

**Chapter 4. Extraordinary Writs and Special Remedies**  
**(CHAPTER TITLE AMENDED PURSUANT TO RESOLUTION NO. 2645-97-4 DATED 9/11/2002)**

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**Sec. 401. Restraining order without notice.**

(a) A restraining order without notice to the adverse party shall be granted if it clearly appears from specific facts shown by oral testimony, affidavit, or by the verified complaint that immediate and irreparable injury will result to the applicant

before notice can be served and a hearing had thereon.

No temporary restraining order or other injunction without notice shall be granted where the Tribes are a defendant or a tribal official is a defendant in his/her official capacity.

(b) Upon review of a petition filed pursuant to subsection (a) and a finding that the petitioner is in danger of immediate and irreparable injury or harm if the Court does not act immediately, the Court shall issue a temporary restraining order that grants the petitioner appropriate relief. The temporary restraining order may include any or all of the orders listed in Section 402 of this Chapter.

(c)(1) A hearing must be conducted within 10 business days from the date that the Court issues a temporary restraining order. The hearing date may be continued at the request of either party for good cause or by the Court. If the hearing date is continued, the temporary restraining order must remain in effect until the Court conducts a hearing. At the hearing, the Court shall determine whether good cause exists for the temporary restraining order to be continued, amended or made permanent.

(2) The respondent may request an emergency hearing before the end of the 10 business day period by filing an affidavit that demonstrates that the respondent has an urgent need for the emergency hearing. An emergency hearing must be set within 3 business days of the filing of the affidavit.

(3) The temporary restraining order may not be made mutually effective by the Court. The respondent may obtain a temporary restraining order from the petitioner only by filing an application for a temporary restraining order and following the procedure described in this Chapter.

(d) The Court may order that the temporary restraining order remain in effect for an appropriate period of time or permanently. The order may be terminated upon the petitioner's request that the order be dismissed.

(e) Violation of the temporary restraining order or the permanent restraining order is a Class A misdemeanor.

**(AMENDED AS PER RESOLUTION NO. 2645-97-4, DATED 9/11/2002. AMENDED AS PER RESOLUTION NO. 26-1196-2012-08, DATED 8/13/2012)**

**Sec. 401-A. Order of protection.**

(a) A temporary order of protection shall be granted to a petitioner who files a sworn petition that states that petitioner is in reasonable apprehension of bodily injury or is a victim of one of the following offenses:

- (1) Kidnaping as defined in 7 CCOJ 210;
- (2) Aggravated sexual assault of a child as defined in 7 CCOJ 227;
- (3) Aggravated assault as defined in 7 CCOJ 230;
- (4) Simple assault as defined in 7 CCOJ 231;
- (5) Intimidation as defined in 7 CCOJ 233;
- (6) Criminal endangerment as defined in 7 CCOJ 234;
- (7) Negligent endangerment as defined in 7 CCOJ 235;
- (8) Severe domestic abuse as defined in 7 CCOJ 244;
- (9) Domestic abuse as defined in 7 CCOJ 245;
- (10) Arson as defined in 7 CCOJ 301; and is in danger of harm if the Court does not issue a temporary order of protection immediately.

(b) Upon review of a petition filed pursuant to subsection (a), and a finding that the petitioner is in danger of immediate and irreparable injury or harm if the Court does not act immediately, the Court shall issue a temporary order of protection that grants the petitioner appropriate relief. The temporary order of protection may include any or all of the orders listed in Section 402 of this Chapter.

(d)(1) A hearing must be conducted within 10 business days from the date that the Court issues a temporary order of protection. The hearing date may be continued at the request of either party for good cause or by the Court. If the hearing date is continued, the temporary order of protection must remain in effect until the Court conducts a hearing. At the hearing, the Court shall determine

whether good cause exists for the temporary order of protection to be continued, amended or made permanent.

(2) The respondent may request an emergency hearing before the end of the 10 business day period by filing an affidavit that demonstrates that the respondent has an urgent need for the emergency hearing. An emergency hearing must be set within 3 business days of the filing of the affidavit.

(3) The temporary order of protection may not be made mutually effective by the Court. The respondent may obtain a temporary order of protection from the petitioner only by filing an application for a temporary order of protection and following the procedure described in this Chapter.

(e)(1) The Court may order that the temporary order of protection remain in effect for an appropriate period of time or permanently. The order may be terminated upon the petitioner's request that the order be dismissed.

(2) The order of protection may include restraining the respondent from any other named family member who is a minor. If this restriction is included, the respondent must be restrained from having contact with the minor for an appropriate period of time as directed by the Court or permanently if the Court finds that the minor was a victim of abuse, a witness to abuse or endangered by the environment of abuse.

(f) Violation of the temporary order of protection is a Class A misdemeanor. Violation of a permanent order of protection is a felony.

**(AS PER RESOLUTION NOS. 26-1196-2012-08, DATED 8/13/2012; 27-1633-2015-03, DATED 3/9/2015.)**

#### **Sec. 402. Scope of Regulation for Temporary Restraining Order, Temporary Order of Protection, Order of Protection.**

A Temporary Restraining Order, Temporary Order of Protection or Order of Protection can include but is not limited to:

(a) An order enjoining an abuser from threatening to commit or committing further acts of domestic or family violence;

(b) An order to cease and desist from stalking behaviors;

(c) An order removing an individual from a residence;

(d) An order for a threatening person to stay away from the moving party's and the moving party's dependents' residence(s), school(s), work, place of worship, or any other specified localities.

(e) An order of confiscation of any firearms or other weapons owned by a threatening individual;

(f) An order granting the moving party sole possession of an automobile and/or other essential personal property;

(g) An order allowing a one-time return to retrieve such essential personal property, accompanied by a police officer, and with a social worker if petitioner for this one time exception so desires, to a residence from which the one restrained is otherwise prohibited from being in or near. The sole purpose of such an allowance shall be to collect essential and highly valuable personal items of the petitioner and his/her dependents, such as clothing, jewelry, correspondence, and pictures of high sentimental meaning, legal documents, and prescription medications.

(h) An order granting temporary custody of children to the moving party;

(i) An order denying a threatening person rights of child visitation, or an order specifying arrangements for visitation, including requiring supervised visitation;

(j) An order for a parent or custodian to pay child support;

(k) An order that an individual pay certain costs and fees, such as rent or mortgage payments, medical expenses, expenses for shelter, court costs, and attorney fees.

**(AMENDED AS PER RESOLUTION NOS. 821-2002-8; DATED 8/12/2002; 26-1383-2012-09, DATED 9/11/2012.)**

#### **Sec. 403. Security.**

Except as otherwise provided by law, no temporary restraining order or preliminary injunction shall issue except upon the giving of security by

the applicant, in such sum as the Court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the United States, the Tribes, or of an officer, or agency, or either.

**Sec. 404. Habeas corpus.**

Relief by habeas corpus proceedings shall be granted whenever it appears to the Court that any person is unjustly imprisoned or otherwise unlawfully deprived of his/her liberty. Upon the filing of the complaint the Court shall issue a writ directed to the defendant commanding him/her to bring the person alleged to be restrained before the Court at a time and place therein specified, at which time the Court shall proceed to hear the matter and render judgment accordingly.

**Sec. 404-A. Civil liabilities for injuries or death involving alcohol beverage consumption.**

Any person, who, or whose property or means of support, is injured by any intoxicated person, shall have a right of action against any vendor of alcoholic beverages who, by unlawfully selling, dispensing, giving, or assisting in procuring alcoholic beverages to or for such intoxicated person, shall have caused or contributed to such intoxication. In any such action the injured person shall have a right to recover actual and exemplary damages. If death ensues, the survivors of the decedent shall succeed to the cause of action.

**(AMENDED AS PER RESOLUTION NO. 2645-97-4 DATED 9/11/2002)**