

DOMESTIC AND FAMILY VIOLENCE ORDINANCE
Siletz Tribal Code § 8.100

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PART 1 GENERAL PROVISIONS

§ 8.100 PURPOSE

(a) The Purpose of this Ordinance is to recognize domestic and family violence as a serious crime against society, the Tribe, and the family, and to provide the victim of domestic or family violence the maximum protection from further violence which the law, and those who enforce the law, can provide. Furthermore, the purpose of this Ordinance is to recognize that the strength of the Tribe is founded on healthy families, and that the safety of victims domestic violence, especially women and children, must be ensured by immediate intervention of law enforcement, prosecution, education, counseling, and other appropriate services.

(b) It is the intent of the Siletz Tribal Council that the official response to cases of domestic and family violence will be that violent behavior will not be excused or tolerated. The fact that a perpetrator is intoxicated will not excuse violent behavior or lessen the criminal justice system's response to the violence. Furthermore, it is the intent of the Siletz Tribal Council that the laws against domestic and family violence be enforced without requiring that the persons be married, cohabitating, or presently involved in a relationship.

§ 8.101 CONSTRUCTION

(a) The Domestic and Family Violence Ordinance must be construed to promote:

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- (1) the protection and safety of all victims of domestic and family violence in a fair, prompt, and effective manner; and
- (2) the prevention of future violence in all families.

§ 8.102 **DEFINITIONS**

(a) Unless the context requires otherwise, terms used in the Domestic and Family Violence Ordinance are defined as follows.

- (1) “Domestic or family violence” means the occurrence of one or more of the following acts by a family or household member, but does not include acts of self-defense by the victim:
 - (2) attempting to cause or causing physical harm, bodily injury, or assault to another family or household member;
 - (3) placing a family or household member in fear of the infliction of physical harm, bodily injury, or assault; or
 - (4) causing a family or household member to engage involuntarily in sexual activity by force, threat of force, or duress.
- (b) “Family or household members” include:
 - (1) current or former spouses;
 - (2) persons who live together or have lived together;
 - (3) persons who are engaged in or have engaged in a sexual relationship;
 - (4) persons who have a child in common or who are expecting a child together;
 - (5) persons related by blood, adoption, or marriage; and

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- (6) minor children, foster children, or adopted children of persons described in (1) through (5) above.

The above definition of “family or household member” applies only to the Domestic and Family Violence Ordinance.

(c) “Bodily injury” means physical pain, illness, or an impairment of a physical condition.

(d) “Causing apprehension of bodily injury” means any physical act, including the utterance of verbal threats, which causes another person reasonably to fear serious bodily injury or death.

(e) “Causing emotional distress” means engaging in conduct that would cause a reasonable person emotional distress and does in fact cause emotional distress to the person. Unless the presumption is rebutted by a preponderance of the evidence, the following types of conduct will be presumed to cause emotional distress:

- (1) creating a disturbance at a person's place of employment or school;
- (2) repeatedly telephoning a person's place of employment or residence;
- (3) repeatedly following a person in a public place or places;
- (4) repeatedly keeping a person under surveillance by remaining present outside his or her home, school, place of employment, vehicle or other place occupied by the person or by peering in the person's windows;
- (5) improperly concealing a minor child from a person with sole or joint custody of the minor, repeatedly threatening to improperly remove the person's minor child from the jurisdiction or from his or her physical care, repeatedly threatening to conceal the person's minor child, or making a single such threat following an actual or attempted improper removal or concealment, unless the removal or attempted removal was made while fleeing from an incident or pattern of domestic violence; or

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- (6) threatening physical force, confinement or restraint on one or more occasions.

- (f) “Program of intervention for perpetrators” means a specialized program that:
 - (1) accepts perpetrators of domestic or family violence into treatment or educational classes to satisfy court orders;
 - (2) offers treatment to perpetrators of domestic or family violence; or
 - (3) offers classes or instruction to perpetrators of domestic or family violence.

- (g) “Prosecutor” means a person employed by the Tribe to prosecute offenses in the Siletz Tribal Court.

- (h) “Advocate” means an employee of or volunteer for a program for victims of domestic or family violence who has a primary function of rendering advice, counseling, or assistance to victims of domestic or family violence, supervising the employees or volunteers of the program, or administering the program.

PART 2
CRIMINAL PENALTIES AND PROCEDURES

§ 8.103 “CRIME INVOLVING DOMESTIC OR FAMILY VIOLENCE” DEFINED

- (a) A “crime involving domestic or family violence” occurs when a family or household member:
 - (1) purposely or knowingly causes bodily injury to a family or household member;
 - (2) purposely or knowingly causes apprehension of bodily injury to a family or household member;

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- (3) purposely or knowingly causes emotional distress of a family or household member; or
- (4) commits one or more of the following offenses, as defined by the Confederated Tribes of Siletz Indians Criminal Code, against another family or household member:
 - (A) Assault (First, Second, Third or Fourth Degree Assault);
 - (B) Menacing;
 - (C) Intimidation (First or Second Degree);
 - (D) Harassment;
 - (E) Burglary (First or Second Degree);
 - (F) Criminal Trespass (First or Second Degree);
 - (G) Criminal Mischief (First, Second or Third Degree);
 - (H) Custodial Interference (First or Second Degree);
 - (I) Theft (First, Second, or Third Degree, and Aggravated First Degree);
 - (J) Disorderly Conduct;
 - (K) Stalking;
 - (L) Arson;
 - (M) Homicide (Murder, First or Second Degree Manslaughter, Criminally Negligent Homicide);
 - (N) Kidnapping (First or Second Degree);

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- (O) Any Sex Offense contained in §§ 12.044 - 12.055; or
- (P) Any Weapon Law Violation contained in §§ 12.122-12.128.

Voluntary intoxication, which is available as a legal defense only in cases involving specific intent crimes, is not available as a defense to a charge of domestic or family violence. Voluntary intoxication will not be utilized by law enforcement, prosecution or the Court to mitigate the severity of the violence or lessen the legal consequences of the charge.

§ 8.104 **VIOLATION OF CERTAIN ORDERS FOR PROTECTION IS AN OFFENSE**

(a) Violation of one of the following orders issued in accordance with § 8.110, 8.120, 8.126 or 8.127 of this Ordinance is an offense of domestic or family violence:

- (1) an order enjoining the perpetrator from threatening to commit or committing acts of domestic or family violence against a family or household member;
- (2) an order prohibiting the perpetrator from intimidating, harassing, menacing, annoying, telephoning, contacting, or otherwise interfering or communicating with a family or household member, directly or indirectly;
- (3) an order removing and excluding the perpetrator from the residence of a family or household member and a reasonable area surrounding the residence;
- (4) an order requiring the perpetrator to stay away from the residence, school, place of employment, or a specified place frequented regularly by a family or household member;
- (5) an order prohibiting the perpetrator from using or possessing a firearm or other weapon specified by the Court; or
- (6) an order granting temporary custody of a minor child to the person protected by the order.

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§ 8.105 **MANDATORY ARREST FOR OFFENSES INVOLVING DOMESTIC OR FAMILY VIOLENCE; DETERMINATION OF PRIMARY AGGRESSOR; REQUIRED REPORT**

(a) A law enforcement officer must arrest and charge a person with the appropriate crime if the officer has probable cause to believe that the person has committed an offense involving domestic or family violence, even if a warrant has not been issued and the offense was committed outside the presence of the officer.

(b) If a law enforcement officer receives complaints of domestic or family violence from two or more opposing persons, the officer must evaluate each complaint separately to determine who was the primary aggressor. If the officer determines that one person was the primary physical aggressor, the officer need not arrest the other person believed to have committed an offense of domestic or family violence. In determining whether a person is the primary aggressor, the officer must consider:

- (1) the Siletz Tribe's intent to protect victims of domestic or family violence;
- (2) prior complaints of domestic or family violence;
- (3) the relative severity of the injuries inflicted on each person, or serious threats creating reasonable fear of bodily injury;
- (4) the likelihood of future injury to each person;
- (5) the officer's experience in handling domestic and family violence cases;
and
- (6) whether one of the persons acted in self-defense.

(c) A law enforcement officer must not threaten, suggest, or otherwise indicate the possible arrest of all parties to discourage requests for intervention by law enforcement by any party.

(d) In addition to any other report required in the usual course of duties, a law

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enforcement officer who does not make an arrest after investigating a complaint of domestic or family violence, or who arrests two or more persons for a crime involving domestic or family violence, must submit a detailed, written report setting forth the grounds for not arresting or arresting both parties. This mandatory report must contain:

- (1) a description of the circumstances of the persons and their surrounding environment when the officer responded to the call;
- (2) a description of the injuries or harm inflicted upon either or both persons; and
- (3) summaries of the comments from the persons describing the circumstances leading to the call for law enforcement.

§ 8.106 **DUTIES OF LAW ENFORCEMENT OFFICER TO VICTIM OF DOMESTIC OR FAMILY VIOLENCE; REQUIRED NOTICE TO VICTIM**

(a) A law enforcement officer who responds to an allegation of domestic or family violence must use all reasonable means to protect the victim and prevent further violence, including but not limited to:

- (1) taking any action necessary to provide for the safety of the victim and any other family or household member;
- (2) confiscating weapons pursuant to 8.108(a);
- (3) transporting or obtaining transportation for the victim and any minor child to a shelter or other place of safety;
- (4) assisting the victim in removing essential personal effects from the place where the alleged offense occurred;
- (5) assisting the victim and any minor child in obtaining medical treatment, including obtaining transportation to a medical facility; or

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- (6) giving the victim immediate and adequate notice of the rights of victims and the remedies and services available to victims of domestic or family violence.

(b) As part of the notice required by subsection (a)(6), the law enforcement officer must give a written notice to the victim, which must include at a minimum the following:

“If you are the victim of domestic or family 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. You may request an emergency order for 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, such as a shelter, a family member’s or a 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 officer’s report at no cost to you.

“You have the right to ask the prosecutor to file a criminal complaint. You also have the right to file a petition in the Siletz Tribal Court requesting an order for protection from domestic or family violence, which could include any of the following orders:

- (1) an order enjoining the perpetrator from threatening to commit or committing further acts of domestic or family violence;
- (2) an order prohibiting the perpetrator from intimidating, harassing, menacing, annoying, telephoning, contacting, or otherwise interfering or communicating with you, directly or indirectly;
- (3) an order removing the perpetrator from your residence and a reasonable area surrounding the residence;
- (4) an order directing the perpetrator to stay away from your residence, school, place of employment, or any other specified place frequented by you or another family or household member;

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- (5) an order prohibiting the perpetrator from using or possessing any firearm or other weapon specified by the Court;
- (6) an order granting you possession and use of the automobile and other essential personal effects;
- (7) an order granting you custody of your minor child or children;
- (8) an order denying the perpetrator visitation;
- (9) an order specifying arrangements for visitation, including requiring supervised visitation; and
- (10) an order requiring the perpetrator to pay certain costs and fees, such as rent or mortgage payments, child support payments, medical expenses, expenses for shelter, court costs, and attorney's fees.

“The forms you need to obtain an order for protection are available from the Clerk of the Siletz Tribal Court. A list of the resources available in this community for information relating to domestic and family violence, treatment of injuries, and places of safety and shelters is attached.

“You also have the right to seek reimbursement for losses suffered as a result of the domestic or family violence, including medical and moving expenses, loss of earnings or support, and other expenses for injuries sustained and damage to your property. This can be done without an attorney or advocate in the Siletz Tribal Court.”

- (c) The written notice must not include the addresses of shelters, unless the location is public knowledge.

§ 8.107 **MANDATORY ARREST FOR VIOLATIONS OF ORDERS FOR PROTECTION OR VIOLATIONS OF CONDITIONS OF RELEASE**

- (a) When a law enforcement officer has probable cause to believe that a person has

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violated one of the following orders issued in accordance with § 8.110 (conditions of release), § 8.120 (conditions of probation or parole), § 8.126 (emergency order for protection) or § 8.127 (orders for protection), and verifies the existence of the order, the officer must arrest the apparent violator, even if a warrant has not been issued and the offense was committed outside the presence of the officer:

- (1) an order enjoining the perpetrator from threatening to commit or committing acts of domestic or family violence against a family or household member;
- (2) an order prohibiting the perpetrator from intimidating, harassing, menacing, annoying, telephoning, contacting, or otherwise interfering or communicating with a family or household member, directly or indirectly;
- (3) an order removing and excluding the perpetrator from the residence of a family or household member and a reasonable area surrounding the residence;
- (4) an order requiring the perpetrator to stay away from the residence, school, place of employment, or a specified place frequented by a family or household member;
- (5) an order prohibiting the perpetrator from using or possessing a firearm or other weapon specified by the Court; or
- (6) an order granting temporary custody of a minor child to the person protected by the order. Following arrest, the officer must deliver the minor child to the care and custody of the person having legal custody.

§ 8.108 **AUTHORITY OF LAW ENFORCEMENT OFFICER TO SEIZE WEAPONS**

(a) Incident to an arrest for a crime involving domestic or family violence, violation of an order for protection, or violation of conditions of release, a law enforcement officer:

- (1) must seize all weapons that are alleged to have been involved or threatened to be used in the commission of the crime; and

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- (2) may seize any weapon that is in the plain view of the officer or was discovered pursuant to a consensual search, as necessary for the protection of the officer or other persons.

(b) When an officer seizes a weapon pursuant to subsection (a)(2), the alleged perpetrator of domestic or family violence may request that the weapon be returned. The Court will grant such a request only if the alleged perpetrator of domestic or family violence shows by clear and convincing evidence:

- (1) that he or she has a compelling need for the weapon, such as a need to hunt for subsistence; and
- (2) that the return of the weapon will not increase the risk of harm to the alleged victim.

The Court may place any conditions on the return and use of the weapon that are necessary to protect the alleged victim of domestic or family violence.

§ 8.109 **FILING OF CRIMINAL COMPLAINT FOR DOMESTIC OR FAMILY VIOLENCE**

The enforcement officer making an arrest for domestic or family violence must sign a criminal complaint charging the crime of domestic or family violence. If the defendant is not in custody, the prosecutor or the victim may sign the complaint. Any complaint signed by the victim must be delivered to the prosecutor. If the defendant is not in custody at the time the complaint is charged, the prosecutor must seek a warrant of arrest.

§ 8.110 **CONDITIONS OF RELEASE**

(a) In making a decision concerning pretrial release of a person who is arrested and/or charged with a crime involving domestic or family violence or a violation of an order for protection, the Court must review the facts of the arrest and determine whether the person:

- (1) is a threat to the alleged victim or other family or household member;

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- (2) is a threat to public safety; and
- (3) is reasonably likely to appear in court.

(b) In making the determination required by subsection (a)(1), the Court will consider whether the arrested person's pattern of violent or threatening behavior towards a family or household member is chronic, and whether the seriousness of the behavior has been escalating, indicating a heightened danger of severe or lethal injury to the victim.

(c) Before releasing a person arrested for or charged with a crime involving domestic or family violence or a violation of an order for protection, the Court must make findings on the record, if possible, concerning the determination made in accordance with subsection (a), and may impose conditions of release or bail on the defendant to protect the alleged victim of domestic or family violence and to ensure the defendant's appearance at a subsequent court proceeding. The conditions may include, but are not limited to:

- (1) an order enjoining the defendant from threatening to commit or committing acts of domestic or family violence against the alleged victim or other family or household member;
- (2) an order prohibiting the defendant from intimidating, harassing, menacing, annoying, telephoning, contacting, or otherwise interfering or communicating with the alleged victim, directly or indirectly;
- (3) an order directing the defendant to vacate or stay away from the home of the alleged victim and to stay away from any other location where the victim or other family or household member is likely to be;
- (4) an order prohibiting the defendant from using or possessing a firearm or other weapon specified by the Court;
- (5) an order prohibiting the defendant from possession or consumption of alcohol or controlled substances; and
- (6) any other order required to protect the safety of the alleged victim and to ensure the appearance of the defendant in Court.

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- (d) If conditions of release are imposed, the Court must:
- (1) issue a written order for conditional release;
 - (2) immediately distribute a copy of the order to the police department or other agency having custody of the defendant; and
 - (3) provide the police department or other agency having custody of the defendant with any available information concerning the location of the victim in a manner that protects the safety of the victim.

(e) The Court, police department or other agency having custody of the defendant must provide a copy of the conditions to the defendant 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 defendant has notice of the conditions.

(f) When a person is released from custody after being arrested for or charged with a crime involving domestic or family violence or a violation of an order for protection, the Court, police department or other agency having custody of the defendant must:

- (1) use all reasonable means to immediately notify the victim of the release; and
- (2) furnish the victim a certified copy of any conditions of release at no cost to the victim.

§ 8.111 MANDATORY ARREST FOR VIOLATION OF CONDITIONS OF RELEASE

If a law enforcement officer has probable cause to believe that a person has violated a condition of release imposed in accordance with § 8.110 and verifies that the defendant received notice of the conditions, the officer must arrest the defendant even if a warrant has not been issued and the offense was committed outside the presence of the officer.

§ 8.112 DUTY OF PROSECUTOR TO NOTIFY VICTIM

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(a) A prosecutor must make reasonable efforts to notify a victim of an alleged crime involving domestic or family 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. Reasonable efforts to notify the victim must be documented, and must be made promptly after the decision to decline prosecution, dismiss criminal charges or enter into a plea agreement.

(b) For purposes of this Section, “reasonable efforts” must include the establishment of a system for notice designed to accomplish actual notice to the victim. The duty of the prosecutor to make reasonable efforts to notify the victim will be satisfied if the victim cannot be located at the last known address provided to the prosecutor or any address available to other Tribal Agencies.

§ 8.113 RECORD OF DISMISSAL REQUIRED IN COURT FILE

When the Court dismisses criminal charges or the prosecutor moves to dismiss charges against a defendant accused of a crime involving domestic or family violence, the specific reasons for the dismissal must be recorded in the Court file. Where the prosecutor has entered into a plea bargain or moved to dismiss charges, the prosecutor must provide written reasons the case cannot be prosecuted, and must indicate the specific reason why any witness is unavailable.

§ 8.114 CRIMINAL CASE MAY NOT BE DISMISSED BECAUSE CIVIL COMPROMISE IS REACHED

The Court must not dismiss a criminal complaint charging domestic or family violence for the sole reason that a civil compromise or settlement is reached.

§ 8.115 RIGHTS OF VICTIMS OF DOMESTIC OR FAMILY VIOLENCE; DUTY OF PROSECUTOR TO INFORM VICTIM OF RIGHTS

- (a) A victim of domestic or family violence is entitled to:
- (1) be informed of all hearing dates and continuances;
 - (2) request a copy of the law enforcement officer’s report at no cost;

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- (3) provide the Court with a victim-impact statement, victim-opinion statement, and an assessment of the risk of further harm;
- (4) be present at sentencing and address the Court;
- (5) advise the Court of conditions of probation and parole required to ensure the safety of the victim and other family or household members;
- (6) receive restitution for losses sustained as a direct consequence of any criminal conduct; and
- (7) receive notice from the prosecutor in accordance with § 8.112.

(b) The prosecutor must notify the victim of domestic or family violence of the victim's rights set forth in this section.

§ 8.116 SPOUSAL PRIVILEGES INAPPLICABLE TO PROTECT THE DEFENDANT IN CRIMINAL PROCEEDINGS INVOLVING DOMESTIC OR FAMILY VIOLENCE

(a) The following evidentiary privileges do not apply to protect the defendant in any criminal proceeding in which a spouse or other family or household member is the victim of an alleged crime involving domestic or family violence perpetrated by the other spouse:

- (1) the privilege of confidential communication between spouses; and
- (2) the testimonial privileges of spouses.

§ 8.117 ADVOCATE-VICTIM PRIVILEGE APPLICABLE IN CASES INVOLVING DOMESTIC OR FAMILY VIOLENCE

(a) Except as otherwise provided in subsection (b), confidential oral communications between a victim of domestic or family violence and an advocate, and written records and reports concerning the victim are privileged. The privilege can be claimed by:

- (1) the victim; or

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- (2) the person who was the advocate at the time of the confidential communication, except that the advocate may not claim the privilege if the victim is deceased or if the privilege has been waived by the victim.

(b) The privilege does not relieve a person from any duty imposed pursuant to the Child Abuse Reporting Requirement contained in the Siletz Juvenile Code, § 8.005 or the Tribe's Personnel Manual at § 2.816. A person may not claim the privilege when providing evidence in proceedings concerning child abuse pursuant to the Siletz Juvenile Code.

§ 8.118 RESIDENTIAL CONFINEMENT IN HOME OF VICTIM PROHIBITED

In cases involving domestic or family violence, the Court must not order residential confinement for a perpetrator in the home of the victim.

§ 8.119 COURT DISCRETION IN SENTENCING PERPETRATORS OF DOMESTIC OR FAMILY VIOLENCE

(a) The Court may not sentence a perpetrator of domestic or family violence to community service in lieu of jail unless:

- (1) the perpetrator has not been accused of violating an Order for Protection while the criminal matter was pending;
- (2) the perpetrator has no previous conviction for domestic or family violence;
- (3) the perpetrator meets other eligibility criteria established pursuant to subsection (b);
- (4) consent of the prosecutor is obtained after consultation with the victim, when the victim is available;
- (5) a hearing is held in which the perpetrator enters a plea or judicial admission to the crime; and
- (6) the Court orders conditions of the sentence to community service that are necessary to protect the victim, prevent future violence, and rehabilitate

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the perpetrator.

- (b) The Court must establish criteria for determination of:
 - (1) a perpetrator's eligibility for a sentence of community service in lieu of jail;
 - (2) a perpetrator's successful completion of the conditions imposed by the Court; and
 - (3) penalties for violation of the conditions imposed by the Court.

§ 8.120 **CONDITIONS OF PROBATION OR PAROLE FOR PERPETRATOR CONVICTED OF CRIME INVOLVING DOMESTIC OR FAMILY VIOLENCE; REQUIRED REPORTS BY POLICE DEPARTMENT**

(a) The Court must consider the safety and protection of the victim and any member of the victim's family or household before placing on probation or granting parole to a perpetrator who has been convicted of a crime involving domestic or family violence.

(b) The Court may condition the placing on probation or granting of parole upon compliance with one or more orders of the Court, including but not limited to the following:

- (1) enjoining the perpetrator from threatening to commit or committing acts of domestic or family violence against the victim or other family or household member;
- (2) prohibiting the perpetrator from intimidating, harassing, menacing, annoying, telephoning, contacting, or otherwise interfering or communicating with the victim, directly or indirectly;
- (3) requiring the perpetrator to vacate or stay away from the residence, school, place of employment, or a specified place frequented by the victim and any designated family or household member;
- (4) prohibiting the perpetrator from possessing or consuming alcohol or

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controlled substances;

- (5) prohibiting the perpetrator from using or possessing a firearm or other specified weapon;
- (6) directing the perpetrator to surrender any weapons owned or possessed by the perpetrator;
- (7) directing the perpetrator to participate in and complete, to the satisfaction of the Court, a program of intervention for perpetrators, treatment for alcohol or substance abuse, or psychiatric or psychological treatment;
- (8) directing the perpetrator to pay restitution to the victim; and
- (9) imposing any other condition necessary to protect the safety of the victim and his or her family or household members, or to rehabilitate the perpetrator.

(c) The perpetrator must pay the costs of any condition of probation or parole, to the extent that he or she is able to do so. The Court will carefully consider the perpetrator's income in assessing these costs, and may establish a payment schedule for the costs payable by the perpetrator.

(d) The Court must establish policies and procedures for responding to reports of nonattendance or noncompliance by a perpetrator with the conditions of probation or parole imposed pursuant to subsection (b).

(e) The police department must immediately report to the Court any assault by the perpetrator, the perpetrator's failure to comply with any condition imposed by the Court, and any threat of harm made by the perpetrator.

(f) The police department must establish policies and procedures:

- (1) for the exchange of information concerning the perpetrator with the Court and the victim; and

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- (2) for responding to reports of nonattendance or noncompliance by the perpetrator with conditions imposed pursuant to subsection (b).

§ 8.121 **PENALTIES FOR CRIME OF DOMESTIC OR FAMILY VIOLENCE**

(a) A person convicted of a crime of domestic or family violence is guilty of an Offense, and will be sentenced in accordance with § 12.163 of the Siletz Criminal Code, as follows:

- (1) a person convicted of a first offense of domestic or family violence as defined by § 8.103(a)(4)(A)-(J) is guilty of a Class C Offense.
- (2) a person convicted of a second offense of domestic or family violence as defined by § 8.103(a)(4)(A)-(J) is guilty of a Class B Offense.
- (3) a person convicted of a first offense of domestic or family violence as defined by § 8.103(a)(4)(K)-(P), or a person convicted of a third or subsequent offense of domestic or family violence as defined by § 8.103(a)(4)(A)-(J) is guilty of a Class A Offense.
- (4) if the Court finds that the respondent has violated the conditions of release, probation or parole contained in an order issued in accordance with § 8.110 or 8.120, or has violated an order for protection issued in accordance with § 8.126 or 8.127, and that there is reason to believe that the respondent will commit a further violation of the provisions of the order, the Court may require the violator to acknowledge an obligation to comply with the order on the record. The Court may require a bond sufficient to deter the violator from committing further violations of the order, considering the financial resources of the violator, and not to exceed \$5000. If the violator refuses to comply with an order to acknowledge the obligation or post a bond under this paragraph, the Court must commit the violator to be imprisoned for the term of the order or until the violator complies with the order under this paragraph, but in no case for a term exceeding one year. The warrant must state the cause of the commitment, with the sum and time for which any bond is required. An order under this paragraph is appealable.

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PART 3
CIVIL ORDERS FOR PROTECTION

§ 8.122 **JURISDICTION**

The Tribal Court has jurisdiction to hear a cause of action for an order for protection and issue such an order if either the petitioner or the respondent resides within the territorial jurisdiction of the Tribal Court as defined in § 3.003(a) of the Tribal Court Rules and Procedures, or if the acts and/or transaction giving rise to the cause of action fall within the Civil Jurisdiction of the Tribal Court as defined in § 3.003(b) of the Tribal Court Rules and Procedures.

§ 8.123 **ELIGIBLE PETITIONERS FOR ORDER**

(a) A person who is or has been a victim of domestic or family violence may file a petition for an order for protection against a family or household member who has committed an act of domestic or family violence.

(b) A parent, guardian, or other representative may file a petition for an order for protection on behalf of a minor or dependent person against a family or household member who commits an act of domestic or family violence. Minors who are at least 16 years of age or are legally married or emancipated may seek relief for themselves.

§ 8.124 **STANDARD FORM REQUIRED FOR PETITIONS AND ORDERS;**
REQUIRED STATEMENTS IN PETITIONS AND ORDERS; DUTY OF
CLERK TO PROVIDE PETITIONS AND CLERICAL ASSISTANCE

(a) The Siletz Tribal Court must:

- (1) develop and adopt standard forms for petitions and orders for protection, including but not limited to such orders issued pursuant to divorce, custody, emancipation and other domestic relations hearings; and
- (2) provide the forms to the Clerk of the Court.

(b) In addition to any other required information, the petition for an order for

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protection must contain a statement listing each civil or criminal action involving both parties filed within the preceding five years.

(c) The following statements must be printed in bold-faced type or in capital letters on the order for protection:

- (1) "Violation of this order may be punished by confinement in jail for as long as insert time period and by a fine of as much as insert amount.
- (2) "If so ordered by the Court, the respondent is forbidden to enter or stay at the petitioner's residence and a reasonable area surrounding the residence, even if invited to do so by the petitioner or any other person. In no event is the order for protection voided."

(d) The Clerk of the Court must provide to a person requesting an order for protection:

- (1) the forms adopted pursuant to subsection (a);
- (2) all other forms required to petition for an order for protection; and
- (3) clerical assistance in filling out the forms and filing the petition.

§ 8.125 **CONTINUING DUTY TO INFORM COURT OF OTHER PROCEEDINGS; EFFECT OF OTHER PROCEEDINGS; DELAY OF RELIEF PROHIBITED; OMISSION OF PETITIONER'S ADDRESS**

(a) At any hearing in a proceeding to obtain an order for protection, each party has a continuing duty to inform the Court of any civil or criminal action involving both parties filed within the previous five years that was not listed in the petition as required by § 8.124(b) for any reason.

(b) An order for protection is in addition to and not in lieu of any other available civil or criminal proceeding. A petitioner is not barred from seeking an order because of other pending proceedings. The Court must not delay granting relief because of the existence of a pending action between the parties.

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(c) A petitioner may omit her or his address from all documents filed with the Court. If a petitioner omits her or his address, the petitioner must provide the Court a mailing address. If disclosure of petitioner's address is necessary to determine jurisdiction, the Court may order the disclosure to be made:

- (1) after receiving the petitioner's consent;
- (2) orally and in chambers, out of the presence of the respondent, with a sealed record to be made; or
- (3) after a hearing, if the Court takes into consideration the safety of petitioner and finds such disclosure is in the interest of justice.

§ 8.126 EMERGENCY ORDER FOR PROTECTION; AVAILABLE RELIEF; AVAILABILITY OF JUDGE OR COURT OFFICER; EXPIRATION OF ORDER

(a) The Court may issue a written or oral emergency order for protection ex parte when a law enforcement officer states to the Court in person or by telephone, and the Court finds reasonable grounds to believe, that the petitioner is in immediate danger of domestic or family violence. Immediate danger under this section includes but is not limited to situations in which there is an allegation of a recent incident of domestic or family violence by the respondent, or the respondent has recently threatened petitioner with additional bodily harm.

(b) A law enforcement officer who receives an oral order for protection from the Court must:

- (1) fill out the order on the form required pursuant to § 8.124 based on the Court's directive and sign the form in the space provided for law enforcement;
- (2) serve a copy on the respondent;
- (3) immediately provide the petitioner with a copy of the order; and
- (4) provide the order to the Court by the end of the next judicial day. The

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Court will sign the order, after reviewing its contents and making any necessary modifications.

- (c) The Court may grant the following relief in an emergency order for protection:
- (1) an order enjoining the respondent from threatening to commit or committing acts of domestic or family violence against the petitioner and any designated family or household member;
 - (2) an order prohibiting the respondent from intimidating, harassing, menacing, annoying, telephoning, contacting, or otherwise interfering or communicating with the petitioner, directly or indirectly;
 - (3) an order removing and excluding the respondent from the residence of the petitioner and a reasonable area surrounding the residence, regardless of ownership of the residence;
 - (4) an order requiring the respondent to stay away from the residence, school, place of employment of the petitioner, or any specified place frequented by the petitioner and any designated family or household member;
 - (5) an order prohibiting the respondent from using or possessing a firearm or other weapon specified by the Court;
 - (6) an order granting possession and use of an automobile and other essential personal effects to the petitioner, and directing the appropriate law enforcement officer to accompany the petitioner to the residence of the parties to ensure that the petitioner is safely restored to possession of the residence, automobile, and other essential personal effects, or to supervise the petitioner's or respondent's removal of personal belongings;
 - (7) an order granting temporary custody of a minor child to the petitioner;
 - (8) an order prohibiting the respondent from removing a minor child from the jurisdiction of the Court; and
 - (9) an order granting such other relief as the Court deems necessary to protect

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and provide for the safety of the petitioner and any designated family or household member.

(d) A judge or other court officer with authority to issue an order for protection must be available 24 hours a day to hear petitions for emergency orders for protection.

(e) An emergency order for protection expires 72 hours after issuance.

§ 8.127 **ORDER FOR PROTECTION; MODIFICATION OF ORDERS; RELIEF AVAILABLE EX PARTE; RELIEF AVAILABLE AFTER HEARING; DUTIES OF THE COURT; DURATION OF ORDER**

(a) If it appears from a petition for an order for protection or a petition to modify an order for protection that domestic or family violence has occurred or a modification of an order for protection is required, the Court may:

- (1) without notice or hearing, immediately issue an order for protection ex parte or modify an order for protection ex parte as it deems necessary to protect the petitioner; or
- (2) upon notice, issue an order for protection or modify an order after a hearing whether or not the respondent appears.

(b) The Court may grant any relief available in accordance with § 8.126(c) without notice and hearing in an order for protection or a modification issued ex parte.

(c) The Court may grant the following relief in an order for protection or a modification of an order after notice and hearing, whether or not the respondent appears:

- (1) any relief available in accordance with § 8.126(c);
- (2) an order specifying arrangements for visitation with any minor child by the respondent and requiring supervision of that visitation by a third party or deny visitation if necessary to protect the safety of the petitioner or the minor child. Visitation arrangements must not compromise any other remedy provided by the Court by requiring or encouraging contact between the petitioner and respondent;

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- (3) an order prohibiting the respondent from transferring, encumbering or otherwise disposing of specified property mutually owned or leased by the parties;
- (4) an order requiring the respondent to pay attorney's fees;
- (5) an order requiring the respondent to:
 - (A) pay rent or make payment on a mortgage on the petitioner's residence and pay for the support of the petitioner and minor child if the respondent is found to have a duty to support the petitioner or minor child;
 - (B) reimburse the petitioner or other person for any expenses associated with the domestic or family violence, including but not limited to loss of earnings or other support, out-of-pocket losses for injuries sustained, cost of counseling, shelter expenses, moving or other travel expenses, and cost of repair or replacement of property damaged or taken;
 - (C) pay the costs and fees incurred by the petitioner in bringing the action;
 - (D) pay an award for emergency monetary relief to the petitioner and other dependents, if any; and
 - (E) pay compensation for pain and suffering, and punitive damages where appropriate.
- (d) The Court must:
 - (1) cause the order to be delivered to the tribal police officer for service;
 - (2) make reasonable efforts to ensure that the respondent and the petitioner, if present, understand the order for protection;

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- (3) transmit, by the end of the next business day after the order is issued, a copy of the order for protection to any non-tribal law enforcement agencies designated by the petitioner; and
- (4) transmit a copy of the order to the state registry. This subsection will not apply until such date that the State has agreed to register Tribal Court Orders on the State registry.

(e) An order for protection will be binding upon the parties to the action, their officers, agents, servants, employees, attorneys, and any other person in active concert or participation with them.

(f) An order for protection or a modification of an order for protection issued ex parte or upon notice and hearing is effective until further order of the Court, notwithstanding the acts of the parties. Temporary reconciliation will not revoke an order.

(g) Monetary relief and/or compensation awarded under this section must not exceed \$5000.

§ 8.128 REQUIRED HEARINGS; DUTY OF COURT WHEN ORDER FOR PROTECTION DENIED

(a) Except as otherwise provided in subsection (b), if the Court issues an order for protection or a modification of an order for protection ex parte, the Court must set a date for a hearing on the petition upon a request by either party made within 30 days after service of the order or modification. The hearing must be held within 30 days after the request for a hearing is filed unless continued by the Court for good cause shown. The Court must notify both parties by first class mail of the date and time of the hearing.

(b) The Court must set a date for a hearing on the petition within 15 days after the filing of the petition if the Court issues an order for protection or a modification of an order ex parte, and the ex parte order awards temporary custody of a minor child to the petitioner, excludes the respondent from the residence of the petitioner, or awards possession and use of an automobile to the petitioner. Such a hearing must be given precedence over all matters except older matters of the same character.

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(c) In a hearing held pursuant to subsection (a) or (b), relief in accordance with § 8.126(c) and 8.127 is available. If the respondent seeks relief concerning an issue not raised by the petitioner, the Court may continue the hearing at the petitioner's request.

(d) If the Court denies a petition for an order ex parte or a petition to modify an order for protection that is requested without notice to the respondent, the Court must inform the petitioner of his or her right to request a hearing upon notice to the respondent.

§ 8.129 EXTENSION OF FINAL ORDER FOR PROTECTION

(a) Prior to the expiration of a final order for protection, the petitioner may apply for a modification of the order for protection that will extend the time period that the order for protection is effective.

(b) The final order for protection may be modified by extending the time period for one year, two years, or five years. The Court may, in its discretion, issue an order for protection of permanent duration, particularly if the petitioner has been subjected to domestic or family violence which required hospitalization, or which resulted in life threatening injuries, significant disfigurement, impairment, or disability.

(c) If there has been no violation of the existing order prior to the application for extension, the Court will take this fact as evidence of the effectiveness of the order for protection in assuring the safety of the petitioner. The Court may not use the fact that there has been no violation of the order for protection to determine that no further need for the order for protection exists.

§ 8.130 EFFECT OF ACTION BY PETITIONER OR RESPONDENT ON ORDER

If a respondent is excluded from the residence of a petitioner or ordered to stay away from the petitioner, an invitation by the petitioner to do an act prohibited by the order does not waive or nullify the order for protection.

§ 8.131 DENIAL OF RELIEF PROHIBITED

The Court must not deny a petitioner relief under a petition for an order for protection

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solely because of a lapse of time between an act of domestic or family violence and the filing of the petition. Previous reconciliation prior to filing the current action must not be grounds for denying or terminating an order for protection.

§ 8.132 MUTUAL ORDERS FOR PROTECTION PROHIBITED

The Court must not issue a mutual order for protection to opposing parties. Where opposing parties seek orders of protection against each other, or a party that is the respondent in an order for protection seeks an order against the petitioner, the Court must determine which party is the primary aggressor in accordance with § 8.105(b). Following such determination, the Court must dismiss the petition filed by the party who is determined to be the primary aggressor.

§ 8.133 COURT-ORDERED AND COURT-REFERRED MEDIATION, MARRIAGE COUNSELING, OR RECONCILIATION OF CASES INVOLVING DOMESTIC OR FAMILY VIOLENCE PROHIBITED

The Court must not order or refer parties into mediation, marriage counseling, or reconciliation for resolution of the issues in a petition for an order for protection.

§ 8.134 COURT COSTS AND FEES

Fees for filing and service of process will not be charged for any proceeding seeking only the relief provided in Part 3 of this Ordinance.

§ 8.135 REGISTRATION AND ENFORCEMENT OF FOREIGN ORDERS FOR PROTECTION; DUTIES OF COURT CLERK

(a) A certified copy of an order for protection issued in another tribal or state court may be filed in the office of the Clerk of the Tribal Court. The Tribal Court will afford full faith and credit to the order for protection if the order is consistent with 18 U.S.C. § 2265(b).

(b) An order for protection filed in accordance with subsection (a) has the same effect and must be enforced in the same manner as an order for protection issued by the Tribal Court.

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(c) The Clerk of the Court must:

- (1) maintain a registry in which to enter certified orders for protection issued by other tribal or state courts that are received for filing; and
- (2) at the request of another tribal or state court or at the request of a person who is affected by or has a legitimate interest in an order for protection, certify and forward a copy of the order to that court or person at no cost to the requesting party.

(d) The Court will enforce all provisions of a registered foreign order for protection whether or not such relief is available in the Court.

PART 4
FAMILY AND CHILDREN

§ 8.136 PRESUMPTIONS CONCERNING CUSTODY

In every proceeding where there is at issue a dispute as to the custody of a minor child, a determination by the Court that domestic or family violence has occurred raises a rebuttable presumption that it is detrimental to the child and not in the best interest of the child to be placed in sole custody, joint legal custody, or joint physical custody with the perpetrator of domestic or family violence.

§ 8.137 FACTORS IN DETERMINING CUSTODY AND VISITATION

(a) In addition to other factors that the Court must consider in a proceeding in which the custody of a minor child or visitation by a parent is at issue and in which the Court has made a finding of domestic or family violence:

- (1) the Court must consider as primary the safety and well-being of the minor child and of the parent who is the victim of domestic or family violence;

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and

- (2) the Court must consider the perpetrator's history of causing physical harm, bodily injury, assault, or causing reasonable fear of physical harm, bodily injury, or assault, to another person.

(b) If a parent is absent or relocated because of an act of domestic or family violence by the other parent, the absence or relocation is not a factor that weighs against the parent in determining custody or visitation.

§ 8.138 PRESUMPTION CONCERNING RESIDENCE OF MINOR CHILD

In every proceeding where there is at issue a dispute as to the custody of a minor child, a determination by the Court that domestic or family violence has occurred raises a rebuttable presumption that it is in the best interest of the child to reside with the parent who is not a perpetrator of domestic or family violence in the location of that parent's choice.

§ 8.139 CHANGE OF CIRCUMSTANCES

In every proceeding where there is at issue the modification of an order for custody or visitation of a minor child, the finding that domestic or family violence has occurred since the last custody determination constitutes a finding of a change in circumstances.

§ 8.140 CONDITIONS OF VISITATION IN CASES INVOLVING DOMESTIC AND FAMILY VIOLENCE

(a) The Court may award visitation by a parent who committed domestic or family violence only if the Court finds that adequate provision for the safety of the minor child and the parent who is a victim of domestic or family violence can be made.

(b) In a visitation order, the Court may:

- (1) order an exchange of a minor child to occur in a protected setting;

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- (2) order that visitation be supervised by another person or agency;
- (3) order the perpetrator of domestic or family violence to attend and complete, to the satisfaction of the Court, a program of intervention for perpetrators or other designated counseling as a condition of the visitation;
- (4) order the perpetrator of domestic or family violence to abstain from possession or consumption of alcohol or controlled substances during the visitation and for 24 hours preceding the visitation;
- (5) order the perpetrator of domestic or family violence to pay a fee to defray the costs of supervised visitation;
- (6) prohibit overnight visitation;
- (7) require a bond from the perpetrator of domestic or family violence for the return and safety of the minor child; and
- (8) impose any other condition that is deemed necessary to provide for the safety of the minor child, the victim of domestic or family violence, or other family or household member.

(c) Whether or not visitation is allowed, the Court may order the address of the minor child and the victim to be kept confidential.

(d) The Court may refer but must not order an adult who is a victim of domestic or family violence to attend counseling relating to the victim's status or behavior as a victim, individually or with the perpetrator of domestic or family violence, as a condition of receiving custody of a minor child or as a condition of visitation.

(e) If the Court allows a family or household member to supervise visitation, the Court must establish conditions to be followed during visitation.

§ 8.141 DUTIES OF INDIAN CHILD WELFARE DEPARTMENT

(a) In performing its duty to investigate pursuant to the Siletz Juvenile Code, § 8.005, the Indian Child Welfare Program must develop written procedures for screening each referral

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for abuse or neglect of a child to assess whether abuse of another family or household member is also occurring. The assessment must include, but is not limited to:

- (1) inquiry concerning the criminal record of the parents, and the alleged abusive or neglectful person and the alleged perpetrator of domestic or family violence, if not a parent of the child; and
- (2) inquiry concerning the existence of orders for protection issued to either parent.

(b) If it is determined in an investigation of abuse or neglect of a child that the child or another family or household member is in danger of domestic or family violence and that removal of one of the parties is necessary to prevent the abuse or neglect of the child, Indian Child Welfare must seek the removal of the alleged perpetrator of domestic or family violence whenever possible.

(c) If it is determined in an investigation of abuse or neglect of a child that a parent of the child is a victim of domestic or family violence, services must be offered to the victimized parent and the provision of such services must not be contingent upon a finding that either parent is at fault or has failed to protect the child.

PART 5
STALKING

§ 8.142 **DEFINITIONS**

(a) Unless the context requires otherwise, terms used in this Part are defined as follows.

- (1) “Alarm” means to cause apprehension or fear resulting from the perception of danger.
- (2) “Coerce” means to restrain, compel or dominate by force or threat.
- (3) “Contact” includes but is not limited to:

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- (A) coming into the visual or physical presence of the other person;
 - (B) following the other person;
 - (C) waiting outside the home, property, place of work or school of the other person or of a member of that person's family or household;
 - (D) sending or making written communications in any form to the other person;
 - (E) speaking with the other person by any means;
 - (F) communicating with the other person through a third person;
 - (G) committing a crime against the other person;
 - (H) communicating with a third person who has some relationship to the other person with the intent of affecting the third person's relationship with the other person;
 - (I) communicating with business entities with the intent of affecting some right or interest of the other person;
 - (J) damaging the other person's home, property, place of work or school; or
 - (K) delivering directly or through a third person any object to the home, property, place of work or school of the other person.
- (4) "Family or household member" has the same meaning as in § 8.102(b) of this Ordinance.
- (5) "Law enforcement officer" means any person employed by the Tribe, the State of Oregon or any agency of the federal government as a law enforcement officer.

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- (6) “Repeated” means two or more times.
- (7) “School” means a public or private institution of learning or a child care facility.

§ 8.143 STALKING

- (a) A person commits the crime of stalking if:
 - (1) the person knowingly alarms or coerces another person or a member of that person’s family or household by engaging in repeated and unwanted contact with the other person;
 - (2) it is objectively reasonable for a person in the victim’s situation to be alarmed or coerced by the contact; and
 - (3) the repeated and unwanted contact causes the victim reasonable apprehension regarding the personal safety of the victim or a member of the victim’s family or household.
- (b) Stalking is a Class A offense.

§ 8.144 CITATION; FORM

(a) Upon a complaint initiated as provided in § 8.147, a law enforcement officer must issue a citation ordering the person to appear in Court within three judicial days and show cause why the Court should not enter a Court’s stalking protective order when the officer has probable cause to believe that:

- (1) the person intentionally, knowingly or recklessly engages in repeated and unwanted contact with the other person or a member of that person’s family or household thereby alarming or coercing the other person;
- (2) it is objectively reasonable for a person in the victim’s situation to be alarmed or coerced by the contact; and

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- (3) the repeated and unwanted contact causes the victim reasonable apprehension regarding the personal safety of the victim or a member of the victim's family or household.
- (b) The Police Department must develop and distribute a form for the citation.

§ 8.145 **EFFECT OF CITATION; CONTENTS; HEARING; COURT'S STALKING PROTECTIVE ORDER**

(a) A citation must notify the respondent of a Tribal Court hearing where the respondent must appear at the place and time set forth in the citation. The citation must contain:

- (1) the name of the respondent;
- (2) a copy of the stalking complaint;
- (3) the date, time and place at which the citation was issued;
- (4) the name of the law enforcement officer who issued the citation;
- (5) the time, date and place at which the respondent is to appear in court; and
- (6) notice to the respondent that failure to appear at the time, date and place set forth in the citation will result in the respondent's arrest and entry of a Court's stalking protective order.

(b) The officer must notify the petitioner in writing of the time, date and place set for the hearing.

(c) The hearing must be held as indicated in the citation. At the hearing, the petitioner may appear in person or by telephone. The respondent must be given the opportunity to show cause why a Court's stalking protective order should not be entered. The hearing may be continued for up to 30 days. The Court may enter:

- (1) a temporary stalking protective order pending further proceedings; or

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- (2) a Court's stalking protective order if the Court finds by a preponderance of the evidence that:
- (A) the person intentionally, knowingly or recklessly engages in repeated and unwanted contact with the other person or a member of that person's family or household thereby alarming or coercing the other person;
 - (B) it is objectively reasonable for a person in the victim's situation to be alarmed or coerced by the contact; and
 - (C) the repeated and unwanted contact causes the victim reasonable apprehension regarding the personal safety of the victim or a member of the victim's family or household.

(d) In the order, the Court must specify the conduct from which the respondent is to refrain, which may include all contact listed in § 8.142(a)(3) and any attempt to make contact listed in § 8.142(a)(3). The order is of unlimited duration unless limited by law.

(e) If the respondent fails to appear at the time, date and place specified in the citation, the Court must issue a warrant of arrest in order to ensure the appearance of the respondent at Court and must enter a Court's stalking protective order.

(f) The Court may also order the respondent to undergo a mental health evaluation and, if indicated by the evaluation, treatment.

(g) A law enforcement officer must report the results of any investigation arising from a complaint under § 8.147 to the Tribal Prosecutor within three days after presentation of the complaint.

§ 8.146 SERVICE OF ORDER

Whenever a stalking protective order is issued and the person to be restrained has actual notice thereof, the person serving the order must deliver forthwith to the tribal police department a true copy of the order and a certificate of service on which it is stated that personal service of

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the order was made on the respondent. If an order entered by the Court recites that the respondent appeared in person before the Court, the necessity for further service of the order is waived and the accompanying certificate of service is not necessary.

§ 8.147 INITIATION OF ACTION TO OBTAIN A CITATION

(a) A person may initiate an action seeking a citation under § 8.144 by presenting a complaint to a law enforcement officer or to any law enforcement agency. The complaint must be a statement setting forth with particularity the conduct that is the basis for the complaint. The petitioner must affirm the truth of the facts in the complaint.

(b) The Tribal Police Department must develop and distribute the form of the complaint. The form must include the standards for reviewing the complaint and for action.

(c) A parent may present a complaint to protect a minor child. A guardian may present a complaint to protect a dependent person.

(d) By signing the complaint, a person is making a sworn statement.

§ 8.148 VIOLATING A COURT'S STALKING PROTECTIVE ORDER

(a) A person commits the crime of violating a Court's stalking protective order when:

- (1) the person has been served with a Court's stalking protective order as provided in § 8.146 or if further service was waived because the person appeared before the Court;
- (2) the person, subsequent to the service of the order, has engaged intentionally, knowingly or recklessly in conduct prohibited by the order; and
- (3) if the conduct is prohibited contact as defined in § 8.142(a)(3)(D), (E), (F), (G) or (H), the subsequent conduct has created reasonable apprehension regarding the personal safety of a person protected by the order.

(b) A person convicted of violating a Court's stalking protective order is guilty of a Class B Offense unless the person has a prior conviction for stalking or violating a Court's

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stalking protective order, in which case the person is guilty of a Class A Offense.

§ 8.149 IMMUNITY OF OFFICER ACTING IN GOOD FAITH

A law enforcement officer acting in good faith will not be liable in any civil action for issuing a citation under § 8.144.

§ 8.150 ACTION FOR ISSUANCE OR VIOLATION OF A STALKING PROTECTIVE ORDER

(a) A person may bring a civil action in Tribal Court for a Court's stalking protective order or for damages, or both, against a person if:

- (1) the person intentionally, knowingly or recklessly engages in repeated and unwanted contact with the other person or a member of that person's immediate family or household thereby alarming or coercing the other person;
- (2) it is objectively reasonable for a person in the victim's situation to be alarmed or coerced by the contact; and
- (3) the repeated and unwanted contact causes the victim reasonable apprehension regarding the personal safety of the victim or a member of the victim's family or household.

(b) At the time the petition is filed, the Court, upon a finding of probable cause based on the allegations in the petition, must enter a temporary Court's stalking protective order that may include, but is not limited to, all contact listed in § 8.142(a)(3). The petition and the temporary order must be served upon the respondent with an order requiring the respondent to personally appear before the Court to show cause why the temporary order should not be continued for an indefinite period.

(c) At the hearing, whether or not the respondent appears, the Court may continue the hearing for up to 30 days or may proceed to enter a Court's stalking protective order and take other action as provided in § 8.145. If the respondent fails to appear after being served as required by subsection (b), the Court may issue a warrant of arrest in order to ensure the

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appearance of the respondent in Court.

(d) The plaintiff may recover:

- (1) both special and general damages, including damages for emotional distress;
- (2) punitive damages; and
- (3) reasonable attorneys fees and costs.

(e) An action under this section must be commenced within two years of the conduct that is the basis of the claim.

(f) Proof of the claim must be by a preponderance of the evidence.

(g) The remedy provided by this section is in addition to any other remedy, civil or criminal, provided by law for the conduct that is the basis of the claim.

No filing fee, service fee or hearing fee will be charged for a proceeding under this section if a Court's stalking protective order is the only relief sought.