrested for the crime of domestic violence or violation of an order for protection under this chapter shall not be released from jail until after the expiration of 48 hours from arrest.

E. Deleting subsection 3.09.702.3 and replacing it with the following:

3. A court may grant the following relief without notice and hearing in an order for protection or a modification issued *ex parte*, and the court may grant the following relief in a permanent order for protection or modification of permanent order for protection:

- (a) Enjoin the respondent from threatening to commit or committing acts of domestic violence against the petitioner and any designated family or household member;

- (b) Prohibit the respondent from harassing, annoying, telephoning, contacting, or otherwise communicating with the petitioner directly or indirectly through friends, relatives, or co-workers;
- (c) Order the respondent to stay away from the residence, school, or place of employment of the petitioner;
- (d) Seize and prohibit the respondent from using or possessing a firearm or other weapon specified by the court;
- (e) Order possession of the party's essential personal effects, and direct the appropriate law enforcement officer to accompany the petitioner to the residence of the parties to ensure the petitioner is safely restored to possession of the residence, vehicle, and other personal effects, or to supervise the petitioner's or respondent's removal of personal belongings.

F. Add the following as subsection 3.09.902.5:

5. Notwithstanding any other provision regarding bail in the Pyramid Lake Law and Order Code, the bail amount for the alleged crime of stalking shall be set as follows: (1) a first offense shall be \$250; (2) if the person has one prior conviction for domestic violence and/or stalking the bail shall be \$500; and (3) if the person has two or more prior convictions for domestic violence and/or stalking the bail shall be \$1000.