

Cherokee Nation Code Annotated

Title 22: Criminal Procedure

Chapter 2: Prevention of Public Offenses

§ 60.2. Protective order—Petition: form; filing fee; preparation

Cite as: 22 CNCA § 60.2

Any of the following persons may seek relief under this chapter by filing a petition with the Court alleging that domestic violence has been committed by the respondent. The person may petition for relief on behalf of any victim including minors within the family or household members:

1. Any person claiming to be the victim of recent domestic violence, harassment or stalking as defined in this Act;
2. Any family member or household member of a person claimed to be the victim of domestic violence, harassment, or stalking as defined in this Act, on behalf of the alleged victim;
3. A police officer;
4. A victim advocate or Victim Support Person; and/or
5. The Attorney General or any Assistant Attorneys General

b. 1. There is no minimum requirement of residency to petition for a protective order.

2. The District Court shall have jurisdiction over a petition for protective order in any case where either the plaintiff or defendant resides within the boundaries of the Cherokee Nation or the act(s) constituting domestic violence, harassment, or stalking have occurred within the boundaries of the Cherokee Nation.

3. If a petition has been filed in an action for divorce or separate maintenance in the Cherokee Nation District Court and either party to the action files a petition for a protective order in the District Court the petition for the protective order may be heard together if the court finds that hearing the actions together would further the interest of judicial economy; provided, however, the petition for a protective order, including, but not limited to, a petition in which children are named as petitioners, shall remain a separate action and a separate order shall be entered in the protective order action. Protective orders may be dismissed in favor of restraining orders in the divorce or separate maintenance action if the court specifically finds, upon hearing, that such dismissal is in the best interests of the parties and does not compromise the safety of any petitioner.

- a. If the defendant is a minor child, the petition shall be filed with the court having jurisdiction over juvenile matters.
- b. When the abuse occurs when the court is not open for business, such person may request an immediate emergency temporary order of protection as authorized by this title.
- c. The petition forms shall be provided by the Clerk of the Court. The District Court shall develop a standard form for the petition.
- d. The plaintiff shall prepare the petition as provided by the Court, or at the request of the plaintiff, the Clerk of the Court or the victim support person may prepare or assist the plaintiff in preparing the same.
- e.
 - 1. Except as otherwise provided by this section, no filing fee, service of process fee, attorney fees or any other fee or costs shall be charged the plaintiff or victim at any time for filing a petition for a protective order whether a protective order is granted or not granted. The court may assess court costs, service of process fees, attorney fees, other fees and filing fees against the defendant at the hearing on the petition, if a protective order is granted against the defendant; provided, the court shall have authority to waive the costs and fees if the court finds that the party does not have the ability to pay the costs and fees.
 - 2. If the court makes specific findings that a petition for a protective order has been filed frivolously and no victim exists, the court may assess attorney fees and court costs against the plaintiff.
 - 3. If, after investigation, the Court finds that a party's allegations of domestic violence in a domestic violence protective order proceeding, divorce proceeding, child custody proceeding, child visitation proceeding, separation proceeding or termination of parental rights proceeding are false and not made in good faith, the Court shall order the party making the false allegations to pay court costs and reasonable attorney fees incurred by the other party in responding to the allegation.
- f. The person seeking a protective order may further request the exclusive care, possession, or control of any animal owned, possessed, leased, kept, or held by either the petitioner, defendant or minor child residing in the residence of the petitioner or defendant. The court may order the defendant to make no contact with the animal and forbid the defendant from taking, transferring, encumbering, concealing, molesting, attacking, striking, threatening, harming, or otherwise disposing of the animal.
- g. A court may not require the victim to seek legal sanctions against the defendant including, but not limited to, divorce, separation, paternity or criminal proceedings prior to hearing a petition for protective order.

h. A victim of rape, forcible sodomy, a sex offense, kidnapping, assault and battery with a deadly weapon or member of the immediate family of a victim of first-degree murder, as such terms are defined in the Cherokee Nation Code Annotated, may petition for an emergency temporary order or emergency ex parte order regardless of any relationship or scenario pursuant to the provisions of this section. The District Court shall modify the petition forms as necessary to effectuate the provisions of this subsection.

Historical Data

LA 10–90, eff. November 13, 1990. Amended LA 33–03, eff. November 13, 1990; LA 12–18, eff. June 13, 2018. Amended LA 31-22, eff. September 22, 2022.