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TITLE XIII – FAMILY LAW

ARTICLE 1 – DOMESTIC RELATIONS - *RESERVED* -

ARTICLE 2 – VULNERABLE ADULT PROTECTION CODE

The effective date of Title 13, Article 2 is July 1, 2023. Resolution No. 2023-R-04.

Sec. 13-2-1 Title

This Code shall be known as the Pueblo of Santa Ana Vulnerable Adult Protection Code.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 13-2-2 Purposes; Interpretation; Custom and Tradition

A. The purposes of this Code are to protect vulnerable adults from abuse, neglect, and exploitation, and to provide services to vulnerable adults in need of them.

B. This Code shall be liberally interpreted in order to achieve its purposes, provided that nothing in this Code shall be construed to authorize or require any medical care or treatment against the express or implied wish of a vulnerable adult, nor shall this Code be construed to require or authorize the provision of medical care to, or prevent the withdrawal of medical care from, any terminally ill person if such person has executed an unrevoked living will, advance health care directive, or medical or healthcare power of attorney and the provision of such medical care would conflict with the terms of such living will, advance health care directive, or medical or healthcare power of attorney.

C. This Code shall also be interpreted pursuant to the customs and traditions of the Pueblo of Santa Ana.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 13-2-3 Definitions

As used in this Code, the following terms shall have the following meanings:

A. “Ability to consent” means an adult’s ability to understand and appreciate the nature and consequences of proposed protective services or protective placement, including benefits, risks and alternatives to the proposed services or placement and to make or communicate an informed decision.

B. “Abuse” means the knowing, intentional, or negligent infliction of physical pain, injury, or mental anguish on a vulnerable adult by another person; criminal sexual contact and criminal sexual penetration of a vulnerable adult; the intentional deprivation by a caretaker or

other person of services necessary to maintain the mental and physical health of a vulnerable adult; or the unreasonable confinement of a vulnerable adult by another person.

C. “Caretaker” means a facility, provider, or individual who has assumed the responsibility for the care of an adult.

D. “Conservator” means a person who is appointed by a court to manage the property or financial affairs of a vulnerable adult.

E. “Department” means the Pueblo of Santa Ana Social Services Department.

F. “Exploitation” means an unjust or improper use of a vulnerable adult’s money or property for another person’s profit, benefit, or advantage, with or without the vulnerable adult’s consent.

G. “Facility” means a hospital, nursing home, adult daycare facility, residential care facility, group home, convalescent home, home for the aged, assisted living facility or other licensed facility, but not a jail, prison, or detention facility.

H. “Guardian” means a person who has qualified to provide for the care, custody or control of vulnerable adult pursuant to appointment by a will or by a court, but excludes one who is merely a guardian ad litem.

I. “Law enforcement officer” means a peace officer employed by the Pueblo of Santa Ana Tribal Police Department or commissioned to enforce Pueblo of Santa Ana law.

J. “Least restrictive services” means services that are necessary to address abuse, neglect, and/or exploitation of a vulnerable adult while affording the vulnerable adult the greatest amount of personal freedom and civil liberties.

K. “Neglect” means the failure of a caretaker or facility to provide for the basic needs of a vulnerable adult by not supplying food, clothing, shelter, supervision, and care for the physical and mental health of the vulnerable adult. Neglect includes self-neglect by a vulnerable adult.

L. “Police Department” means the Pueblo of Santa Ana Tribal Police Department.

M. “Protective placement” means the placement of a vulnerable adult with a provider or in a facility or the transfer of a vulnerable adult from one provider or facility to another.

N. “Protective services” means short-term services furnished by the Department or under arrangement through the Department to a vulnerable adult who has been abused, neglected, or exploited, and that are provided with the adult’s consent or pursuant to the appropriate legal authority. Protective services may include social, psychiatric, health, and other services to detect, correct, or eliminate abuse, neglect, or exploitation.

O. “Provider” means a private residence, or health-care worker, or an unlicensed residential or nonresidential entity that provides personal, custodial, or health care.

P. “Tribal Court” means the Pueblo of Santa Ana Contemporary Court.

Q. “Traditional Court” means the Lt. Governor of the Pueblo of Santa Ana. The Governor of the Pueblo of Santa Ana is the appellate court for the Traditional Court forum. The Governor’s determinations may be heard on appeal to the Pueblo of Santa Ana Tribal Council.

R. “Vulnerable adult” means a person eighteen (18) years of age or older who is within the jurisdiction of the Pueblo of Santa Ana Contemporary Court and whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to: a mental, emotional, physical, or developmental disability or dysfunction; brain damage; the infirmities of aging; and/or chronic drug use or chronic intoxication.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 13-2-4 Duties of the Department

A. Subject to funding availability, the Department shall establish a system of protective services and protective placement for vulnerable adults and ensure the availability of those services or placement to all vulnerable adults in need of them.

B. The Department shall:

1. develop, maintain, and update as needed a process to receive a report of suspected abuse, neglect, or exploitation of a vulnerable adult;

2. assess a vulnerable adult and the adult’s situation to determine what immediate protective services or protective placement may be required;

3. conduct an investigation to determine if a report of abuse, neglect, or exploitation is substantiated;

4. document evidence, observations, and other information obtained in the course of an investigation;

5. establish a process to conduct a comprehensive evaluation or assessment of the physical, mental, and social well-being of an adult for whom a petition has been filed in Tribal Court requesting an order of non-emergency protective services or protective placement, or for whom an application for renewal of an original ex-parte emergency order has been made;

6. consistent with the customs and traditions of the Pueblo, develop a plan to provide a vulnerable adult with, or referral to, protective services, protective placement, or other intervention service, unless the Department determines that the adult has the ability to consent to services, but knowingly and voluntarily refuses services; and

7. ensure that the protective services or protective placement provided by or through the Department is short term and has a termination date, provided that appropriate arrangements have been made for follow-up care if needed.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 13-2-5 Investigation

A. The Department shall have immediate access to an adult located within the jurisdiction of the Tribal Court who is alleged to be abused, neglected, or exploited, in order to determine the accuracy of the report and the necessity of protective services or protective placement. If the Department is denied access to such an adult, it may petition the Tribal Court for an order requiring access, and will be granted an order upon a showing that a person has interfered with the Department's attempts to access the adult who is the subject of an abuse, neglect, or exploitation report.

B. Within twenty-four (24) hours after receiving a report, the Department shall conduct a safety check of the vulnerable adult to determine whether he or she is at a substantial risk of death or immediate and serious physical harm. If so, the Department shall first seek the adult's consent to protective services or protective placement. If the vulnerable adult lacks the ability to consent, or no person is authorized by law or court order to consent to services or a person with such authorization refuses to do so, the Department may seek an emergency order pursuant to Sec. 13-2-6, herein.

C. If the Department determines that the vulnerable adult is not at substantial risk of death or immediate and serious physical harm, the Department shall conduct an investigation, interviewing the vulnerable adult, his or her family and caretaker, any persons suspected of abusing, neglecting, or exploiting the vulnerable adult, and other persons with knowledge of the vulnerable adult's circumstances.

D. The Department shall assess the physical, mental, cultural and emotional needs of the vulnerable adult, as they relate to the alleged abuse, neglect, and exploitation.

E. The Department shall also review any documentary evidence pertaining to the allegations of abuse, neglect, or exploitation, including medical, psychological, and financial records. The Department may petition the Tribal Court for an order directed to an agency, facility, or person within the jurisdiction of the Tribal Court who has possession of any such records to provide the records or copies thereof to the Department, which petition shall be granted upon a showing of good cause.

F. The Department shall complete the investigation and prepare a written report of the findings of the investigation within three business days after receiving a report of neglect, abuse, or exploitation. The written report shall include the information regarding the factors set forth in Section 13-2-6 (B), below, as well as the results of interviews, observations and assessments, and other findings of fact. If the Department determines that the adult is a vulnerable adult who is in need of protective services, protective placement, or for a conservator,

the written report shall also state whether the adult consents to protective services, protective placement, or a conservator.

G. The Department may seek the assistance of the Police Department to carry out its investigation.

H. If the results of the investigation indicate that abuse, neglect, and/or exploitation has occurred, the Department shall immediately notify the Police Department. The Department shall make available to the vulnerable adult the appropriate and least restrictive services, directly or through referral of services to other agencies or providers.

I. If an adult who has the ability to consent to proposed protective services or protective placement refuses to consent to services or withdraws consent, voluntary protective services or voluntary protective placement shall not be provided. The Department, however, may file a petition seeking to provide involuntary protective services or involuntary protective placement pursuant to a Tribal Court in accordance with Section 13-2-8, below.

J. The Department may petition the court for the appointment of a guardian or conservator if the Department determines that a no less restrictive course of care or treatment is available that is consistent with the incapacitated adult's welfare and safety.

K. The Department and its employees are prohibited from:

1. taking custody of an adult;
2. acting as guardian, conservator or surrogate for any adult in need of protective services or protective placement, except that an employee may serve in that role when related to an adult;
3. acting as visitors in a proceeding for guardianship or conservatorship filed by the Department.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 13-2-6 Ex-Parte Orders for Emergency Protective Services

A. The Department may petition the Tribal Court for an emergency order of protective services or protective placement regarding a vulnerable adult in accordance with this Section.

B. The Tribal Court shall issue an ex-parte order authorizing involuntary protective services or protective placement on an emergency basis to an adult upon a showing by sworn statements that probable cause exists to believe that:

1. the adult is a vulnerable adult;

2. the adult is at a substantial risk of death or immediate and serious physical harm;
3. the adult lacks the ability to consent to receive protective services or protective placement; and
4. no person authorized by law or court order to give consent for the adult is available or willing to consent to the proposed services or protective placement.

C. A sworn petition for an emergency order shall state:

1. the name, address or location, and interest of the petitioner;
2. the name, address or location, and condition of the vulnerable adult;
3. the basis for alleging that the adult is a vulnerable adult;
4. the facts describing the nature of the emergency and the need for emergency intervention;
5. the proposed services or protective placement; and
6. the facts showing the petitioner's attempts to obtain the adult's consent to the proposed protective services or protective placement and the outcome of those attempts.

D. The rules of evidence do not apply to proceedings under this Section.

E. An ex-parte emergency order issued under this Section:

1. shall provide for only the protective services or protective placement necessary to remove the conditions creating the emergency, and specifically designate the protective services or protective placement to be provided;
2. shall not include hospitalization or change of residence unless specifically ordered;
3. shall be valid for no more than ten (10) days, provided that the original order may be renewed once for a period of up to twenty (20) days upon application to the Tribal Court showing that the original order must be continued to remove the conditions creating the emergency; and
4. may authorize the forcible entry of the premises where the vulnerable adult is located, provided that the facts in the petition show that attempts to gain voluntary access to the premises have failed and forcible entry is necessary to provide protective services or protective

placement, and provided further that any person making a forcible entry shall be accompanied by a law enforcement officer.

F. Within twenty-four hours after issuance of an ex-parte emergency order, a copy of the emergency ex-parte order, along with a copy of the petition, shall be served on the adult, and the adult's spouse, or if none, the adult children or next of kin, surrogate, guardian, or legal counsel, if any.

G. The vulnerable adult or any interested person may petition the Tribal Court to have the emergency order set aside or modified at any time.

H. The Tribal Court shall hold a hearing pursuant to Section 13-2-8(E) on an application to review an ex-parte emergency order within ten (10) days after the issuance of an emergency order.

I. If the vulnerable adult continues to need involuntary protective services or protective placement after the expiration of an ex-parte emergency order or renewal period, then the Department shall immediately petition the Tribal Court to appoint a conservator or guardian or to order non-emergency protective services or protective placement pursuant to Section 13-2-8.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 13-2-7 Emergency Protective Placement by a Law Enforcement Officer

A. When it appears from personal observation of a law enforcement officer that a vulnerable adult will suffer immediate and irreparable physical injury or death if not immediately removed from his or her current location, that the vulnerable adult is unable to give consent, and that it is not possible due to the emergency nature of the circumstances to follow the procedures of Section 13-2-6, above, then the law enforcement officer may transport the vulnerable adult to a facility or provider.

B. A law enforcement officer who removes an adult for emergency protective placement shall immediately notify the Department of the placement.

C. The Department shall file a petition pursuant to Section 13-2-6 within two (2) working days after the placement of the vulnerable adult has occurred unless the Department determines that there is no further need for involuntary protective services or protective placement, or that the criteria for emergency removal and placement have not been met.

D. Within two (2) working days after the placement of the vulnerable adult has taken place, the Department shall give notice to the adult's spouse, or if none, the adult's adult children or next of kin, surrogate, guardian, or legal counsel, if any.

E. If the Department files a petition as a result of an emergency placement, the Tribal Court shall hold a hearing within ten (10) days after the filing of the petition, pursuant to the provisions of Section 13-2-8(E), to determine whether the conditions creating the need for the emergency placement have been removed and whether the adult should be removed from the protective placement.

F. If the Department does not file a petition in accordance with this Section, then the protective placement will terminate upon the expiration of the time period provided for filing set forth at Section 13-2-7(C).

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 13-2-8 Involuntary, Non-Emergency Protective Services or Protective Placement

A. Involuntary, non-emergency protective services or protective placement shall not take place unless ordered by the Tribal Court after a finding on the record based on clear and convincing evidence that:

1. the adult is a vulnerable adult and lacks the ability to consent;
2. the adult is incapable of providing for his or her own care or custody and the adult is at significant risk of abuse, neglect, or exploitation that creates a substantial risk of serious physical harm to the adult or others;
3. the adult needs care or treatment;
4. the proposed order is substantially supported by the evaluation provided for in subsection D of this Section, or if not so supported, there are compelling reasons for ordering those protective services or that protective placement; and
5. no less restrictive alternative course of care or treatment is available that is consistent with the vulnerable adult's welfare and safety.

B. A petition under this Section shall state with particularity the factual basis for the allegations specified in subsection A of this Section and shall be based on the most reliable information available to the petitioner.

C. At the time the petition is filed, but in no case later than fourteen (14) days prior to the time set for hearing, a copy of the petition filed under this Section shall be served upon the adult, and given to the adult's legal counsel, caretaker, guardian, conservator, surrogate, spouse and adult children or next of kin, whose names and addresses are known to the petitioner or can with reasonable diligence be ascertained.

D. The Tribal Court shall direct the Department to conduct or cause to be conducted a comprehensive evaluation or assessment of the adult alleged to be in need of protective

services or protective placement, as established by the Department pursuant to Section 13-2-4 (B)(5).

E. The Tribal Court shall hold a hearing on the petition, at which hearing the following conditions apply:

1. the adult alleged to be a vulnerable adult shall be present unless the Tribal Court determines that it is impossible for the adult to be present or it is not in the adult's best interest because of a threat to the adult's health and safety;
2. the adult has the right to legal counsel at his or her own cost; and
3. the adult may, at his or her own expense, secure an independent medical, psychological, or psychiatric examination relevant to the issue involved in any hearing under this Section, and to present a report of this independent evaluation or the evaluator's in-person testimony at the hearing.

F. The Tribal Court shall issue an order in writing that sets forth its findings with respect to the petition.

G. At any point in the proceedings under this Section, the Tribal Court may:

1. refer the matter for resolution pursuant to custom and tradition;
2. request guidance from the Traditional Court regarding questions of custom and tradition; or
3. refer the matter to the Traditional Court for resolution.

The Traditional Court and its appeal processes are the sole determination of custom and tradition and resolution of any matter so referred and shall be final and binding on the parties.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 13-2-9 Costs of Protective Services and Protective Placement

A. The Department shall bear the costs of providing protective services, unless the adult agrees to pay for them or the Tribal Court, upon a showing that the adult is financially able to pay, authorizes payment to the Department for the reasonable costs of the protective services.

B. The Department shall bear the costs of providing protective placement to the extent the Department's budget allows, otherwise, the adult shall be responsible for the costs of protective placement.

C. As appropriate and permitted by law, the Department may bill a third party to receive reasonable reimbursement for protective services or protective placement.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec.13-2-10 Duty to Report; Criminal Penalty; Civil Penalty

A. Any person who has reasonable cause to believe that a vulnerable adult is being abused, neglected, or exploited shall immediately report that information to the Department. This section does not impose a duty on a vulnerable adult to report abuse, neglect, or exploitation of him or her.

B. The report may be made orally or in writing, and shall include:

1. the name, age, address or location, and phone number of the vulnerable adult;
2. the name, address or location, and phone number of any other person responsible for the adult's care;
3. the name, address or location, and phone number of the person who is suspected of abusing, neglecting, or exploiting the vulnerable adult;
4. the names, addresses or locations, and phone numbers of any witnesses;
5. the nature and extent of the adult's condition;
6. the basis of the reporter's knowledge; and
7. other relevant information.

C. Any Indian who knowingly fails to make a report required by this Section or who obstructs or impedes any investigation of a report made pursuant to this Section is guilty of a class 6 offense and may be imprisoned up to 30 days, fined up to \$500.00, or both imprisoned and fined.

D. Non-Indians violating this provision may be criminally prosecuted under comparable provisions of New Mexico state or federal law.

E. In addition to any criminal penalty, any person who knowingly fails to make a report required by this Section or who obstructs or impedes any investigation of a report made pursuant to this Section is subject to a civil fine of no more than \$500.00.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 13-2-11 Immunity

Any person who makes a report pursuant to Section 13-2-10, above, testifies in any judicial proceeding arising from the report, or provides information or documents in the course of the Department's investigation of a report, or any law enforcement officer carrying out his or her responsibilities under this Code, shall be immune from civil or criminal liability on account of that report, testimony, or participation in an investigation, unless that person acted in bad faith or with a malicious purpose, or is found to have engaged in the abuse, neglect, or exploitation of the vulnerable adult.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 13-2-12 Confidentiality of Records

Records of an investigation, and any services or referrals provided as a result of an investigation, are confidential and may be viewed only by authorized representatives of the Department, law enforcement personnel, a special prosecutor appointed to prosecute abuse, neglect, and exploitation cases on behalf of the Pueblo, and the parties to an abuse, neglect or exploitation case before the Tribal Court.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

ARTICLE 3 – DOMESTIC VIOLENCE CODE

The effective date of Title 13, Article 3 is July 1, 2023. Resolution No. 2023-R-04.

Chapter 1 – GENERAL PROVISIONS

Sec. 13-3-1 Short Title

This Article may be cited as the Domestic Violence Code.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 13-3-2 Definitions

As used in this Article:

- A. “continuing personal relationship” means a dating or intimate relationship.
- B. “Court” means the Pueblo of Santa Ana Contemporary Court.
- C. “domestic violence” means

- 1. an incident of stalking or sexual assault whether committed by a Household Member or not

2. any conduct by a Household Member against another Household Member resulting in:

- a. physical harm or bodily injury;
- b. substantial emotional distress;
- c. coercion;
- d. intimidation;
- e. imminent fear of physical harm to self or others;
- f. criminal damage to property;
- g. criminal trespass;
- h. false imprisonment;
- i. harassment;
- j. interference with emergency communications;
- k. strangulation;
- l. suffocation; or
- m. kidnapping;

but does not mean the use of force in self-defense or in the defense of another.

D. “federal firearms license” is a person who is licensed by the federal government to engage in the business of manufacturing, importing and/or dealing in firearms.

E. “firearm” means any weapon that will or is designed to or may readily be converted to expel a projectile by the action of an explosion or the frame or receiver of any such weapon.

F. “harassment” is knowingly pursuing a pattern of conduct that is intended to annoy, seriously alarm, or terrorize another person and that serves no lawful purpose. The conduct must be such that it would cause a reasonable person to suffer substantial emotional distress.

G. “household member” means a current or former spouse, parent, present or former stepparent, present or former parent in law, grandparent or grandparent-in-law, child, stepchild, grandchild, co-parent of a child or a person with whom an alleged victim has or has had a continuing personal relationship. It is not necessary that persons live together to be deemed Household Members under this Code.

H. “law enforcement officer” means an officer employed by the Santa Ana Tribal Police Department or commissioned by the Pueblo to enforce Pueblo law.

I. “mutual order of protection” means an order of protection that includes provisions that protect both parties.

J. “order of protection” means an injunction or a restraining order or other court order granted for the protection of a victim or alleged victim of domestic violence.

K. “pattern of conduct” means two or more acts, on more than one occasion, in which the alleged stalker by any action, method, device or means, directly, indirectly or through third parties, follows, monitors, surveils, threatens or communicates to or about a person.

L. “protected party” means a person protected by an order of protection.

M. “restrained party” means a person against whom an order of protection has been issued.

N. “Stalking” means knowingly pursuing a pattern of conduct, without lawful authority, directed at a specific individual when the person intends that the pattern of conduct would place the individual in reasonable apprehension of death, bodily harm, sexual assault, confinement or restraint of the individual or another individual.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 13-3-3 Severability

If any provision or the application of any provision of this Code is held invalid, such holding shall not affect the validity of the remaining parts of this Code.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 13-3-4 Dual Arrests

Dual arrests of persons involved in a domestic violence incident are discouraged. A law enforcement officer, in making arrests arising from a domestic violence incident, shall seek to determine whether one of the parties acted in self-defense and whether one party was the predominant physical aggressor. The Santa Ana Tribal Police Department is directed to develop and institute policies and procedures and to provide training designed to assist its officers in fulfilling their obligations under this Section.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 13-3-5 Law Enforcement Officers; Emergency Assistance; Notification; Limited Liability; Statement in Judgment and Sentence

A. In all arrests arising from a domestic violence incident, after notifying the alleged perpetrator of his or her rights, a law enforcement officer shall attempt to interview the alleged perpetrator within twenty-four (24) hours after the arrest.

B. A law enforcement officer shall make every attempt to take a recorded statement (with video if available) or a written statement from the alleged victim, if possible, and take photographs of any injuries. If injuries are not clearly visible upon first contact law enforcement, if possible, should attempt to take photographs 48 to 72 hours after the incident.

C. A law enforcement officer responding to the request for assistance shall take whatever steps are reasonably necessary to protect the alleged victim from further Domestic Violence, including:

1. advising an alleged victim of the remedies available under this Article and the availability of domestic violence shelters, medical care, counseling and other services, including the assistance of law enforcement available under this Section 13-3-5(C);

2. upon the request of an alleged victim, arranging for the alleged victim to be transported to a medical facility or place of shelter;

3. upon the request of an alleged victim, accompanying the alleged victim to the alleged victim's residence to remove the alleged victim's clothing and personal effects and the personal effects of any children then in the care of the alleged victim, as required for immediate needs.

4. upon the request of the victim, assist in placing the victim in possession of the dwelling or premises or otherwise assist in execution, enforcement or service of an order of protection;

5. arresting the alleged perpetrator when appropriate and including a written statement in the attendant police report to indicate that the arrest of the alleged perpetrator was, in whole or in part, premised upon probable cause to believe that the alleged perpetrator committed domestic abuse against the victim and, when appropriate, indicate that the party arrested was the predominant aggressor; and

6. advising the victim when appropriate of the procedure for initiating proceedings under the Domestic Violence Protection Code or criminal proceedings and of the importance of preserving evidence.

D. When a law enforcement officer arrests a person alleged to have committed a crime involving domestic violence, the officer shall request that the jail or detention center notify the Santa Ana Pueblo Tribal Police Department when the person is released from custody. When the Tribal Police Department receives such notice, it shall make a reasonable attempt to notify the alleged victim of that information. A law enforcement officer making such reasonable attempt is immune from civil liability for such action.

E. A law enforcement officer responding to a request for assistance pursuant to this Section is immune from civil liability, except for actions beyond the officer's authority as set forth in this Article that cause unreasonable harm to a person.

F. A statement shall be included in a judgment and sentence document to indicate when a conviction results from the commission of domestic violence.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 13-3-6 Medical Personnel; Documentation of Domestic Violence

A. When medical personnel who are interviewing, examining, attending or treating a person:

1. receive a report from the person of an act of domestic violence, the medical personnel shall document the nature of the abuse and the name of the alleged perpetrator of the abuse in the person's medical file and shall provide the person with information and referral to services for victims of domestic violence; or

2. may have reason to believe or suspect that the person is a victim of domestic violence, the medical personnel shall provide the person with information and referral to services for victims of domestic violence.

B. Medical and other health care related information or communications concerning domestic violence of a person obtained by or from medical personnel during the course of an interview, examination, diagnosis or treatment are confidential communications unless released:

1. with the prior written consent of the person;

2. pursuant to a court order; or

3. when necessary to provide treatment, payment and operations in accordance with the federal Health Insurance Portability and Accountability Act.

C. As used in this section, "medical personnel" means:

1. community health representatives;

2. licensed health care practitioners;

3. licensed emergency medical technicians;

4. health care practitioners who interview, examine, attend or treat a person and who are under the guidance or supervision of licensed health care practitioners; and

5. residents and interns.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Chapter 2 - CIVIL ORDERS OF PROTECTION

Sec. 13-3-7 Ex Parte Emergency Orders of Protection

A. The Court shall be available to hear ex parte petitions for emergency orders of protection.

B. The Court may issue an ex parte written emergency order of protection when a law enforcement officer states to the Court in person, by telephone, electronic media, or facsimile, and files a sworn written statement, setting forth the need for an ex parte emergency order of protection, and the Court finds reasonable grounds to believe that the alleged victim or the alleged victim's child is in immediate danger of domestic violence following an incident of domestic violence. The written statement shall include the location telephone number, and email address of the alleged perpetrator, if known.

C. A law enforcement officer who receives an emergency order of protection from the Court, whether in writing, by telephone, electronic media, or facsimile transmission, shall:

1. if necessary, pursuant to the judge's oral approval, write and sign the order on a Court-approved form;
2. immediately, or as soon as practically possible, serve a signed copy of the order on the restrained party and complete the appropriate affidavit of service;
3. immediately, or as soon as practically possible, provide the protected party with a signed copy of the order; and
4. provide the original order to the Court by the close of business on the next day that the Court is open.

D. The Court may grant the following relief in an emergency order of protection:

1. enjoin the restrained party from threatening to commit or committing acts of domestic violence against the protected party or any designated household members;
2. enjoin the restrained party from initiating any contact, direct or indirect, with the protected party;
3. grant temporary custody to the protected party of any minor child in common with the restrained party and the protected party, if necessary; and
4. grant sole possession of the residence to the protected party.

E. An emergency order of protection expires seventy-two hours (72) after issuance or at the end of the next day that the Court is open, whichever time is latest. The expiration date shall be clearly stated on the emergency order of protection.

F. A person who is adversely affected by an emergency order of protection may move the Court for reconsideration of the order. Such motion shall be heard as soon as the next day the Court is open following the issuance of the order, or as soon thereafter as the Court's calendar will permit.

G. Upon a proper petition, the Court may issue a temporary order of protection that is based upon the same incident of domestic violence for which the Court issued an emergency order of protection.

H. Emergency orders of protection are enforceable in the same manner as other orders of protection issued under this Code.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 13-3-8 Petition for Order of Protection

A. A victim of domestic violence may petition the Court in writing under this Code for an order of protection.

B. The petition shall be made under oath or shall be accompanied by a sworn affidavit setting out specific facts showing the alleged domestic violence.

C. The petition shall state whether any other domestic action is pending in any tribal or state court between the petitioner and the respondent. A domestic action includes an action for divorce, separation, child support, paternity, or order of protection. The petition shall also state whether the petitioner or the respondent are parties to an action filed by any tribe or state alleging child abuse or neglect.

D. If any other domestic action is pending between the petitioner and the respondent, the parties shall not be compelled to mediate any aspect of the case arising from this Code unless the Court finds that appropriate safeguards exist to protect each of the parties and that both parties can fairly mediate with such safeguards.

E. An action brought under this Code is independent of any proceeding between the parties for annulment, separation or divorce, or to establish paternity.

F. Remedies granted pursuant to this Code are in addition to and shall not limit other civil or criminal remedies available to the parties.

G. Standard simplified petition forms with instructions for completion shall be available to all parties. Law enforcement officers shall keep such forms and make them available upon request to alleged victims of domestic abuse.

H. No filing fee shall be required for the filing of a petition for order of protection.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 13-3-9 Temporary Orders of Protection

A. Upon the filing of a petition for an order of protection, the Court shall:

1. immediately grant an ex parte temporary order of protection without bond if there is probable cause from the specific facts shown by the affidavit or by the petition to give the judge reason to believe that an act of domestic violence has occurred;
2. cause a temporary order of protection, together with notice of hearing, to be personally served immediately on the alleged perpetrator of the domestic violence;
3. within fifteen (15) days after granting the temporary order of protection, hold a hearing on the petition for order of protection; provided, the time in which a hearing must be held may be extended one time by up to seven (7) days by the Court for good cause;
4. if an ex parte order is not granted, serve notice to appear upon the parties and hold a hearing on the petition for order of protection within seventy-two (72) hours after the filing of the petition; provided that if the notices to appear cannot be served within seventy-two (72) hours, the Court shall hold a hearing as soon as practicable after the service of notice to appear, but in no event later than the time required under Section 13-3-9(A)(3).

B. If the court grants a temporary order of protection, it may award temporary custody and visitation of any children involved when appropriate.

C. Except for petitions alleging stalking or sexual assault, if the Court finds that the alleged perpetrator is not a household member, the Court shall dismiss the petition.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 13-3-10 Order of Protection; Contents; Remedies

A. Upon finding that domestic violence has occurred, the Court shall issue an order of protection.

B. An order of protection shall:

1. specifically describe the acts the court has ordered the restrained party to do or to refrain from doing;
2. describe any prior court orders related to domestic violence and including the parties that are altered or superseded by the order of protection;
3. state when it expires;

4. contain notice that violation of any provision of the order of protection is a violation of Pueblo law and that federal law, 18 U.S.C. §922 (d)(8) and (9), prohibits possession of firearms by certain persons;

C. An order of protection may:

1. grant sole possession of the residence or household to the protected party during the period the order of protection is effective or order the restrained party to provide temporary suitable alternative housing for the protected party and any children to whom the restrained party owes a legal obligation of support;

2. exclude the restrained party from the protected party's residence, school, place of employment or other specified place frequented by the protected party or the protected party's minor children;

3. order the restrained party not to initiate direct or indirect contact with the protected party;

4. award temporary custody of any children involved when appropriate and provide for visitation rights, child support, and temporary support for the protected party on a basis that gives primary consideration to the safety of the protected and the children. If the Court finds that the safety of the protected party or the parties' minor children may be jeopardized by unsupervised or unrestricted visitation with the restrained party, the Court shall set forth conditions or restrict visitation as to the time, place, duration or supervision, or deny visitation entirely, as necessary, to safeguard the protected party and/or the parties' minor children;

5. restrain one or both parties from transferring, encumbering, concealing or disposing of property except as authorized by the court, and require that an accounting shall be made to the court for all such transfers, encumbrances, dispositions and expenditures made after the order is served on or communicated to the restrained party;

6. order the restrained party to reimburse the protected party or any other household member for expenses reasonably related to the occurrence of domestic violence, including medical expenses, counseling expenses, attorney fees, the expense of seeking temporary shelter, expenses for the replacement or repair of damaged property or the expense of lost wages;

7. order the restrained party to participate in, at the restrained party's own expense, professional counseling or educational programs designed to treat or educate perpetrators of domestic violence, persons who abuse alcohol, and/or persons who abuse controlled substances;

8. if the Court also determines that the restrained party presents a credible threat to the physical safety of the household member, after the restrained party has received notice and had an opportunity to be heard or by stipulation of the parties, order the restrained party to:

a. deliver any firearm in the restrained party's possession, care, custody or control to the Santa Ana Pueblo Tribal Police Department, a law enforcement officer or a federal firearms licensee while the order of protection is in effect; and

b. refrain from purchasing, receiving, possessing or attempting to purchase, receive or possess any firearm while the order of protection is in effect.

9. order any other lawful relief as the court deems necessary for the protection of any victim of domestic violence, including orders or directives to the Santa Ana Tribal Police to assist in the execution of service of the order of protection.

D. A mutual order of protection shall be issued only in cases where both parties have petitioned the court and the court makes detailed findings of fact indicating that both parties acted primarily as aggressors and that neither party acted primarily in self-defense.

E. No order issued under this Article shall affect title to any property or allow a party to transfer, conceal, encumber or otherwise dispose of another party's property or the joint or community property of the parties.

F. Either party may request a review hearing to amend an order of protection. An order of protection involving child custody or support may be modified without proof of a substantial or material change of circumstances.

G. An order of protection shall not be issued unless a petition or a counter petition has been filed.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 13-3-11 Relinquishment of Firearms; Penalty

A. After the Court has issued notice that the restrained party is subject to the provisions of Paragraph (8) of Subsection C of Section 13-3-10, the restrained party shall relinquish all firearms in the restrained party's immediate possession or control, or subject to the restrained party's possession or control, in a safe manner to a law enforcement officer, the Santa Ana Pueblo Tribal Police Department or a federal firearms licensee within twenty-four (24) hours after service of the order.

B. A law enforcement officer or Santa Ana Tribal Police Department shall take possession of all firearms subject to the order of protection that are relinquished by the restrained party or are in plain sight or are discovered pursuant to a lawful search.

C. A law enforcement officer or Santa Ana Tribal Police Department that takes temporary possession of a firearm pursuant to this section shall:

1. prepare a receipt identifying all firearms that have been relinquished or taken;
2. provide a copy of the receipt to the restrained party;

3. provide a copy of the receipt to the petitioner within seventy-two hours of taking possession of the firearm(s);

4. file the original receipt with the Court within seventy-two (72) hours of taking possession of the firearm(s); and

5. ensure that the Santa Ana Tribal Police Department retains a copy of the receipt.

D. An order of protection issued pursuant to Section 13-3-10 shall include:

1. a statement that the restrained party shall not purchase, receive, transport, possess or have custody or control of a firearm while the order of protection is in effect;

2. a description of the requirements for the relinquishment of firearms as provided in this section;

3. a statement that within seventy-two (72) hours of the issuance of the order of protection the restrained party must file with the court issuing the order:

a. a receipt identifying all firearms that have been relinquished or taken by a law enforcement officer or Santa Ana Tribal Police Department; or

b. a written declaration of non-relinquishment made under penalty of perjury stating that restrained party (1) has not surrendered any firearms because the restrained party does not have any firearms, and (2) understands that the restrained party is prohibited under Pueblo and federal law from obtaining or possessing a firearm until further order of the court.

4. the expiration date of relinquishment;

5. the address of the court; and

6. a statement that violation of any provision of the order of protection is a violation of Pueblo law, and that federal law, 18 U.S.C. § 922(b)(8) and (9), prohibits possession of firearms by certain persons.

E. If the restrained party is present at the hearing on the order of protection, the Court shall provide the restrained party with a receipt form to identify all firearms to be surrendered or, if the restrained party has no firearms to relinquish, a declaration of non-relinquishment. The Court shall accept the completed form from the restrained party for immediate filing.

F. Evidence establishing ownership or possession of a firearm pursuant to this section shall not be admissible as evidence in any criminal proceeding.

G. The Santa Ana Tribal Police Department or federal firearms licensee with custody of a surrendered or seized firearm shall make the firearm available to a formerly restrained party within three business days of receipt of a request from a formerly restrained party providing

evidence that the order of protection has expired and that the formerly restrained party is otherwise not prohibited by Pueblo or federal law to own and possess a firearm.

H. A formerly restrained party who has surrendered or had firearms taken by a law enforcement officer or Santa Ana Tribal Police Department pursuant to this section who does not wish the firearm returned or who is no longer eligible to possess a firearm may sell or transfer the firearm to a federal firearms licensee. The Santa Ana Tribal Police Department shall not release the firearm to a federal firearms licensee until:

1. the federal firearms licensee has displayed proof that the formerly restrained party has transferred the firearm to the licensee; and

2. the Santa Ana Tribal Police Department has verified the transfer with the formerly restrained party.

I. A Santa Ana Tribal Police Department holding a firearm relinquished pursuant to this section may dispose of the firearm twelve months from the date of proper notice to the formerly restrained party of the intent to dispose of the firearm, unless another person claiming to be the lawful owner presents written proof of ownership. If the firearm remains unclaimed after twelve months from the date of notice, no party shall assert ownership and the Santa Ana Tribal Police Department may dispose of the firearm. For the purposes of this subsection, “dispose” means to destroy a firearm or sell or transfer the firearm to a federal firearms licensee.

J. The provisions of this section shall not be interpreted to require a federal firearms licensee to purchase or accept possession of a firearm from a restrained party.

K. The administrative office of the courts shall develop a standard receipt form and declaration of non-relinquishment form for use under this section.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 13-3-12 Duration and Modification

A. All provisions of an order of protection issued under Sec. 13-3-10 shall remain in full force and effect until the order expires or is modified by the court.

B. An order of protection granted under Sec. 13-3-10 shall state when it expires, however, orders of protection involving custody or support shall be effective for no more than six months.

C. At the request of the protected party and upon a showing of good cause, the Court may extend an order of protection for an additional period of time not to exceed six months. Provided the requirements for each extension are met, there is no limit to the number of extensions the Court may grant.

D. Either party may request that the Court hold a hearing to amend the order of protection.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 13-3-13 Service of Orders of Protection; When Effective

A. All orders of protection shall be filed with the Court and a copy shall be sent to the Santa Ana Police Department at no cost to the protected party.

B. Service upon the restrained party of an order of protection issued by the Court must be done personally, unless the restrained party or the restrained party's attorney was present at the hearing. The Court will arrange for service.

C. Emergency and temporary orders of protection are effective when served upon restrained party. Orders of protection issued after notice to the restrained party and hearing upon the merits are effective when issued, whether or not the restrained is personally served.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 13-3-14 Forbearance of Costs associated with Domestic Violence

An alleged victim of domestic abuse shall not be required to bear the cost of:

- A. the filing, issuance or service of a witness subpoena;
- B. the filing, issuance or service of a petition for an order of protection;
- C. the filing, issuance or service of an order of protection; or
- D. obtaining law enforcement reports or photographs or copies of photographs relating to the alleged abuse or pattern of abuse.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 13-3-15 Victim Counselor/Victim Advocate Confidentiality; Definitions

As used in Section 13-3-15 to Section 13-3-18:

- A. "confidential communication" means
 - 1. any information exchanged between a victim and a victim counselor in private or in the presence of a third party who is necessary to facilitate communication or further the counseling and which is disclosed in the course of the counselor's treatment of the victim for any emotional or psychological condition resulting from a sexual assault or domestic violence;
 - 2. any information exchanged between a victim and a victim advocate in private or in the presence of a third party who is necessary to facilitate communication or further the

provision of advice, counsel, or assistance by the victim advocate to the victim and which is disclosed in the course of the victim advocate's provision of such services to the victim.

B. "victim" means a person who is a victim of domestic violence or sexual assault.

C. "victim advocate" means a person:

1. whose primary function is to render advice, counsel, or assist victims of domestic or family violence or sexual assault; and

2. who has undergone not less than fifteen (15) hours of training as a victim's advocate or, with respect to an advocate who assists victims of sexual assault, not less than thirty (30) hours of training as a sexual assault victim's advocate; and

3. who supervises employees of the program, administers the program, or works under the direction of a supervisor of the program;

4. but does not include an advocate employed by any law enforcement agency.

D. "victim counseling" means assessment, diagnosis and treatment to alleviate the adverse emotional or psychological impact of a sexual assault or domestic violence on the victim. Victim counseling includes crisis intervention.

E. "victim counseling center" means a private organization or unit of a government agency which has as one of its primary purposes the treatment and support of victims for any emotional or psychological condition resulting from a sexual assault or domestic violence; and

F. "victim counselor" means any employee or supervised volunteer of a victim counseling center or other agency, business or organization that provides counseling to victims who is not affiliated with a law enforcement agency or the prosecutor, has successfully completed forty hours of academic or other formal victim counseling training or has had a minimum of one year of experience in providing victim counseling and whose duties include victim counseling.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 13-3-16 Victim Counselor/Victim Advocate Confidentiality; Confidential Communications

A. A victim, a victim counselor or victim advocate without the consent of the victim, or a minor or incapacitated victim without the consent of a custodial guardian or a guardian ad litem appointed upon application of either party shall not be compelled to provide testimony or to produce records concerning confidential communications for any purpose in any criminal action or other judicial, legislative or administrative proceeding.

B. A victim counselor, victim advocate, or a victim shall not be compelled to provide testimony in any civil or criminal proceeding that would identify the name, address, location or telephone number of a safe house, abuse shelter or other facility that provided temporary emergency shelter to the victim of the offense or occurrence that is the subject of a judicial, legislative or administrative proceeding unless the facility is a party to the proceeding.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 13-3-17 Victim Counselor/Victim Advocate Confidentiality; Waiver

A. A victim does not waive the protections afforded by Section 13-3-15 through Section 13-3-18 by testifying in court about the crime; provided that if the victim partially discloses the contents of a confidential communication in the course of the victim's testimony, then either party to the action may request the court to rule that justice requires the protections of Section 13-3-15 through 13-3-18 be waived to the extent that they apply to that portion of the communication. Waiver shall apply only to the extent necessary to require any witness to respond to questions concerning the confidential communication that are relevant to the facts and circumstances of the case.

B. A victim counselor or victim advocate shall not have authority to waive the protections afforded to a victim under Section 13-3-15 through Section 13-3-18; provided that if a victim brings suit against a victim counselor or victim advocate or the agency, business or organization in which the victim counselor or victim advocate was employed or served as a volunteer at the time of the counseling or victim-victim advocate relationship and the suit alleges malpractice during that relationship, the victim counselor or victim advocate may testify or produce records regarding confidential communications with the victim without liability for those actions.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 13-3-18 Victim Counselor/Victim Advocate Confidentiality; Interpretation

Sections 13-3-15 through 13-3-17 shall not be construed to relieve a victim counselor or victim advocate of any duty to report suspected child abuse or neglect, to report any evidence that the victim is about to commit a crime, or to limit any testimonial privileges available to any person pursuant to other provisions of law.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.